



# Legal Induction Booklet for Panel Firm Lawyers

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### Legal Induction Information for Panel Firm Lawyers

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# 1 Introduction

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The Legal Induction Booklet is a short guide to assist panel firm lawyers working with government.

Panel Firms are encouraged to provide any suggestions on ways to improve this document to the Legal Services Coordination, Department of Justice.

## 2 NSW Government Sector

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### 2.1.1 NSW Government Structure

The NSW Government structure is available from the Department of Premier and Cabinet website at the following link:

[http://www.dpc.nsw.gov.au/programs\\_and\\_services/governance](http://www.dpc.nsw.gov.au/programs_and_services/governance)

### 2.1.2 Management of External Legal Services

#### 2.1.2.1 NSW Government Legal Services Panel

Effective 1 July 2016 a panel of external law firms was established to provide legal services as required for NSW Government agencies. The Panel satisfies the external legal requirements of eligible departments, agencies, separate agencies, statutory bodies, State-owned corporations of the NSW Government and other agencies eligible to purchase from NSW Government contracts. The term of the Panel is three years, with two options to extend of 12 months duration each.

The Panel is established on a non-exclusive basis, that is, each Agency remains responsible for procuring its own legal services. An Agency's procurement of legal services outside the Panel arrangements will usually be on an exceptional basis. Agencies have discretion to retain legal services outside the Panel arrangement, including from the NSW Crown Solicitor's Office. However, Agencies and panel firms are required to refer Core Legal Work to the Crown Solicitor in accordance with Premier's Memorandum M2016-04 – NSW Government Core Legal Work Guidelines.

All engagements of external law firms must be made by in-house government lawyers to comply with delegations, and to ensure external legal services are relevant, effective and deliver appropriate value for money.

More information including the guidelines and forms relating to the NSW Government Legal Services Panel can be found on the ProcurePoint website located at:

<https://www.procurepoint.nsw.gov.au/2015068>

### 2.1.3 Treasury Managed Fund

The Treasury Managed Fund (TMF) is the largest fund administered by icare Self-Insurance. The TMF provides protection for the asset and liability exposures (except compulsory third party insurance) for most government agencies. Workers compensation, public and other liabilities, property, motor vehicle accident and other miscellaneous cover is managed for agencies as a self-insurance fund, including collecting contributions from agencies towards the cost of administering the TMF.

The TMF provides indemnity under the Statement of Cover which sets out the responsibilities of claims managers and agencies and the requirements for notification of claims to the TMF and approval for settlement of claims. Fund managers are appointed by NSW Treasury to manage claims against the Fund. TMF Claims Managers act as agents of the icare Self-Insurance in relation to the management of claims.

Icare Self-Insurance operate a multi-provider model for claims management which features five claims management service providers, each assigned to a claims management portfolio. -If a claim is accepted TMF will pay all awards of damages as well as the legal costs and disbursements incurred in proceedings, including any adverse orders for costs.

## 3 Compliance with Government Policy, Procedures and Guidelines

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All panel firm lawyers should familiarise themselves and have regard to the following policies.

### 3.1.1 Model Litigant Policy

The Model Litigant Policy provides guidelines for best practice for government agencies in civil litigation matters. The Policy is founded upon the concepts of behaving ethically, fairly and honestly to model best practice in litigation. Under the Policy, government agencies are required to:

- Deal with claims promptly
- Not take advantage of a claimant who lacks the resources to litigate a legitimate claim
- Pay legitimate claims
- Avoid litigation
- Keep costs to a minimum; and
- Apologise where the State has acted inappropriately.

The Model Litigant Policy is complemented by the Guiding Principles which apply to all Government agencies dealing with civil claims involving child abuse.

Panel lawyers engaged to act on behalf of a government agency are also bound by the Model Litigant Policy when conducting civil litigation matters and are also required to comply with the Guiding Principles when dealing with child sexual abuse claims.

There is an expectation that government will deal honestly and fairly with its citizens and discharge its powers for the public good. The courts expect the government and its agencies to act as a moral exemplar throughout the litigation process. The Model Litigant Policy seeks to provide clarity and guidance on conduct required of a model litigant and goes beyond the requirement for lawyers to act in accordance with their ethical obligations and merely acting honestly or in accordance with the law and court rules.

Individual government agencies are responsible for enforcing the Model Litigant Policy and Agency heads are required to monitor and report on their agency's compliance with the Policy.

Government legal officers are held accountable through judicial criticism and the expectation of assistance in the administration of justice by the Crown. Courts can take conduct falling short of the standard of a model litigant into account when determining questions of costs. It is therefore essential that Panel lawyers have active consideration of their Model Litigant obligations to prevent breaches occurring and to consider the potential impact of such conduct on costs when advising government agencies.<sup>1</sup>

The NSW Government *Model Litigant Policy for Civil Litigation and Guiding Principles for Civil Claims for Child Abuse* can be found at:

<http://arp.nsw.gov.au/m2016-03-model-litigant-policy-civil-litigation-and-guiding-principles-civil-claims-child-abuse>

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<sup>1</sup> Salem, Phillip Sparke Helmore Lawyers, 'The government's model litigant policy – ethical issues' June 2015, [www.sparke.com.au/custom/files/docs/model-litigant-policy.pdf](http://www.sparke.com.au/custom/files/docs/model-litigant-policy.pdf)

### 3.1.2 Equitable Briefing Policy

The Equitable Briefing Policy promotes equal opportunities for women at the Bar in the provision of legal advice or Court appearances. The NSW Government recognises the need for equity in briefing practices. Panel Law firms conducting work on behalf of a government agency are required to consider briefing female barristers and ensuring an equitable distribution of work to both male and female barristers.

