

*Tabled by Mr Speaker  
on 16 August 2018.  
H. Minnie*



Justice

# Statutory Review

## *Local Court Act 2007*

June 2018

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Justice Strategy and Policy  
NSW Department of Justice  
Email: [www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au)  
Phone: 02 8346 1281  
Fax: 02 8061 9370  
Level 3, Henry Deane Building, 20 Lee St, SYDNEY 2000  
GPO Box 31 SYDNEY 2001

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Email: [diversityservices@agd.nsw.gov.au](mailto:diversityservices@agd.nsw.gov.au)  
Phone: 02 8688 7507  
Fax: 02 8688 9626  
TTY: 02 8688 7733 for people who have a speech or hearing impairment.

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## Executive Summary

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- 0.1 The *Local Court Act 2007 (the Act)* was enacted to create a single Local Court of New South Wales sitting at various locations across the State. This replaced a system of separately constituted local courts operating independently. The creation of the single Local Court was to streamline the court and registry system and promote administrative efficiency throughout the State.
- 0.2 The Act also merged two rule committees (one making rules about criminal and application proceedings, the other making rules about civil proceedings), into a single Local Court Rule Committee which makes rules in relation to civil, criminal and application proceedings. The Act further changed the requirements for the appointment of magistrates and introduced the concept of a relevant registrar.
- 0.3 This Report is the result of a review of the Act, as required by section 6. The terms of the Review are to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- 0.4 The Department of Justice undertook the statutory review of the Act on behalf of the Attorney General. In conducting the Review, we received submissions and carried out targeted consultation, details of which are outlined on pages one and two of the Review.
- 0.5 The information we gathered from submissions and consultations revealed that the broader policy objectives of the Act remain valid. Most submissions raised proposals outside of the scope of the Review or are in the process of being explored or implemented through other projects. No recommendations are made in the Report that require legislative amendment, that are not being progressed elsewhere.

# 1. The Review

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## Background to the legislation

- 1.0 Prior to the enactment of the Act, local courts were constituted separately and each individual court was responsible for its own operations. This structure created restrictions on the efficient operation of those local courts. Once proceedings were commenced in a specific local court, parties could only file documents and make enquiries at local court. A registrar in one location could not exercise powers and make orders in relation to proceedings elsewhere. If a party wished to have proceedings dealt with in another local court, the party was required to make an application to have the proceedings transferred.
- 1.1 The Act received assent in 2007 and commenced in July 2009. The delay was to allow sufficient time for the development and implementation of related operational changes. As the Parliamentary Secretary noted on behalf of the then Attorney General in the second reading speech to the Local Court Bill 2007<sup>1</sup>, the development of the Act was primarily driven by a need for a single entity Local Court of NSW sitting at various locations across the State. A similar change occurred in 1973 when the District Court of NSW was created from a number of separately constituted District Courts.
- 1.2 The creation of a unified Local Court means that parties can file documents and make enquiries about their proceedings at any registry and, with recent modernisation of court processes and operations, parties can also make telephone enquiries to a centralised call centre and file documents electronically via the NSW Online Registry. Today, the Local Court operates in 150 locations throughout NSW and deals with a wide range of matters across its criminal, civil, coronial and industrial jurisdictions.
- 1.3 Section 6 of the Act requires the Attorney General to undertake a review of the Act as soon as possible after the period of five years from the date of assent to the Act. The review is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. The Act received assent on 13 December 2007 (and commenced on 6 July 2009).

## Conduct of the Review

- 1.4 In March 2013, advertisements were placed in the Sydney Morning Herald and the Daily Telegraph newspapers and notices were placed on the Department's website calling for submissions to the Review. Given the limited scope of the Act, letters inviting submissions to the Review were also sent to a targeted group of stakeholders. Those stakeholders are:
  - The Heads of Jurisdiction of all NSW courts: Supreme Court, Land and Environment Court, District Court, Local Court, Children's Court and Coroners Court.
  - Legal Professional bodies: Law Society of NSW, NSW Bar Association, Legal Aid Commission of NSW.

