



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to edition 54 of our NSW public sector newsletter, in what has been a busy fortnight for the sector. This issue includes media coverage of the NSW Government apology to survivors of institutional child sexual abuse, and the announcement of a \$127 million package to implement the recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse, and much more.

MEDIA

NSW Government delivers apology to survivors of institutional child sexual abuse

Premier Gladys Berejiklian has delivered an apology to survivors of institutional child sexual abuse on behalf of the NSW Government at an official ceremony at the Sydney Opera House <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/apology-to-survivors-of-institutional-child-sexual-abuse.aspx>

NSW Government commits \$127 million to respond to Royal Commission

The NSW Government has announced a comprehensive \$127 million package to implement the recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/government-funds-royal-commission-reforms.aspx>

The protection of human rights of people born with variations in sex characteristics in the context of medical interventions

On 12 October 2018, the Law Council provided the Australian Human Rights Commission with a submission in relation to its consultation on the protection of human rights for people born with variations in sex characteristics in the context of medical interventions <https://www.lawcouncil.asn.au/media/news/the-protection-of-human-rights-of-people-born-with-variations-in-sex-characteristics-in-the-context-of-medical-interventions>

Tougher penalties for international parental child abductions

The legislation, which has passed through Parliament, fills a current gap in the law and will apply when a child, who is the subject of a court order or proceedings, is unlawfully retained overseas without parental consent or a court order. The new offences will be punishable by up to 3 years' imprisonment <https://www.attorneygeneral.gov.au/Media/Pages/Tougher-penalties-for-international-parental-child-abductions-22-October-2018.aspx>

ATO executive admits letter automation error 'a bad look'

The taxpayer applied to the Federal Court for judicial review, but the full Federal Court majority denied the taxpayer's appeal. However, there was also a dissenting judgment delivered by Justice Kerr, who said the majority's decision "would turn on its head fundamental principles of administrative law" and cause "confusion" for Australian taxpayers <https://www.abc.net.au/news/2018-10-24/ato-admits-automation-error-at-senate-estimates/10423830>

More support for vulnerable victims in court

Vulnerable people will be spared the ordeal of giving evidence multiple times in sexual assault trials, under legislation recently introduced to NSW Parliament. Attorney General Mark Speakman said the new provisions are designed to reduce the trauma and stress on witnesses whose evidence is needed in retrials or other court proceedings <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/more-support-vulnerable-victims-in-court.aspx>

Triple Zero investigation finds Telstra breach

Telstra will improve delivery of the Triple Zero emergency call service following an ACMA investigation. The ACMA's investigation found that Telstra contravened a rule that requires telecommunications providers to ensure that calls made to Triple Zero using their networks are carried to the operator of the emergency call service <https://www.acma.gov.au/theACMA/triple-zero-investigation-finds-telstra-breach>

IPC Annual Report 2017/18 released

Information and Privacy Commission (IPC) CEO has released the IPC's Annual Report 2017/18, which also contains a report on the work of the Privacy Commissioner, Samantha Gavel for the same period. Ms Tydd noted the Annual Report demonstrates that the IPC is both an effective regulator and leader in sound information access and privacy governance <https://www.ipc.nsw.gov.au/news-media/media-releases/ipc-annual-report-201718-released-0>

Uncertainty about side-stepping warrants and detention must be resolved under encryption bill

The Australian Government's encryption access bill raises serious questions about the ability of law enforcement and intelligence agencies to access encrypted private information without a warrant, as well as the power detain individuals in certain circumstances <https://www.lawcouncil.asn.au/media/media-releases/uncertainty-about-side-stepping-warrants-and-detention-must-be-resolved-under-encryption-bill->

New NCAT President appointed

The Attorney General has announced that Ms Lea Armstrong, NSW Crown Solicitor, has been appointed as the new President of the NSW Civil and Administrative Tribunal (NCAT). Ms Armstrong will be sworn in as a Supreme Court judge on 31 October 2018 http://www.ncat.nsw.gov.au/Pages/announcements/20181019_new_president_appointed_to_ncat.aspx