The NSW Government Equitable Briefing Policy for Female Barristers and Advocates (Equitable Briefing Policy) applies to all government departments and agencies and to Panel firms conducting work on behalf of a government agency. The Policy is founded on the principles of equality and is designed to promote opportunities for women at the Bar. Under this Policy, government agencies are required to make a reasonable effort to identify and genuinely consider engaging female counsel. The Policy is endorsed by the Department of Premier and Cabinet via Premier's Memorandum M2009-17 Briefing Senior Counsel.

The Equitable Briefing Policy is designed to promote opportunities for women at the Bar. It is founded on equity principles. Under the Policy, when government agencies engage barristers or advocates, they are to take reasonable endeavours to:

- a) Identify female counsel in the relevant practice area
- b) Genuinely consider engaging female counsel
- c) Monitor and review the engagement of female counsel; and
- d) Periodically report on the nature and rate of female counsel engaged.

The Attorney General monitors compliance with the Equitable Briefing Policy which is a positive attempt to address the imbalance in briefing male and female members from the New South Wales Bar.

The Department of Justice compiles data from various government departments and agencies on the rates of engagement of male and female Counsel. The data is extracted from the Annual Legal Services Expenditure Data Collection.

Panel law firms should have regard to the Equitable Briefing Policy when engaging barristers. Annual reports on panel law firm equitable briefing practices will be made available to the Attorney General and government agencies to ensure compliance with the Policy.

The NSW Government approved the *Equitable Briefing Policy* for Government agencies on 8 July 2008 which can be found at:

<http://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/eq-briefing-policy.aspx>

### 3.1.3 Briefing of Senior Counsel

All government agencies and panel law firms are required to comply with the requirements of Premier's Memorandum M2009-17 which requires the Attorney General's approval be sought prior to briefing Senior Counsel, including for representation in proceedings and in advice matters.

The government agency for which the law firm acts, is required to submit a request to the Attorney General for the approval to engage Senior Counsel. Agencies and panel law firms should endeavor to submit requests in advance of the need to brief to allow the Attorney time to consider the requests. Urgent requests need to note the reason for the urgency. Requests should detail the level of expertise or skill of the Senior Counsel proposed; the probable total cost of Senior Counsel's fees in the matter (where this is known and able to be estimated); the reasoning around preferences of particular counsel selected by an agency, for example experience; and the importance of the matter in respect of which the request is being made.

Agencies are expected to propose at least one female Senior Counsel in the request to the Attorney General. Where a female Senior Counsel is not nominated, reasons should be provided (e.g. there are no female Senior Counsel practising in the area or available to take the brief). Agencies are expected to make reasonable endeavors to identify possible female Senior Counsel who could be engaged when nominating senior counsel.

Senior Counsel may be briefed through the agency or in-house legal team directly or briefed indirectly by a panel law firm or the Crown Solicitor's Office on behalf of the Department or Agency. Approval from the Attorney General is required in all circumstances.

The Department of Justice receives requests from agencies for approval to engage Senior Counsel at the following email address: [enquiries\\_generalcounsel@justice.nsw.gov.au](mailto:enquiries_generalcounsel@justice.nsw.gov.au)

M2009-17: *Briefing Senior Counsel* provides that Government agencies obtain the Attorney-General's prior approval to engage Senior Counsel and the level of remuneration to be paid, when agencies propose to engage Senior Counsel other than via the Crown Solicitor. A copy of the *Premier's Memorandum M2009-17* can be found at:

<http://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/briefing-of-senior-counsel.aspx>

### 3.1.4 Attorney General's Rates for Legal Representation

The Attorney General's rates (also referred to as AG Rates or Attorney's rates) are payable to legal representatives such as solicitors, junior and Senior Counsel, engaged by and on behalf of Government agencies and public officials and in respect of applications for ex gratia legal assistance. Where representation by private solicitors is approved, both the level and the rates of representation are detailed in the approval letter.

The Attorney's rates include all overheads, secretarial, legal and administrative assistance but not out of pocket disbursements. The rates are GST exclusive.

The Attorney's rates also do not apply to matters referred to the Legal Representation Office (LRO) as the LRO apply specific rates. The Attorney's rates are different to the Crown Rates which are set by the Crown Solicitor's Office. Where an application is approved for LRO representation by private solicitors the conditions and the rates of representation payable are those known as the LRO rates.

The Attorney's rates for Solicitors apply to external solicitors engaged (outside any panel and LRO arrangement) to act on behalf of a government department in such matters as outlined above, and as a guide for all other matters. The Attorney's rates for Solicitors do not apply to Panel law firm solicitors engaged under the NSW Government Legal Services Panel, the Treasury Managed Fund Panel (TMF) or the Health Panel. Fees for these solicitors have been set under the relevant Panel agreements.