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<sup>1</sup> Second Reading Speech, Local Court Bill 2007 (NSW), Legislative Council, Penny Sharpe (Parliamentary Secretary, on behalf of John Hatzistergos, then Attorney General of NSW), 5 December 2007

- The Ministry for Police and Emergency Services (Now known as NSW Police Force and Office for Police).
- The Director of Public Prosecutions.

Submissions were received from the Chief Magistrate and the Ministry for Police and Emergency Services. They contained only a few proposals for change to the Act.

- 1.5 Due to other Government priorities, the Review was placed on hold. However, most of the legislative amendments identified in 2013 were progressed through other projects by the Department.
- 1.6 In March 2018, the same stakeholders identified above were given an opportunity to make further submissions. Submissions were received from the Chief Magistrate, NSW Police Force and Office for Police, the Law Society of NSW and Legal Aid Commission of NSW.
- 1.7 This report is the outcome of the review process. It takes into account submissions received, as well as comments and recommendations made throughout the consultation process. The Review examines the operation of the Act only.

## 2. Overview of the Local Court

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### Jurisdiction

- 2.0 The Local Court is the first point of contact many people have with the NSW justice system, as it hears the lowest level of court applications in the court hierarchy. The District Court, Supreme Court, Courts of Appeal and Criminal Appeal, and the High Court of Australia follow and they deal with jurisdictions that concern more serious cases and claims for higher amounts of money.
- 2.1 The Court has jurisdiction across a wide range of matters, including:
- civil cases
  - criminal cases
  - bail applications
  - applications for apprehended violence orders
  - some family law cases
  - appeals against decisions of the Roads and Maritime Services
  - annulment applications.
- 2.2 The Local Court deals with over 90% of all criminal matters in NSW, including the finalisation of charges for summary offences and the summary hearing of particular indictable offences nominated under the *Criminal Procedure Act 1986*. The Court also conducts committal proceedings in indictable offences to be committed to the District and Supreme Courts.
- 2.3 In its civil jurisdiction, the Court deals with disputes about money or property for claims up to \$100,000 in either its Small Claims Division or the General Division. The Small Claims Division deals with claims with a monetary value of up to \$10,000 and the General Division deals with claims between the amounts of \$10,000 and \$100,000.

### Workload

- 2.4 Between 1 January 2017 and 31 December 2017, 333,564 criminal matters were finalised. In that same period, 76 468 civil actions were commenced, of which 59 635 matters were filed in the Small Claims Division and 13,271 in the General Division. There were 3,569 other lodgements that were finalised, these are primarily the registration of certificates of orders made by other courts for enforcement.<sup>2</sup>

### The Magistrates

- 2.5 The judicial officers of the Court are magistrates. They are appointed by the Governor of NSW pursuant to section 13 of the Act on the advice of the Executive

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<sup>2</sup> This data was supplied to the Department of Justice by the NSW Chief Magistrate's Office.

Council. The Act also provides that the Governor may appoint a Chief Magistrate and Deputy Chief Magistrates.

- 2.6 As at 31 December 2017, there were 134 magistrates (126 full-time magistrates and eight part-time) who presided in the Local and Children's Courts at 150 sitting locations throughout NSW.
- 2.7 All magistrates are also appointed as coroners and industrial magistrates.
- 2.8 Recently retired magistrates can be commissioned as acting magistrates for a limited tenure (section 16). Acting magistrates preside at the weekend bail court and cover absences resulting from sick leave and extended leave.

## Assessors

- 2.9 Assessors are appointed under section 17 of the Act. They sit at various Local Court locations in the Sydney metropolitan area, Newcastle, the Central Coast and Wollongong in the Small Claims Division. As at 31 December 2017, three assessors occupy the equivalent of two full-time positions.