Annual report highlights milestones for privacy and information access in 2017-18

Significant changes to privacy regulations and heightened awareness of information handling and access issues have been the hallmarks of 2017-18, the Office of the Australian Information Commissioner (OAIC) annual report shows <https://www.oaic.gov.au/media-and-speeches/media-releases/annual-report-highlights-milestones-for-privacy-and-information-access-in-2017-18>

A fairer system for considering criminal records in employment decisions

The Government will amend the Australian Human Rights Commission Regulations 1989 (the Regulations) to clarify that whilst employers can discriminate on the basis of a 'relevant criminal record', they won't be able to discriminate if the conviction is 'irrelevant' to the role being applied for <https://www.attorneygeneral.gov.au/Media/Pages/A-fairer-system-for-considering-criminal-records-in-employment-decisions-19-October.aspx>

Permanent stay as abuse of process: UBS AG v Tyne [2018] HCA 45

In UBS AG v Scott Francis Tyne as Trustee of the Argot Trust [2018] HCA 45 (17 October 2018) the High Court of Australia has, in a majority decision, allowed an appeal from a decision of the Full Court of the Federal Court of Australia dealing with the power to permanently stay proceedings as an abuse of the processes of the court <http://eresources.hcourt.gov.au/showCase/2018/HCA/45>

LCA welcomes new entitlements proposed under the Family and Domestic Violence Leave Bill

Law Council representatives welcomed the new entitlement in the National Employment Standards proposed under the Bill, being five days of unpaid family and domestic violence leave, as a critical step in the right direction <https://www.lawcouncil.asn.au/media/news/lca-welcomes-new-entitlements-proposed-under-the-family-and-domestic-violence-leave-bill>

New Commissioner eyes surveillance devices

A new commissioner will be appointed to provide greater scrutiny of applications for surveillance device warrants under legislation introduced into Parliament. Attorney General Mark Speakman said the commissioner will be given scrutiny powers previously exercised by the NSW Solicitor General <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/new-commissioner-eyes-surveillance-devices.aspx>

Police airport powers need to be strictly defined and subject to proper oversight

The Law Council has told a Parliamentary Committee that police powers to request ID and remove people from airports are currently too broad and not subject to appropriate review in the event that the wrong decision is made <https://www.lawcouncil.asn.au/media/media-releases/police-airport-powers-need-to-be-strictly-defined-and-subject-to-proper-oversight>

Tightening controls on terror detainees

Juvenile detainees considered a threat to national security will be subject to tighter controls inside centres, including additional restrictions on mail, phone calls and visitors <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/tightening-controls-terror-detainees.aspx>

Law Council endorses Australian Government's Strategy for Abolition of Death Penalty

The Law Council has thrown its support behind the Australian Government's Strategy for Abolition of the Death Penalty. The Strategy, launched by Foreign Minister, Senator Marise Payne, outlines the practical steps that ministers, parliamentarians and Australia's network of embassies and missions can take to advance the goal of global abolition. <https://www.lawcouncil.asn.au/media/media-releases/law-council-endorses-australian-governments-strategy-for-abolition-of-the-death-penalty>

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Understanding the disruptive technology ecosystem in Australian urban and housing contexts: a roadmap](#)

Christopher J. Pettit, Edgar Liu, Ellie Rennie, Jake Goldenfein, Stephen Glackin; Australian Housing and Urban Research Institute: 25 October 2018

While much work has been done in opening up property data assets across governments, significant

work is required on data standards, privacy standards and data sharing across government, industry and the non-profit sectors

[Draft ACCC guidelines to assist the Copyright Tribunal in the determination of copyright remuneration](#)

Australian Competition and Consumer Commission: 24 October 2018

The ACCC has developed these guidelines to assist in the determination of reasonable copyright remuneration in proceedings relating to voluntary licences and licence schemes before the Copyright Tribunal of Australia