The current Attorney's rates (as at 1 August 2017) are as follows:

- **Solicitor - \$285 per hour with a daily maximum of \$2,850 plus GST**
- **Junior Counsel - \$285 per hour with a daily maximum of \$2,140 plus GST**
- **Senior Counsel - \$470 per hour with a daily maximum of \$4,700 plus GST**

The daily maximum for Solicitors and Senior Counsel is based on a 10 hour day. The daily maximum for junior counsel is based on a 7.5 hour day. The daily rate is a maximum rate; there is no entitlement to the maximum daily rate. Work performed over a day can be charged at the hourly rate up to but not exceeding the stated daily maximum per calendar day or 24 hour period.

Those briefing junior counsel in respect of matters to which these rates apply would be expected to negotiate an appropriate fee having regard to the matters, the experience of counsel and the need to keep legal costs to government reasonable.

As provided for in Premier's Memorandum 2009-17, where exceptional circumstances arise due to the complexity of the matter, an application can be made to the Attorney General seeking approval to brief Senior Counsel at a higher nominated rate.

The Attorney's rates are next due for review on 1 August 2018. A Fact Sheet relating to the Attorney General's rates for Legal Representation can be found at:

<http://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/attorney-generals-rates-for-legal-representation.aspx>

### **3.1.5 Litigation between Government Agencies**

M1997-26: *Litigation Involving Government Authorities* provides guidelines that apply to all Government authorities, including Government Trading Enterprises, for litigation involving Government authorities.

The guidelines apply both to civil and criminal proceedings. Litigation between Government authorities is undesirable and should be avoided whenever possible. Where litigation does occur, Government authorities should take steps to consult with the authority against which litigation has been commenced and attempt to reach agreement on as many factual and legal issues as possible, to ensure only matters which need to be resolved by the Court are left in issue. In civil proceedings, alternative dispute resolution procedures should be utilised before resorting to the Court system.

M1997-26: *Litigation Involving Government Authorities* requires that Government agencies adopt the guidelines for litigation between themselves.

A copy of M1997-26 and the guidelines can be found at:

<http://arp.nsw.gov.au/m1997-26-litigation-involving-government-authorities>

### **3.1.6 NSW Government Core Legal Work Guidelines**

Although Government agencies are able to procure legal services from the private sector in respect of certain matters arising within their administration, core legal work of Government must be referred to the Crown Solicitor to be managed in a consistent and co-ordinated way.

The *NSW Government Core Legal Work Guidelines* have been prepared to help agencies identify and manage core legal work. The Guidelines have been developed in consultation with agencies and provide guidance on:

- a) what constitutes core legal work
- b) the types of legal matters that are regarded as core legal work
- c) who pays for core legal work; and
- d) the circumstances in which core legal work may be performed by private sector legal practitioners.

Premier's Memorandum 2016-04 provides that agencies must refer all core legal work to the Crown Solicitor in accordance with the Guidelines. The Crown Solicitor is also able to be engaged by agencies for legal matters that are not core legal work, although this work will not be funded from the Attorney General's Legal Fund.

The Guidelines apply to all NSW government agencies, excluding entities incorporated under the *State Owned Corporations Act 1989*.

A copy of M2016-04-NSW Government Core Legal Work Guidelines can be found at: <http://arp.nsw.gov.au/m2016-04-nsw-government-core-legal-work-guidelines>

### **3.1.7 Prosecution Policy**

Should a matter involve decisions about prosecution, guidance may be sought by applying, so far as is appropriate, the *Prosecution Guidelines of the Office of the Director of Public Prosecutions for New South Wales*.

A link to the Prosecution Guidelines can be found at: <http://www.odpp.nsw.gov.au/prosecution-guidelines>

### **3.1.8 Alternative Dispute Resolution Directorate**

The Alternative Dispute Resolution (ADR) Directorate co-ordinates, manages and drives ADR government policy and strategy in NSW. Its role is to provide advice on ADR policy and strategy to eligible agencies, and oversee the implementations of the reform recommendations.

A link to the Department of Justice website outlining the role of the ADR Directorate can be located at:

[http://www.courts.justice.nsw.gov.au/Pages/cats/catscorporate\\_adrdirectorate/catscorporate\\_adrdirectorate.aspx](http://www.courts.justice.nsw.gov.au/Pages/cats/catscorporate_adrdirectorate/catscorporate_adrdirectorate.aspx)

### **3.1.9 Ex gratia payments**

Ex gratia payments may be made to persons who Ministers consider have suffered a financial or other detriment as a result of the workings of government. This detriment must be of a nature which cannot be remedied through recourse to legal proceedings.

Treasury Circular 11/2 provides that Ministers have the authority to approve ex gratia payments, subject to the guidelines in the circular.

A copy of Treasury Circular 11/2 can be found at:

[http://www.treasury.nsw.gov.au/\\_data/assets/pdf\\_file/0019/19414/TC11-02\\_dnd.pdf](http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0019/19414/TC11-02_dnd.pdf)

### **3.1.10 Ministerial Diaries**

Premier's Memorandum M2014-07 sets out the obligations of Ministers to publish quarterly summaries detailing scheduled meetings held with stakeholders, external organisations and individuals.

A copy of M2014-07 can be found at: <http://arp.nsw.gov.au/m2014-07-publication-ministerial-diaries>

The quarterly summaries are published on the DPC website at:

[http://www.dpc.nsw.gov.au/about/publications/ministers\\_diary\\_disclosures](http://www.dpc.nsw.gov.au/about/publications/ministers_diary_disclosures)

## 4 Useful Legislation

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The following legislation (including regulations) is generally relevant to government agencies.

