



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Edition 51 of our NSW Public Sector Newsletter. 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

LCA: Policy must be before politics: Senate motion extending court reform submission date applauded

The Senate recently took the rare step of passing a motion requiring the committee inquiry into the family court merger bills to delay its closing date for submissions by a further two months – a move praised by the Law Council <https://www.lawcouncil.asn.au/media/media-releases/policy-must-be-before-politics-senate-motion-extending-court-reform-submission-date-applauded>

Broader powers for Police at Airports

Minister for Home Affairs Peter Dutton said the *Police Powers at Airports Bill 2018* expands existing powers to enable police to direct a person to provide proof of identity, 'move on' from airport premises, or not take a flight, where they pose a criminal or security threat <https://minister.homeaffairs.gov.au/peterdutton/Pages/Broader-powers-for-Police-at-Airports.aspx>

HRLC: Hate Crimes Act needed to protect LGBTI people from prejudice

The Human Rights Law Centre report *End the Hate: Responding to prejudice motivated speech and violence against the LGBTI Community* reveals how current laws and policies are failing to protect LGBTI people from hate crime and hate conduct and outlines how the tide can be turned with 23 recommendations for reform <https://www.hrlc.org.au/news/2018/9/12/hate-crimes-act-needed-to-protect-lgbti-people-from-prejudice>

More support for more cognitive impairment

The NSW Government is investing \$10 million over two years in a new state wide service to help people with cognitive impairment navigate the criminal justice system, from the time a crime occurs until the end of the legal process

<https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/people-with-cognitive-impairment-to-receive-more-support.aspx>

New laws to protect domestic violence victims

Domestic violence victims will have greater protection in NSW with the introduction of tougher strangulation laws and longer Apprehended Domestic Violence Orders (ADVOs) <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/new-laws-to-protect-domestic-violence-victims.aspx>

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Everyone's business: fourth national survey on sexual harassment in Australian workplaces](#)

Australian Human Rights Commission: 12 September 2018

The Australian public has rightly demanded to know more about the pervasiveness and impact of workplace sexual harassment and to see concerted action taken to prevent this behaviour from occurring. Government and employers need reliable data to inform their actions and responses to workplace sexual harassment

[Crime and law enforcement: a quick guide to key internet links](#)

Parliament of Australia: 12 September 2018

This Quick Guide provides key internet links to websites with information on crime and law enforcement arrangements and issues

[Submission to the Department of Home Affairs on Exposure Draft of the Telecommunications and Other Legislation Amendment \(Assistance and Access\) Bill 2018](#)

Adam Molnar, Lizzie O'Shea, Monique Mann, Angus Murray, Peter Tonoli, Bruno Watt, Suelette Dreyfus

Digital Rights Watch: 10 September 2018

Digital Rights Watch collaborated with Australian Privacy Foundation, Electronic Frontiers Australia, Future Wise, The Queensland Council for Civil Liberties, The New South Wales Council for Civil Liberties, Access Now and Blueprint for Free Speech to produce this joint submission

[A statistical snapshot of crime and justice in New South Wales](#)

Tom Gotsis, Matthew Dobson; New South Wales Parliamentary Research Service: 07 September 2018

This paper collates recent statistical information on crime rates, victims, offenders, policing, juvenile justice, criminal courts and corrections in New South Wales. It is designed to provide an evidence base to inform public discussion and policy development

[Draft Charter of Aged Care Rights: consultation paper](#)

Department of Health (Australia): 05 September 2018

This consultation paper outlines the basis for developing a single Charter of Aged Care Rights and how the draft charter has been developed to date. As noted in the paper, the draft charter is aimed at stimulating feedback from this consultation

CASES

[CXXXVII v Australian Criminal Intelligence Commission & Anor \[2018\] FCCA 2400](#)

ADMINISTRATIVE LAW – Application for Judicial Review – Australian Crime Commission – special investigation – federally relevant criminal activity – determination of the Board – conceded first summons issued by examiner invalid by reason of attachment of incorrect superseded determination – whether second summons and notice to produce issued by examiner invalid – improper exercise of power – notice to produce required production of electronic communication devices – whether notice to produce impossible to comply with due to its incoherence – whether requirement to produce thing unfair in nature – whether invalid first notice to produce renders second notice invalid – whether extent of determination unreasonably broad – lack of specificity of determination – whether more particulars of matter to be investigated required to be provided – abuse of process – mobile phone seized pursuant to invalid notice to produce – unreasonableness – re-exercise of administrative power.

Australian Crime Commission Act 2002, ss.4; 7; 7A; 7B; 7C; 21A; 24ABA(1); 28; Administrative Decisions (Judicial Review) Act 1977, ss.5, 6

[Wagner & Ors v Harbour Radio Pty Ltd & Ors \[2018\] QSC 201](#)

DEFAMATION – STATEMENTS AMOUNTING TO DEFAMATION – PARTICULAR STATEMENTS – IMPUTATIONS – where the plaintiffs sue in respect of 32 separate matters, the majority of which are radio broadcasts – where the defendants admit that they published, or were responsible for the publication of, the 32 matters complained of – where the plaintiffs allege that these publications give rise to 98 defamatory imputations – where the alleged imputations primarily concern the plaintiffs' role in the Grantham Floods of 2011, and the plaintiffs' construction of Wellcamp Airport – where the action was tried by a judge sitting alone – whether the alleged imputations are conveyed – whether the alleged imputations are of and concerning the plaintiffs – whether the alleged imputations are defamatory of the plaintiffs