## Registrars

- 2.10 The Governor appoints Registrars under section 18. They have a number of quasi-judicial functions conferred upon them by legislation, including:
  - conduct of call-overs in both the civil and criminal jurisdiction
  - conduct of pre-trial reviews in civil claims and small claims hearings
  - issuing of search warrants
  - determining various applications and motions in all jurisdictions
  - management and supervision of the court registry
  - swearing in of Justices of the Peace, and
  - limited responsibilities in relation to births, deaths and marriages.

### 3. Policy objectives of the Act

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#### Do the policy objectives of the Act remain valid?

- 3.0 The first step of the Review is to determine whether the policy objectives of the Act remain valid. When introduced in Parliament in 2007, the second reading speech emphasised that the reforms were principally administrative and to primarily replace the separately constituted Local Courts in NSW with the Local Court of NSW sitting at various locations across the State.<sup>3</sup> The changes made by the bill were intended to facilitate the Government's ongoing commitment to providing accessible court services across the State and enhance the efficient and effective operations of the court.
- 3.1 We conclude that the policy objectives of the Act remain valid. The Act created a unified Local Court of NSW. This then facilitated the establishment of a number of centralised court services, including a call centre and an electronic case management system and online courts via the NSW Online Registry. Parties who were previously required to file documents or make enquiries about their proceedings at a particular local court, are now able to do so in person at any court registry, as well as remotely by telephone or online.

#### Are the terms of the Act appropriate for securing its objectives?

- 3.2 We conclude that the terms of the Act remain appropriate for securing its objectives. It is a small piece of legislation with limited scope which provides a framework for the constitution, jurisdiction and administration of the Local Court. With the abolition of separately constituted local courts in NSW, the Act established a centralised Local Court, conferred certain jurisdictions on the Court and, among other things provided for the appointment of judicial officers and other officers of the Court. Rules governing the day-to-day case management of matters applicable to the Court are provided in various legislative schemes such as the Local Court Rules 2009, Uniform Civil Procedure Rules 2005 and the *Criminal Procedure Act 1986*, as well as non-legislative schemes such as the Local Court's Practice Notes. This framework is consistent with other courts and jurisdictions, and allows the Court to adapt flexibly to emerging issues.

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<sup>3</sup> Second Reading Speech, Local Court Bill 2007 (NSW), Legislative Council, Penny Sharpe (Parliamentary Secretary, on behalf of John Hatzistergos, then Attorney General of NSW), 5 December 2007

## 4. Amendments proposed by stakeholders

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- 4.0 During the course of the Review, stakeholders made six submissions containing 15 proposals. Most of those proposals have been implemented, are being considered by the Department under other projects, or they fall outside of the scope of this Review.

### Proposals that have been implemented or are being considered by the Department through other projects

- 4.1 In response to submissions made by stakeholders, amendments to the Act have enabled the Local Court to set its Christmas vacation dates via the Local Court Rules and clarified that when making bail decisions, any concerns about non-appearance at future court dates are relevant. Work is also being progressed to increase the jurisdictional threshold of the Small Claims Division. Further detail about these proposals and how they have been or are being pursued is contained in **Appendix A**.

### Proposals outside of the scope of this Review

- 4.2 While relevant to the Local Court, eight of the proposals made do not require an amendment to the Act. Instead, they relate to the Local Court Rules, general court administration or other pieces of legislation. Further detail about these proposals is contained in **Appendix B**.

### Proposals for discussion

- 4.3 There are three proposals that remain for discussion. These relate to:
- the process for handling complaints against Local Court Assessors
  - the impact that changes to the Court sitting arrangements may have on police prosecutorial resources; and
  - enabling the transfer of proceedings from the General Division to the Small Claims Division in certain circumstances.

These proposals are examined below.

### *Complaints against Local Court Assessors*

- 4.4 On occasion, complaints about the performance of a Local Court Assessor are made to the Court or the Attorney General. They are usually sent to the Department to respond to on behalf of the Attorney General. However, given that Assessors are neither public officials nor judicial officers, there is confusion around the processes for managing those complaints. This has been raised by the Chief Magistrate previously as requiring resolution.
- 4.5 Assessors are appointed by the Attorney General under section 17 of the Act and must be Australian lawyers. An Assessor, rather than a magistrate, usually hears matters in the Small Claims Division and conducts these proceedings with as little

formality and technicality as possible.<sup>4</sup> The terms and conditions relating to the office of Assessor are set out in Schedule 2 of the Act. The Act also provides that the Attorney General is responsible for their removal in circumstances of incapacity, incompetence or misbehaviour.<sup>5</sup> However, the Act does not provide how, or by whom, complaints of incapacity, incompetence or misbehaviour by an Assessor are to be investigated or established.