### 4.1.1 Government and Legislation Generally

- *Constitution Act 1902 (including Administrative Arrangements Orders)*
- *Interpretation Act 1987*
- *Subordinate Legislation Act 1989*

The purpose of Administrative Arrangements Orders (AAOs) is to:

1. Allocate to Ministers the administration of Acts and other portfolio responsibilities
2. Specify the Minister or Ministers to whom an agency is responsible, and
3. Establish, abolish or change agencies and/or transfer staff between agencies.

AAOs are often re-issued, especially when a new government comes to power, and may also be amended from time to time as the structure of government departments change – referred to as ‘machinery of government’ changes.

All Administrative Arrangements Orders are published on the NSW legislation website (<http://www.legislation.nsw.gov.au/#/>) and can be located by navigating to *Browse > Regulations > Administrative Changes Orders*.

### 4.1.2 Government Records, Access and Privacy Legislation

- *State Records Act 1998*
- *Government Information (Public Access) Act 2009*
- *Privacy and Personal Information Protection Act 1998*
- *Health Records and Information Privacy Act 2002*

The *State Records Act 1998* makes provision for the creation, management and protection of the records of public offices of NSW and provides for public access to those records.

The *Government Information (Public Access) Act 2009* (GIPA Act) provides for an open and transparent process for giving the public access to information from New South Wales (NSW) public sector agencies and to encourage the proactive public release of government information. The GIPA Act replaced the *Freedom of Information Act 1989* (NSW) on 1 July 2010. The following Acts and Regulations govern the release of government information:

- *Government Information (Public Access) Act 2009* (GIPA Act)
- *Government Information (Public Access) Regulations 2009* (GIPA Regulations)

The Information and Privacy Commission NSW (IPC) has developed a range of resources and templates for government agencies to assist with the release of and/or the protection of government information.

The IPC also promotes and protects privacy and information access rights in NSW and provides information, advice, assistance and training for agencies and individuals on privacy and access matters. Information can be accessed at: <http://www.ipc.nsw.gov.au/>

### 4.1.3 NSW Government Procurement Policy Framework

The NSW Procurement Board is responsible for overseeing the Government's procurement system, setting policy and ensuring compliance. It has the statutory power to issue directions to agencies, and make decisions and monitor the progress of agency compliance. It accredits agencies to undertake their own procurement of goods and services and construction work.

The NSW Procurement Board consists of the Secretary of the Treasury (the Chairperson) and, at least, six Secretaries of the Principal Departments appointed by the Minister for Finance and Services.

Section 165 of the [Public Works and Procurement Act 1912](#) provides for the establishment of the NSW Procurement Board.

The NSW Procurement Board is subject to the direction and control of the Minister in the exercise of its functions and is able to establish subcommittees and advisory groups to assist the Board. The NSW Procurement Board is supported by the Procurement Leadership Group, Industry Advisory Group and procurement category working groups.

NSW Government Procurement information can be found at:

<https://www.procurepoint.nsw.gov.au/policies/nsw-government-procurement-information>

[https://www.procurepoint.nsw.gov.au/system/files/documents/procurement\\_policy\\_framework\\_-\\_july\\_2015.pdf](https://www.procurepoint.nsw.gov.au/system/files/documents/procurement_policy_framework_-_july_2015.pdf)

### 4.1.4 Government authorities financial administration

- *Public Authorities (Financial Arrangements) Act 1987*
- *Public Finance and Audit Act 1983*
- *Annual Reports (Departments) Act 1985 & Annual Reports (Statutory Bodies) Act 1984*

### 4.1.5 Government Sector Employment Act 2013

The *Government Sector Employment Act 2013* (GSE Act) provides the legislative framework for government employment in NSW. The GSE Act reforms employment arrangements, executive structures, and workforce management in the NSW public sector. The GSE Act is the centre-piece of a suite of reforms that provide the foundation for a modern, capable and professional workforce delivering the best services to the people of NSW. The GSE Act commenced on 24 February 2014 replacing the *Public Sector Employment and Management Act 2002*.

*The Government Sector Employment Act 2013* (GSE Act) establishes two main employment groups: the government sector and, within that, the Public Service. The GSE Act applies to the Public Service, but only parts of it apply to the other services in the government sector.

Some agencies are not part of the government sector. This means that the GSE Act does not apply to these agencies. Section 3 of the GSE Act defines the government sector and section 5 lists the agencies and other entities to which the Act does not apply. Schedule 1 lists all Public Service agencies.

Information and resources regarding the GSE Act are available from the Public Services Commission website: <http://www.psc.nsw.gov.au/employmentportal/resources/fact-sheets>

## 5 Useful Reference Tools

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### 5.1.1 NSW Public Sector Governance Generally

The Department of Premier & Cabinet provides a useful outline of governance of the NSW public sector with links to relevant documents. The governance framework can be located at:

[http://www.dpc.nsw.gov.au/programs\\_and\\_services/governance](http://www.dpc.nsw.gov.au/programs_and_services/governance)

### 5.1.2 Administrative Requirements (Including DPC Memoranda and Circulars)

Government guidance and directions are issued by various agencies including Premier's Memoranda and Department of Premier and Cabinet Circulars. Collectively these are referred to as 'Administrative Requirements'.