[Victim appeal: how to address manifestly inadequate sentences](#)

Andrew Bushnell; Institute of Public Affairs: 19 October 2018

This paper recommends that victims of crime be given the right to instruct the DPP to seek leave to appeal sentences that they find unjustly lenient. The primary goal of this reform is to address community concern that the judiciary is out-of-touch with community standards

[Police use of CCTV on the rail network](#)

Anthony Morgan, Maggie Coughlan; Australian Institute of Criminology: 18 October 2018

Despite support from police for the use of CCTV, and its popularity in public places, there has been limited research into the use of CCTV by police for investigative purposes. This study attempted to better understand police demand for CCTV footage from the NSW rail network

[Young people in child protection and under youth supervision: 1 July 2013 to 30 June 2017](#)

Australian Institute of Health and Welfare: 16 October 2018

This report presents information on people aged 10–17 who were in the child protection system and under youth justice supervision from 1 July 2013 to 30 June 2017

[Article: Australian Information Commissioner and Privacy Commissioner in the Australian](#)

OAIC: 23 October 2018

Human error and deception. Compromised credentials. One-off incidents. This is the reality of most data breaches notified to the Office of the Australian Information Commissioner since mandatory reporting began in February

[Judicial decision-making in times of war and relative peace - The Hon Susan Kiefel AC](#)

In some controversial decisions during World War II and in its aftermath, the Court held invalid statutory and regulatory measures

[Social values and the criminal law's adaptability to change](#)

Chief Justice Susan Kiefel AC, Paper delivered at the International Criminal Law Congress, Byron Bay, 6 October 2018

CASES

[Australian Broadcasting Corporation and Department of Communications and the Arts \(Freedom of information\) \[2018\] AICmr 66](#)

Freedom of Information – Whether material in document irrelevant to the request – Whether disclosure would unreasonably affect an organisation in respect of its lawful business affairs – (CTH) Freedom of Information Act 1982 ss 22 and 47G

[Council of the Law Society of New South Wales v Levitt \[2018\] NSWCA 247](#)

ADMINISTRATIVE LAW – judicial review – application for judicial review of decisions of Council of Law Society of New South Wales determining complaints against a solicitor pursuant to s 537(2) of the Legal Profession Act 2004 (NSW) – where Council resolved it was satisfied there was a reasonable likelihood of Civil and Administrative Tribunal concluding solicitor guilty of professional misconduct – whether requirement to consider s 540 as condition precedent to operation of s 537(2) of the Legal Profession Act 2004 (NSW) ADMINISTRATIVE LAW – judicial review – application for judicial review of decisions of Council of Law Society of New South Wales determining complaints against a solicitor – construction of ss 537(2) and 540 of the Legal Profession Act 2004 (NSW) – whether conclusion by Council it was satisfied there was a reasonable likelihood of Civil and Administrative Tribunal concluding solicitor was guilty of professional misconduct precluded it also being satisfied of finding of reasonable likelihood of Tribunal concluding solicitor was guilty of unsatisfactory professional conduct STATUTORY INTERPRETATION – where Council resolved it was satisfied there was a reasonable likelihood of Tribunal concluding solicitor was guilty of professional misconduct – whether s 537(2) of the Legal Profession Act (NSW) requires Council also to consider whether there is a reasonable likelihood of a finding of unsatisfactory professional

[Balnaves Foundation Pty Ltd v Minister for Planning \(No 2\) \[2018\] NSWLEC 163](#)

JUDICIAL REVIEW: whether the consent authority had the power to impose a condition requiring contributions to be paid – whether a regulation empowering the imposition of a condition is inconsistent with the primary enactment authorising the making of the regulation – whether the regulation is “of a savings or transitional nature” – whether the regulation is “consequent on” the enactment of a later Act – regulation validly enacted and the imposition of condition of consent lawful. STATUTORY CONSTRUCTION: whether delegated legislation is inconsistent with primary legislation authorising the making of the delegated legislation – applicable principles of statutory construction – proper construction of transitional and savings provisions