- 4.6 Clause 6 of Schedule 2 expressly provides the office of Assessor is a statutory office and is not subject to the *Government Sector Employment Act 2013*.<sup>6</sup> Nor are Assessors a 'judicial officer' within the meaning of the *Judicial Officers Act 1986*. As such, complaints about the conduct of Assessors cannot be dealt with under the Department's general complaints process relating to public officials, nor be referred to the Conduct Division of the Judicial Commission of NSW being a complaint process relating to judicial officers.
- 4.7 In light of these complexities, the Department will continue to explore the matter in consultation with the Chief Magistrate to develop an appropriate process for dealing with complaints against Assessors.

### ***Section 23 – Arrangement of business of the Court***

- 4.8 Under section 23(3) of the Act, the Chief Magistrate is required to consult the Attorney General before making a direction as to the court's business arrangement that substantially alters the frequency of court sittings at a particular place. Directions to increase the frequency of court sittings may impact on the ability of Police Prosecutions to efficiently and adequately staff police prosecutors at those locations. One submission suggested that the Chief Magistrate should also be required under the Act to consult the Minister for Police before making directions that alter the frequency of court sittings. It was suggested that this consultation would benefit the Chief Magistrate and assist in making informed decisions about the arrangement of court business.
- 4.9 While it is important that the Chief Magistrate is fully informed when making these directions, we do not consider it is appropriate to make consultation with the Minister for Police a legislative requirement. Given the Attorney General is the Minister responsible for the Act, we also consider it is not appropriate to require the Chief Magistrate to consult with another Minister before making a direction. We are aware, however, that in practice the Chief Magistrate does consult with police in such matters. We consider that this is a more appropriate means of ensuring the impact on Police Prosecutions is considered.

### ***Transfer of proceedings from General Division to the Small Claims Division***

- 4.10 There is a clear delineation between the General Division and the Small Claims Division based on the value of the money or property in dispute. One submission provided that the Act should enable the transfer of proceedings from the General Division to the Small Claims Division in the following circumstances:
- where the total quantum is over the threshold amount and liability is accepted by the respondent but the amount due to the claimant is disputed and that amount is less than \$10,000 (for example, a tradesman performs work and says they

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<sup>4</sup> The rules of evidence do not apply and there is a presumption against the cross-examination of witnesses under s 35 of the Act

<sup>5</sup> Schedule 2, Clause 8 of the Act

<sup>6</sup> Formerly, the *Public Sector Employment and Management Act 2002*

are owed \$20,000 under the contract, the defendant agrees but says that the amount owed is actually \$15,000. In such circumstances, the dispute is really a \$5,000 dispute); and

- where the parties agree to the proceedings being transferred to the Small Claims Division.
- 4.11 It was also submitted that where proceedings are transferred by consent, the appeal provisions which provide a right to both parties to appeal on the basis of an error of law, should be preserved. An amendment to section 39 of the Act would need to be made to preserve the rights of appeal where the amount of the dispute exceeds the jurisdictional limit of the Small Claims Division but the proceedings were dealt with in that Division by consent.
- 4.12 Whilst the proposal seeks to retain a right of appeal that would otherwise be lost in having a matter heard in the Small Claims Division, the right to claim costs would be lost in this scenario. Other than, to seek a faster resolution of the matter, it seems unlikely that parties would choose to have their matters heard in circumstances where they would not be entitled to claim costs.
- 4.13 As outlined in section 2.4 above, the majority of civil cases heard in the Local Court go before the Small Claims Division (83%). The proposal to increase the jurisdictional threshold of the Small Claims Division to \$20,000, which is being progressed by the Department, will further increase the number of cases in that Division. Expanding the scope of the Small Claims Division may in part respond to the concerns raised in the submission. On this basis, we do not consider it would be prudent to create a complicated process for transferring matters between the Divisions until the impact of increasing the jurisdictional limit is clear.