The Administrative Requirements can be searched. A consolidated subscription service is also provided. This will issue email alerts according to your selection of document type, document creator and topic. The Administrative Requirements are located at:

[www.dpc.nsw.gov.au/announcements](http://www.dpc.nsw.gov.au/announcements) (Tip: use an up-to-date browser to access this webpage)

### 5.1.3 NSW Parliament website

The NSW Parliamentary website contains information on Members of Parliament, Bills, Committees and Hansard, and can be located at:

[www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au)

Parliamentary sittings are webcast on the Parliament's website located at:

<https://www.parliament.nsw.gov.au/pages/webcasts.aspx>

A useful regular summary of activities in the Legislative Council House of Parliament is 'The House in Review' which provides regular updates of the activities of the New South Wales Legislative Council. It is published after each sitting week of the House, and routinely after other weeks when Council committees have been active.

The New South Wales Legislative Council's House in Review Updates can be located at:

<https://www.parliament.nsw.gov.au/lc/proceduralpublications/Pages/house-in-review.aspx>

To subscribe to 'The House in Review' please email your request to the following address: [brett.rodgers@parliament.nsw.gov.au](mailto:brett.rodgers@parliament.nsw.gov.au) or [kate.cadel@parliament.nsw.gov.au](mailto:kate.cadel@parliament.nsw.gov.au).

You can also subscribe to alerts for Parliamentary Inquires and research papers (see section on Parliamentary Research Service).

### 5.1.4 NSW Government Legislation website

Official notification of the making of statutory instruments, NSW Government Gazette and Bill Information are located at:

[www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

To join the Parliamentary Counsel's notification web feed please follow the below link: <http://www.legislation.nsw.gov.au/maintop/epub>

NSW Legislation also offers subscription to feeds as follows, which can be accessed from their website:

- New or Updated Bills in Parliament
- New or updated in force legislation
- New As Made legislation; and
- New Government Gazettes.

The Parliamentary Counsel may publish on the NSW legislation website: legislation, the Gazette and other matter under the authority of the Government in accordance with Part 6A of the *Interpretation Act 1987*. Instructions on how to correctly cite particular Acts and instruments can be found in sections 66-67 of the Act.

### 5.1.5 Parliamentary Counsel's Office Website

This website contains PCO corporate information such as annual reports, and information on preparing and publishing legislation. Publications of particular interest include:

- NSW Government Ministerial Handbook
- Information Sheet on the Staged Repeal of Statutory Rules
- Policy relating to Plain Language

The PCO website can be located at: [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au)

### 5.1.6 NSW legislative programs

There is a series of regular legislative events each year.

#### Legislative Program

Every six months, the Premier invites the Ministry to submit proposals for Cabinet consideration for the following 12 months, on a rolling basis. Legislative proposals from the Ministry are included in these sweeps and form part of a consolidated Cabinet forward agenda determined by the Premier as chair of Cabinet.

#### Statute Law Revision Program

Under Statute Law Revisions Programs a 'Statute Law Revision Bill' is introduced late in each of the Budget and Spring sittings. These Bills are usually titled Statute Law (Miscellaneous Provisions) Bill with 'No 2' added for the Spring sitting Bill. These Bills are intended to contain amendments as follows:

- Schedule 1 Minor amendments
- Schedule 2 Amendments by way of statute law revision
- Schedule 3 Repeals
- Schedule 4 General savings, transitional and other provisions

Submissions for a Statute Law Revision Program are invited by DPC Circular issued each year.

In 2015 the repeal of redundant legislation was addressed by the *Regulatory Reform and Other Legislative Repeals Act 2015*. A Bill for this type of Act may become an annual feature.

#### Staged Repeal of Regulations

Most NSW regulations are subject to automatic repeal on the fifth anniversary of the date of publication if published on 1 September of any year, or on 1 September following the fifth

anniversary of the date of publication if published on any other date.

The intention is that the body of NSW regulations remain current. Regulations may be remade and there is provision for postponement of repeal in appropriate cases. Regulations that are of no current utility are allowed to be repealed without replacement.

Relevant provisions are in Part 3 of the *Subordinate Legislation Act 1989*.

The program is managed by Parliamentary Counsel's Office and is usually initiated by a letter from Parliamentary Counsel sent on about 1 October of each year.

### 5.1.7 Australian Legal Information Institute (“Austlii”)

This website provides a wide range of legislative and court information as well as links to similar international law websites. Austlii can be accessed at:

[www.austlii.edu.au](http://www.austlii.edu.au)

### 5.1.8 NSW Caselaw

This website publishes recent decisions of almost all NSW Courts and Tribunals, which can be located at:

[www.caselaw.nsw.gov.au](http://www.caselaw.nsw.gov.au)

### 5.1.9 NSW Coronial findings and recommendations

The NSW Coroner's Court findings are not included in NSW Caselaw. Select findings are published at: [www.coroners.justice.nsw.gov.au/Pages/findings.aspx](http://www.coroners.justice.nsw.gov.au/Pages/findings.aspx)

**M2009-12 Responding to Coronial Recommendations** sets out the process for responding to coronial recommendations directed at Ministers and NSW government agencies. The purpose of the Memorandum is to ensure that there is a consistent process across government for responding to coronial recommendations, and that there is increased accountability and transparency in responding to such recommendations.

Coroners conducting inquests or inquiries into deaths, fires or explosions may make recommendations relating to public health and safety or other matters that arise during the course of an inquest or inquiry.