[Dezfouli v Health Care Complaints Commission \[2018\] NSWCATAD 245](#)

HUMAN RIGHTS – Equal Opportunity – leave required for complaint to proceed – principles applying to grant of leave
HUMAN RIGHTS – Equal Opportunity – discrimination in the area of services – identification of relevant service

[Briggs v Commissioner for Fair Trading Department of Finance, Services and Innovation \[2018\] NSWCATOD 175](#)

ADMINISTRATIVE REVIEW – Home Building – Application for contractor licence – Where application rejected on basis that Applicant did not meet requirements of an instrument made by the Respondent - Whether the Tribunal is satisfied that the Applicant has the requisite qualifications and experience to be a builder

PRACTICE AND PROCEDURE

High Court Bulletin

[High Court of Australia Bulletin \[2018\] HCAB 08 \(24 October 2018\)](#)

OAIC Statements

22 October 2018 - Commissioners opening statement - Senate Estimates 22 October 2018

AAT: Reporting on our performance

The [AAT's Annual Report 2017-18](#) is now available

AAT Bulletins 2018

[Issue No. 41/2018](#), 22 October 2018

AAT's recent senate estimates appearance

The AAT was called to appear before the [Senate Legal and Constitutional Affairs Legislation Committee](#) on Tuesday 23 October 2018. An excerpt of the opening statement provided by the Registrar is outlined here. The AAT remains dedicated to providing a review process that is accessible, fair, just, economical, informal and quick. The full testimony from the hearing will soon be available on the [Committee website](#)

Law Council of Australia Submissions

25 October 2018 - Law Council - [Human Rights and Technology](#)

18 October 2018 - Law Council - [Telecommunications and Other Legislation Amendment \(Assistance and Access\) Bill 2018](#)

High Court Amendment (Constitutional Writs and Other Matters) Rules 2018

These Rules were registered on the Federal Register of Legislative Instruments on 17 October 2018 and commence on 1 November 2018. Click here to download [the Amendment](#). Click here to download the [Explanatory Statement](#).

AHRC: National Workplace Sexual Harassment Inquiry - Conversation toolkit

The National Workplace Sexual Harassment Inquiry launched a conversation toolkit to assist businesses and

organisations conduct facilitated conversations about workplace sexual harassment. The conversation toolkit has been developed to help employers, individuals and groups open respectful and productive discussions in their places of work, and to feed that input into their submissions to the National Inquiry. Download the [conversation toolkit here](#).

ARLC reminder: Review of the Family Law System: Discussion Paper

The Discussion Paper asks 33 questions and makes 124 proposals for change to the family law system, which focuses on support for children in the family law system, improving public understanding of the family law system, accessible and coordinated service delivery, and enhanced oversight of the family law system and its workforce.

Submissions close on 13 November 2018. [See the Discussion Paper](#)

[Review of national arrangements for the protection and management of identity information](#)

Terms of reference: The Review will consider ways to enhance or strengthen arrangements for the protection, use and management of identity information in Australia. Public submissions will be received until 26 October. The review is to report by the end of November.

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 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

NCAT: [New reinstatement application form](#)

NCAT has developed a new standard form for applying for a reinstatement of proceedings. If there is a reasonable excuse for not appearing at the hearing, the applicant or appellant can apply to NCAT to reinstate the proceedings

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

Tables summarising information about briefs that are with the DPP, and prosecution outcomes. Last updated 26 October 2018

ICAC: [Register now for new investigation and management workshops: 13 November 2018, Sydney CBD](#)

Renowned local and international facilitators will lead interactive training on electronic evidence gathering, open source intelligence and forensic accounting, investigating serious incidents in the disability sector, institutional integrity, and advanced investigative training for administrative oversight agencies

ICAC: [Public inquiry into allegations concerning the former Canterbury City Council adjourned](#)

The ICAC Operation Dasha public inquiry into allegations concerning the former Canterbury City Council will resume on Monday 10 December

[Review of the Domestic Violence Justice Strategy](#)

The Department of Justice sought feedback from people who have been the victim or perpetrator of a domestic or family violence incident in the last two years. The feedback, which was collected online, will inform our review of the Domestic Violence Justice Strategy and will help us to improve the NSW justice system's response to domestic and family violence in the coming years.