## Appendix A

### Proposals that have been implemented or are being considered by the Department through other projects

| Proposal   | How has this proposal been pursued?   |
|--|---|
| Amend the Act to enable the Local Court to set its Christmas vacation dates.   | The <i>Justice Legislation Amendment Act (No. 2) 2017</i> amended section 26 to give the Local Court Rules Committee power to make rules relating to the Christmas vacation and providing for the hearing and disposal of proceedings during vacations. This amendment aligned the Local Court with the Supreme Court and the District Court in respect of the Christmas vacation.  |
| In determining whether to grant bail to a respondent who has been arrested for failing to appear in application proceedings, it was submitted that section 65 should be amended so the decision maker may consider those matters ordinarily considered to ensure the appearance of the respondent at subsequent court dates. | This proposal was addressed by the <i>Bail (Consequential Amendments) Act 2014</i> which amended section 65 to clarify that a bail decision may be made as per the <i>Bail Act 2013</i> . That Act prescribes a number of matters a decision maker is required to consider in making an assessment of bail concerns prior to the making of a bail determination. A bail concern includes a concern that the respondent will fail to appear at subsequent court dates. |
| Increase the jurisdictional limit of the Small Claims Division (section 29(1)(b)) (Civil Justice Strategy Project) to \$20,000 to facilitate a quicker and cheaper method of resolving civil monetary disputes   | The Department recommends that the Act be amended to increase the threshold to \$20,000. This is being progressed as part of the Civil Justice Strategy.  |

## Appendix B

### Proposals outside of the scope of this Review

| Proposal  | Reason for it being out of scope  |
|---|---|
| To permit parties to make an application for costs where they are successful in making an application to have a subpoena set aside due to it being an abuse of process, including in criminal proceedings. Section 44 currently excludes the application of Part 4, which includes costs under section 69, from criminal proceedings.                                     | This proposal should not be limited to the Local Court but consideration should be given to the appropriateness of its application in all NSW courts.   |
| To amend various Acts to ensure proper naming of the NSW Police Force in application appeals from the Local Court to the District/Supreme Court.  | The names of parties to proceedings can be corrected through administrative arrangements with the Local Court Registry. It is not necessary to amend the Act.   |
| Amend rule 4.4 of the Local Court Rules 2009 to include 'want of due despatch' as an additional basis upon which the Local Court may stay or dismiss application proceedings  | The Local Court Rules are made by the Local Court Rule Committee and not the Attorney General. No amendments to the Act are necessary. This will be raised with the Local Court Rule Committee for their consideration. |
| Divide the General Division into a number of lists to allow for the appointment of magistrates with some specialist experience to particular lists, for example: <ul style="list-style-type: none"> <li>▪ Criminal (including AVO matters);</li> <li>▪ Commercial;</li> <li>▪ Employment and Industrial (including WHS matters); and</li> <li>▪ General civil.</li> </ul> | This is a matter for the Chief Magistrate to consider and not something that would be included in the Act.  |
| The processes for resolving civil disputes in the Local Court are too complicated and legalistic and that simpler court forms and processes in the civil jurisdiction of the Local Court would assist.  | Court forms are approved by the Chief Magistrate (section 72) and not the Attorney General. No amendments to the Act are necessary.   |
| Some matters are better resolved outside of the Local Court, especially   | This proposals goes beyond just amending the Act.   |