When a coroner makes a recommendation at an inquest or inquiry, the coroner will forward a copy of the recommendation to:

- the State Coroner any person to whom, or body to which, a recommendation is directed
- the Minister who administers the legislation, or who is responsible for the person or body to which a recommendation relates; and
- the Attorney General.

Within six months of receiving a coronial recommendation, a Minister or NSW government agency should write to the Attorney General outlining any action being taken to implement the recommendation. If it is not proposed to implement a recommendation, reasons should be given (e.g. the recommendation will not achieve the intended outcome; the outcome can be achieved in another way; the recommendation is impractical to implement having regard to the cost and potential benefits; there are other considerations that make implementation of the recommendation not feasible).

Ministers and agencies are encouraged to provide updates to the Attorney General on any further action taken to implement recommendations following their initial advice. In accordance with the usual process, if the proposed Government response to a coronial recommendation involves

significant change to Government policy, impacts on more than one portfolio, or has budgetary implications, a Minister should bring forward a Cabinet Minute.

The Department of Justice maintains a record of all coronial recommendations notified, together with the responses received from Ministers and NSW government agencies. The Attorney General will arrange for a report to be posted on his Department's website, in June and December of each year, summarising coronial recommendations made and the responses received from Ministers and NSW government agencies. The Attorney General will also send a copy of the report to the State Coroner for information. State Owned Corporations are encouraged to adopt the provisions of this Memorandum.

Access to coronial recommendations reports are available from the Justice website: <http://www.justice.nsw.gov.au/lrb/Pages/coronial-recommendations.aspx>

### **5.1.10 High Court Quarterly Summary of Judgments**

The High Court Bulletin is compiled approximately once a month, from February to December after each Court sitting and contains, as at the date of each issue:

1. Cases Handed Down
2. Cases Reserved
3. Original Jurisdiction
4. Special Leave Granted
5. Cases Not Proceeding or Vacated
6. Special Leave Refused

To subscribe to email alerts for the High Court Bulletins, complete the online form located at:

<http://www.hcourt.gov.au/library/high-court-bulletin>

For enquiries concerning the High Court Bulletin, contact the Court Librarian on (02) 6270 6921 or Legal Research Officer on (02) 6270 6307.

For a record of High Court Bulletins prior to 2011, refer to the following websites:

Austlii - <http://www.austlii.org/au/other/hca/bulletin/>

Jade - <https://jade.io/#/!/?clh=HCAB>

### **5.1.11 NSW Independent Commission Against Corruption**

The principal object of the *Independent Commission Against Corruption Act 1988* is to promote the integrity and accountability of public administration by constituting an Independent Commission Against Corruption (ICAC).

The ICAC is an independent and accountable body which investigates, exposes and seeks to prevent corruption in the NSW public sector by educating public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community.

Under section 11 of the ICAC Act, a principal officer of a NSW public authority has a duty to report to the ICAC any matter that the person suspects on reasonable grounds concerns or may concern corrupt conduct. A principal officer is generally the person who heads the public authority, most commonly the Secretary, Chief Executive or the Minister of a NSW Government Agency.

The ICAC Act contains no provision permitting delay in reporting. To delay can result in the loss of investigative opportunities to the ICAC. The duty to report overrides any duty of confidentiality. As it is a statutory duty, a principal officer is protected in making such a report from any civil or criminal liability.

All reports and complaints regarding suspected corrupt conduct are carefully assessed by the ICAC.

Information about fighting corruption in the NSW public sector is available on the ICAC website located at:

[www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

When providing advice on advertising proposals regard should be given to ICAC's ten guidelines in its publication titled 'Sponsorship in the Public Sector - A guide to developing policies and procedures for both receiving and granting sponsorship'.

<http://www.icac.nsw.gov.au/documents/preventing-corruption/cp-publications-guidelines/1289-sponsorship-in-the-public-sector/file>

The ICAC has also released a publication 'Direct negotiations - guidelines for managing risks in direct negotiations' which can be found at:

<http://www.icac.nsw.gov.au/documents/preventing-corruption/cp-publications-guidelines/1299-direct-negotiations-guidelines-for-managing-risks-in-direct-negotiations/file>

### **5.1.12 NSW Ombudsman**

Information about the role of the NSW Ombudsman can be found on the agency's website located at: <http://www.ombo.nsw.gov.au/>

### **5.1.13 Information and Privacy Commission NSW**

Information about the independent agency that promotes and protects privacy and information access rights in NSW and provides information, advice, assistance and training for agencies and individuals on privacy and access matters can be found on the NSW Information and Privacy Commission's website, located at: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

### **5.1.14 Audit Office of NSW Website**

The Audit Office of New South Wales is the independent auditor of the New South Wales public sector. The Office reports directly to Parliament on the New South Wales government's financial statements and use of public money.

The Auditor-General is responsible for audits and related services. The Audit Office conducts financial and performance audits, principally under the *Public Finance and Audit Act 1983* and the *Corporations Act 2001*, and examines allegations of serious and substantial waste of public money under the *Public Interest Disclosures Act 1994*.

The Audit Office produces several publications. The Auditor-General's Report to Parliament is produced as Financial Audit Reports, Performance Audit Reports and Special Reviews. The majority of Financial Audit Reports are published between October and December each year as they report on the June year-end financial statements of government agencies. Performance Audit Reports are published regularly throughout the year and report on different performance aspects of government agencies.