LEGISLATION**Commonwealth****Regulation****[High Court Amendment \(Constitutional Writs and Other Matters\) Rules 2018](#)**

16/10/2018 - This instrument amends the High Court Rules 2004 to provide for a more streamlined procedure when filing and considering applications for Constitutional Writs

[Intellectual Property Laws Amendment \(Productivity Commission Response Part 1 and Other Measures\) Regulations 2018](#)

16/10/2018 - These Regulations amend the Designs Regulations 2004, Patents Regulations 1991, Plant Breeder's Rights Regulations 1994, and Trade Marks Regulations 1995 to prescribe matters required under provisions of the Acts as amended by the Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Act 2018, and to align and streamline certain processes involved with obtaining and maintaining IP rights

Bills**[Copyright Amendment \(Online Infringement\) Bill 2018](#)**

Introduced Senate – 16/10/2018 - This Bill amends the Sex Discrimination Act 1984 (the Act), removing the current exemption for religious schools to discriminate against students and teachers on the basis of sexual orientation or gender identification

[Discrimination Free Schools Bill 2018](#)

Introduced Senate – 16/10/2018 - This Bill amends the Sex Discrimination Act 1984 (the Act), removing the current exemption for religious schools to discriminate against students and teachers on the basis of sexual orientation or gender identification

Acts**[Government Procurement \(Judicial Review\)](#)**

22/10/2018 - Act No. 129 of 2018

NSW**Regulations and other miscellaneous instruments****Bills introduced Government – 19 October**

[Crimes \(Administration of Sentences\) Legislation Amendment Bill 2018](#)

[Crimes \(Domestic and Personal Violence\) Amendment Bill 2018](#)

[Crimes Legislation Amendment Bill 2018](#)

[Road Transport Amendment \(National Facial Biometric Matching Capability\) Bill 2018](#)

[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2018](#)

[Surveillance Devices Amendment \(Statutory Review\) Bill 2018](#)

[Terrorism \(Police Powers\) Amendment \(Statutory Review\) Bill 2018](#)

Non-Government – 19 October

[Gambling Advertising Prohibition Bill 2018](#)

Bills passed by both Houses of Parliament – 19 October

[Civil Liability Amendment \(Organisational Child Abuse Liability\) Bill 2018](#)

[Community Gaming Bill 2018](#)

Bills introduced Government – 26 October

[Children and Young Persons \(Care and Protection\) Amendment Bill 2018](#)

[Crimes Legislation Amendment \(Victims\) Bill 2018](#)

[Fair Trading Legislation Amendment \(Miscellaneous\) Bill 2018](#)

[Government Information \(Public Access\) Amendment Bill 2018](#)

[Justice Legislation Amendment Bill \(No 3\) 2018](#)

[National Disability Insurance Scheme \(Worker Checks\) Bill 2018](#)

Non-Government – 26 October

[Exhibited Animals Protection Amendment \(Prohibitions on Exhibition\) Bill 2018](#)

[Justice Legislation Amendment \(Walama Court\) Bill 2018](#)

[Liquor Legislation Amendment \(Repeal of Lock-out Laws\) Bill 2018](#)

Bills passed by both Houses of Parliament – 26 October

[Fair Trading Legislation Amendment \(Reform\) Bill 2018](#)

[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2018](#)

KEY CONTACTS

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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.

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- (a) Calling 02 8248 5810; or
- (b) Emailing legalhelpdesk@tglaw.com.au

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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