DEFAMATION – DEFENCES – JUSTIFICATION – TRUTH – SUBSTANTIAL TRUTH AND CONTEXTUAL TRUTH – FAIR REPORT – MATTER OF PUBLIC INTEREST – OTHER DEFENCES – where the defendants seek to establish defences of substantial truth, contextual truth, and fair report of proceedings of public concern – where the defendants prior to trial extended to the plaintiffs a written offer to make amends – where the defendants plead that the plaintiffs' failure to accept that offer constitutes a further defence pursuant to s 18 of the Defamation Act 2005 (Qld) – whether the imputations are defensible on any of the pleaded grounds – whether the defendants' offer to make amends was, in all the circumstances, reasonable

DAMAGES – GENERAL DAMAGES – ASSESSMENT – SPECIAL MATTERS

[McEwan v Port Stephens Council \[2018\] NSWCATAP 211](#)

APPEAL – ADMINISTRATIVE LAW – access to objections to development application – balancing of interests for and against disclosure where information sought is open access information – public interest considerations against disclosure – application of appeal right where part of reasons not disclosed to appellant – adequacy of reasons – need to address material evidence against existence of factor relied upon to refuse disclosure.

[Infrastructure NSW & Department of The Premier and Cabinet v Mookhey \[2018\] NSWCATAP 213](#)

Appeal – Administrative Law – Access to government information – Cabinet information – no reasonable grounds for claim that Cabinet information – procedural fairness – whether agency should have opportunity to rely on alternative grounds to refuse access

[Broadribb v Medical Council of New South Wales \[2018\] NSWCATAD 213](#)

ADMINISTRATIVE LAW – government information – conclusive presumption of an overriding public interest against disclosure – information relating to or obtained in exercise of functions of Health Care Complaints Commission

[DNP v NSW Trustee and Guardian \[2018\] NSWCATAD](#)

ADMINISTRATIVE LAW – merits review – where NSW Trustee and Guardian decided to approve the sale of property owned jointly by a person who is the subject of a financial management order and one of her sons – where son disagreed with the decision to sell the property – where paramount consideration is the welfare and interests of the person subject to the financial management order – correct and preferable decision

PRACTICE AND PROCEDURE

ABA: Draft rule change of Legal Profession Uniform Conduct (Barristers) Rules 2015

The Legal Services Council agreed with the ABA's proposal to further amend r 101(n) of *Legal Profession Uniform Conduct (Barristers) Rules 2015* to ensure that the preclusion rule does not operate retrospectively. The Council has also authorised to approve the ABA to conduct public consultation on draft rule 101A of the Barristers Conduct Rules under s427(5)(b) of the Uniform Law. (13 September 2018) [View the PDF here](#)

AAT Bulletins 2018

[Issue No. 35/2018](#), 10 September 2018

[Issue No. 34/2018](#), 3 September 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.

Human Rights and Technology Issues Paper 2018: consultation

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 which has been extended to 15 November 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](#)

NSW

[ICAC: Operation Skyline public inquiry witness list](#)

Witness list for the Operation Skyline public inquiry into allegations concerning the Awabakal Local Aboriginal Land Council, week beginning Monday 17 September 2018. Please note that this list is subject to change.

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

Tables summarising information about briefs that are with the DPP, and prosecution outcomes. Last updated 7 September 2018

[ICAC: Operation Dash 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

[NCAT Legal Bulletin Issue 5 of 2018](#)

The NCAT Legal Bulletin provides a summary of relevant and interesting case law of significance to the work of the NSW Civil and Administrative Tribunal. See the September Issue [here](#)

New Sentencing legislation commences 24 September 2018

On 24 September, the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* commences.

Material about the reforms can also be found on the Public Defenders website: <https://www.publicdefenders.nsw.gov.au/>

[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 is: TaskForce@justice.nsw.gov.au and remain open for 13 weeks

[Strengthening child sexual abuse laws in NSW](#)

The NSW Government has prepared a discussion paper that identifies issues and poses questions about possible options for child sexual abuse law reform. The paper considers the recommendations made by the Royal Commission and the recommendations of the NSW Parliament's Joint Select Committee on Sentencing of Child Sexual Assault Offenders. Submissions close 6 October 2017.

[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 November 2018

LEGISLATION

Commonwealth

[Civil Law and Justice Legislation Amendment Bill 2017](#)

Senate: Third reading agreed to 12/09/2018

Amends the: Acts Interpretation Act 1901 and Legislation Act 2003 to clarify the validity of ministerial acts and the operation of provisions about the management of compilations prepared for the Federal Register of Legislation

[Crimes Legislation Amendment \(Police Powers at Airports\) Bill 2018](#)

HR 12/09/2018 - The Crimes Legislation Amendment (Police Powers at Airports) Bill 2018 (the Bill) amends the Crimes Act 1914 (the Crimes Act) to enhance police powers at Australia's major airports, including by enabling constables and protective service officers (PSOs) [1] to: direct a person to produce evidence of their identity ('identity check direction') (section 3UN)

[Commonwealth Places and Services \(Facial Recognition\) Bill 2018](#)

HR 11/09/2018 - The Bill also prohibits wearing of facial coverings when obtaining Commonwealth social services and as a participant in citizenship ceremonies. The Bill is to ensure that Australian national security and citizen safety is paramount, to improve verification of identity, to ensure that Australian values and cultural norms are accepted and respected, and to uphold the equality of women in Australian society

NSW

Proclamations commencing Acts

[Rural Crime Legislation Amendment Act 2017 No 62](#)
(2018-529) — published LW 14 September 2018

Regulations and other miscellaneous instruments

[Law Enforcement \(Powers and Responsibilities\) Amendment \(Stock Mustering Orders\) Regulation 2018](#)
(2018-530) — published LW 14 September 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