To subscribe to Auditor-General's Reports and Better Practice Guides or Professional Updates submit your request via the link below:

<http://www.audit.nsw.gov.au/publications/subscriptions/default.aspx>

### **5.1.15 Daily Digest for NSW Treasury and Finance Circular**

To subscribe to the Daily Digest for NSW Treasury and Finance Circular there is a subscription tab on the search box linked: <http://www.dpc.nsw.gov.au/announcements>

Select the items that you want to be alerted to when changes are made and the notifications will follow. If you are sent a log in page, please ignore this as you do not need it. You will be subscribed as soon as you complete the prompts on the subscription tab of the search box.

### **5.1.16 The Cabinet System**

The Department of Premier and Cabinet provides online resources to help agencies preparing Cabinet submissions to better understand Cabinet and each stage of the Cabinet system. Information is available at:

[http://www.dpc.nsw.gov.au/programs\\_and\\_services/cabinet\\_in\\_nsw](http://www.dpc.nsw.gov.au/programs_and_services/cabinet_in_nsw)

A copy of the Premier's Memorandum 2006-08 *Maintaining Confidentiality of Cabinet Documents and Other Cabinet Conventions* can be located at:

<http://arp.nsw.gov.au/m2006-08-maintaining-confidentiality-cabinet-documents-and-other-cabinet-conventions>

Cabinet submissions are stored and distributed through eCabinet. Each government cluster has a Cabinet Liaison Officer who co-ordinates comments for their cluster on draft and final submissions. Timing requirements need to be taken into account when preparing Cabinet submissions.

Further information about timeframes for preparing and lodging Cabinet submissions can be found at:

[http://www.dpc.nsw.gov.au/programs\\_and\\_services/cabinet\\_in\\_nsw/stages\\_of\\_the\\_cabinet\\_process](http://www.dpc.nsw.gov.au/programs_and_services/cabinet_in_nsw/stages_of_the_cabinet_process)

<http://help.ecab.nsw.gov.au/>

### **5.1.17 State Election - Caretaker Conventions**

Conventions in relation to periods of 'caretaker' government should be adhered to in New South Wales. These conventions cover the period immediately leading up to a general election and continue until either the Government is returned or a new Government is commissioned.

A copy of *Premier's Memorandum M2014-12 2015* relating to the 2015 State Election Caretaker Conventions can be located at:

<http://arp.nsw.gov.au/m2014-12-2015-state-election-caretaker-conventions>

During periods of Caretaker Conventions, practices apply in respect of the handling of Cabinet documents. Detailed information can be found at:

<http://arp.nsw.gov.au/sites/default/files/Caretaker%20Conventions%20and%20Other%20Pre-Election%20Practices%20-%202015%20General%20State%20Election.pdf>

### **5.1.18 Standing Order No. 52 - Order for the Production of Documents**

The Legislative Council has the power to order the production of State papers by the Executive Government. The basis of this power is the common law principle that the Houses of Parliament possess such inherent powers as are reasonably necessary for their effective functioning.

The Legislative Council routinely makes orders for the production of State papers. They assist the Legislative Council to fulfil its functions of making laws and holding the Government to account. They are also important because, under the system of responsible government that operates in New South Wales, citizens have a right to know the information that underlies public debate and informs government decision-making. Orders for the production of state papers are commonly referred to as

'orders for papers' or 'orders for returns'. Strict timeframes set for the production of papers in response to an Order must be adhered to. Further information relating to Standing Order 52s can be found at:

<https://www.parliament.nsw.gov.au/lc/Pages/Orders-for-papers.aspx>

#### **5.1.18.1 Procedures for the production of state papers**

The procedures for the production of State papers are set out in Standing Order 52 of the Legislative Council.

Under Standing Order 52, any member of the House may give notice of motion for an order for papers. Usually, the notice will relate to a particular decision of Government that has become a matter of broad public interest. If the House agrees to the motion, the General Counsel of the Department of Premier and Cabinet is advised of the order and coordinates the preparation of the Government response – that is, the return in response to the Order.

The return to order is provided to the Clerk and is tabled in the House and made public, unless privilege is claimed.

#### **5.1.19 Ministerial Handbook**

The 'Ministerial Handbook', has been prepared by the Department of Premier and Cabinet to assist Ministers in the effective, efficient and ethical discharge of their duties.

The Ministerial Handbook (prepared by the General Counsel) provides information on:

- the appointment and operation of the Ministry
- the standards of conduct required of Ministers [superseded]
- the operation of Cabinet [superseded]
- the operation of the Executive Council; and
- the processes for drafting and enacting legislation, and making regulations.

The Ministerial Handbook can be found at:

<http://publications.dpc.nsw.gov.au/assets/composed-pdfs/2/Ministers-Office-Handbook-updated-23-03-2017.pdf>

The 'Ministers' Office Handbook' (prepared by Ministerial and Parliamentary Services) provides policy and practice material for Ministers and their staff about employment and office management arrangements. The Ministers' Office Handbook can be found at:

<http://publications.dpc.nsw.gov.au/assets/composed-pdfs/2/Ministers-Office-Handbook.pdf>

The Ministerial Code of Conduct prescribes the ethical standards of behaviour applicable to Ministers. The Code is set out in the Appendix to the ICAC Regulations and can be found at: <http://www.legislation.nsw.gov.au/#/view/regulation/2010/211/app1>

Ministers and their staff should also have regard to any changes to policies conveyed by the various Memoranda, Circulars and Directions issued by the Premier, the Department of Premier and Cabinet (DPC) and Treasury.