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| <p>Council rates matters and Strata.</p> <p>Ensure that the Local Court provides interpreters for all parties in civil matters, rather than having parties arranging and paying for their own interpreter.</p>  | <p>This is a matter for the Chief Magistrate to consider and would not require an amendment to the Act.</p>  |
| <p>A court should be restricted from awarding costs against a police officer in applications for confiscation and forensic procedure orders. In such matters, a court should only be able to award costs against applicant police officers if satisfied the police officer brought the application in circumstances of misconduct. For example, either:</p> <ul style="list-style-type: none"> <li>• knowing it contained matter that was false or misleading in a material particular; or</li> <li>• without reasonable cause or in bad faith.</li> </ul> <p>The proposed restriction does not relate to costs consequences for any procedural misconduct by the applicant police officer (or their legal representative) in its conduct of the proceedings.</p> <p>It was submitted that a police officer should not be dissuaded from bringing applications for confiscation and forensic procedure orders in good faith and in appropriate circumstances, or from withdrawing such applications where appropriate, because of concerns an adverse costs order may be made against them.</p> | <p>Currently, there are no specific costs provisions relating to applicant police officers in applications for confiscation and forensic procedure orders. Applications for forensic procedure orders are brought within the Local Court's special jurisdiction where the Court has a wide discretion to award costs and may determine by whom, to whom and to what extent costs are to be paid. Applications for confiscation orders are brought within the General Division of the Local Court's civil jurisdiction. Costs orders in civil proceedings are made as per the <i>Civil Procedure Act 2005</i> and the <i>Uniform Civil Procedure Rules 2005</i>.</p> <p>In criminal and apprehended violence proceedings, however, there are specific costs provisions restricting the court from awarding costs against applicant police officers in prescribed circumstances. In criminal proceedings, costs may be awarded under the <i>Criminal Procedure Act 1986</i>, <i>Costs in Criminal Cases Act 1967</i> or the <i>Suitors' Fund Act 1951</i>. Generally, the court is restricted from awarding costs against an applicant police officer unless satisfied an investigation or the proceedings for an alleged offence was conducted in an unreasonable or improper manner, or the proceedings were initiated without reasonable cause or in bad faith. In apprehended violence proceedings, a court is limited from awarding certain costs against an applicant police officer under s 99A of the <i>Crimes (Domestic and Personal Violence) Act 2007</i>.</p> <p>This proposal relates to costs consequences in a discrete category of applications and should be addressed in the respective principal Acts. Any amendments to the civil and special jurisdiction of the Local Court would have the unintended consequences for other applications brought in those jurisdictions. This would be consistent with specific costs provisions restricting the court from awarding costs against applicant police officers in apprehended violence proceedings under the <i>Crimes</i></p> |

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|--|---|
|  | <i>(Domestic and Personal Violence) Act 2007.</i>   |
| <p>A submission sought clarification and amendments to modernise rules relating to the service of documents.</p> <p>In regards to the proof of service of documents, clarification was sought as to the effect and operation of rule 5.12 of the Local Court Rules 2009 and its purported inconsistency with section 181 of the <i>Evidence Act 1995</i>. Rule 5.12 provides for proof of service of a document issued in proceedings by a statement of service, whereas the Evidence Act provides for proof of service of statutory notices by affidavit in regards to the electronic service of documents. The submission requested that the Rules provide for electronic service as a valid method of service for originating documents and that the requirement to obtain the prior consent of the recipient of the document as to that method of service where a valid electronic address is known should be removed.</p> <p>Section 49 of the Act prescribes that an application notice must be served in accordance with the Rules. Part 5 of the Local Court Rules 2009 sets out the various rules relating to the service of documents, to include requirements for personal service, provisions enabling electronic service and the proof of service of documents.</p> | <p>The Local Court Rules are made by the Local Court Rule Committee and not the Attorney General. No amendments to the Act are necessary.</p> <p>This will be raised with the Local Court Rule Committee for their consideration.</p> |

## Appendix C – Submissions to the Review

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The Review received and considered submissions from the following stakeholders:

- His Honour Judge G Henson, Chief Magistrate (17 April 2013 and 27 March 2018)
- New South Wales Police Force and Office for Police (7 May 2013 and 29 March 2018)
- The Law Society of NSW (28 March 2018)
- Legal Aid Commission of NSW (9 April 2018)