Further information or advice on the matters raised in the Ministerial Handbook may be obtained from the Department of Premier and Cabinet.

## 5.1.20 Parliamentary Sitting Days

Parliamentary Sitting Day Calendar may be found at:

<https://www.parliament.nsw.gov.au/Pages/sitting-day-calendar.aspx?y=2017>

## 5.1.21 Parliamentary Research Service

Parliamentary Research Service may be accessed through Australian Policy Online. This is a research database and alert service providing free access to full text research reports and papers, statistics and other resources essential for public policy development and implementation in Australia and New Zealand. The research database can be accessed using the following two links:

<http://apo.org.au/about>

<http://apo.org.au/source/nsw-parliamentary-research-service>

## 5.1.22 Government Information (Public Access) Act 2009

The *Government Information (Public Access) Act 2009* (GIPA Act) promotes open government information to the public by authorising and encouraging proactive public release of government information; by giving members of the public an enforceable right to access government information and providing access to government information is restricted only when there is an overriding interest against disclosure. Where **Cabinet and Executive Council claims are made**, and there has been a determination that there is an overriding public interest against disclosure of the information and an application for review has been lodged with the NSW Civil and Administrative Tribunal (NCAT) it is important to note that the Premier is a party to any NCAT and that Agencies are required to contact the Department of Premier and Cabinet's Legal Branch (telephone: 9228 5599) as soon as they become aware that a Cabinet or Executive Council claim is, or is likely to be, contested before NCAT.

### 5.1.22.1 Contract Disclosure

Under the GIPA Act, government agencies are required to disclose certain information about the agency's contracts, where the value, or anticipated value, is \$150,000 or more, including GST.

The [eTendering](#) website outlines information of contracts over \$150,000 between NSW Government agencies and private sector organisations including:

- Contract value
- Name and business address of contractor
- Commencement date of contract
- Details of the project undertaken
- Estimated amount payable to the contractor
- Description of variation or renegotiation provisions in the contract
- Method of tendering and assessment criteria
- Description of operational or maintenance services.

Additional information may be required in certain situations. There are also time sensitive requirements concerning the publication of certain contractual details. In the case of a contract valued over \$5 million, the agency must also publish a copy of the contract.

### 5.1.23 Legislative Council Budget Estimates

Ministers and Senior Public Servants attend an annual Budget Estimates Inquiry to answer questions about the expenditure, performance and effectiveness of their agencies. Budget Estimates is a key process for government accountability and transparency. The Budget Estimates Inquiry involves detailed questioning on the decisions, actions and advice of ministers and public servants.

More information on Budget Estimates can be found at:

<http://www.parliament.nsw.gov.au/budgetestimates>

## 6 Useful Contacts

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### 6.1.1 Legal Services Coordination

Legal Services Coordination assists NSW Government agencies to obtain cost effective and appropriate legal services by providing:

- support to the General Counsel Group and providing assistance on whole of government reforms and initiatives
- developing guidelines, policies and best practice standards for legal services
- coordinating legal training seminars for government lawyers such as the In-house Government Lawyers Forum; and
- providing information on legal and policy developments, education and training and internal government initiatives through publication of the monthly In-house Government Lawyers Bulletin.

For further information visit the LSC website: <http://www.justice.nsw.gov.au/legal-services-coordination>

#### 6.1.1.1 Panel Firm CLE Bulletin

LSC distribute a fortnightly CLE Bulletins to government lawyers across the sector. These Bulletins include panel firm CLE seminars. Should your firm wish to be included in these bulletins please contact us at: [nswlsc@justice.nsw.gov.au](mailto:nswlsc@justice.nsw.gov.au)

### 6.1.2 Parliamentary Counsel

Tel 9321 3333 Email [parliamentary.counsel@pco.nsw.gov.au](mailto:parliamentary.counsel@pco.nsw.gov.au)

Guidance on the preparation of drafting instructions and other relevant information is available on the Parliamentary Counsel's Office (PCO) website: [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au). See the NSW Government Handbook (section 4 and Annexure J) as well as the policies on Plain language and Gender-neutral expression.

It is a requirement under s.7(c) of the *Subordinate Legislation Act 1989* that a proposed regulation submitted for making by the Governor must be accompanied by a copy of the opinion of the Attorney General or the Parliamentary Counsel as to whether the proposed regulation may legally be made. In practice the 'opinion' is routinely given by Parliamentary Counsel, rather than the Attorney General. The requirement is an effective control on the use of the regulation making power by Government.

As to the advice given by the PCO, this constitutes legal advice and is otherwise privileged (see *State of New South Wales v Betfair Pty Ltd* [2009] FCAFC 160 (12.11.2009)).

### 6.1.3 Gazette Office

Tel 9321 3333 Email [nswgazette@pco.nsw.gov.au](mailto:nswgazette@pco.nsw.gov.au)

The Gazette is published electronically by Parliamentary Counsel's Office.

PCO publishes an Information Sheet 'NSW Government Gazette Information' and technical requirements for statutory instruments not drafted by Parliamentary Counsel's Office. A copy of the Information Sheet can be located at:

[http://www.legislation.nsw.gov.au/Gazetta\\_IS.pdf](http://www.legislation.nsw.gov.au/Gazetta_IS.pdf)

