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ISSUE 2



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Taking advantage of the benefits of technology presents challenges and opportunities for all providers of legal services. Thomson Geer continues to advance its modernisation process to ensure its services are provided as efficiently as possible.

As can be seen from the media items below, it is clear that government is moving towards an online environment. As services are being progressively moved online (not always successfully as highlighted by the recent Census 2016 incident), addressing security risk remains a challenge. The security of information is of paramount importance and fortunately, the Commissioner was satisfied that no Census data was inappropriately accessed, lost or mishandled.

On the opposite end of the spectrum, access to information, particularly government information, remains a prevalent issue for agencies and this newsletter includes a number of recent cases in relation to FOI requests.

### MEDIA

#### Business women take charge with new online network

The NSW Government has launched The Women's Online Network (WON), a platform capable of supporting and championing women entrepreneurs through their business journey.

<https://www.nsw.gov.au/news/business-women-take-charge-new-online-network>

#### Census 2016 website incident, August 9

The Commissioner initiated an investigation

into an incident involving the Census 2016 website. The priority in doing so was to ensure that no personal information had been compromised. The Commissioner was satisfied that personal information was not inappropriately accessed, lost or mishandled.

<https://www.oaic.gov.au/media-and-speeches/statements/australian-privacy-commissioner-opens-investigation-into-census-2016-cyber-attack>

<https://www.oaic.gov.au/media-and-speeches/statements/census-2016-website-incident-august-9>

#### NSW first government to tap on with Android Pay

Customers in NSW will be the first in the nation to be able to pay for government services with the tap of an Android smartphone, as Service NSW becomes the first government agency in Australia to adopt Google's cashless Android Pay service.

<https://www.service.nsw.gov.au/news/nsw-first-government-tap-android-pay>

#### Small bars legislation review

The review will consider the appropriateness of small bar licence requirements, factors affecting the uptake of this licence category, and positive and negative impacts of the small bars legislation.

<https://www.liquorandgaming.justice.nsw.gov.au/Pages/public-consultation/community-consultation/small-bars-legislation-review.aspx>

## Communique: Meeting of Attorneys-General on post sentence preventative detention

The highest priority for Commonwealth, State and Territory Governments is to ensure the safety of the community and the importance of balancing that with the protection of basic human rights. The scheme will include safeguards to achieve that balance.

<https://www.attorneygeneral.gov.au/MediaReleases/Pages/2016/ThirdQuarter/Communique-Meeting-of-Attorneys-General-on-post-sentence-preventative-detention.aspx>

## CASES

### [‘JE’ and Australian Nuclear Science and Technology Organisation \[2016\] AICmr 49](#)

Freedom of Information – Whether documents subject to legal professional privilege – (CTH) Freedom of Information Act 1982 s 42

### [‘JD’ and Australian Taxation Office \[2016\] AICmr 48](#)

Freedom of Information – Whether disclosure would have a substantial adverse effect on the management or assessment of personnel or on the operations of an agency – Whether contrary to the public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5), 47E(c), 47E(d)

### [‘JC’ and Department of Health \[2016\] AICmr 47](#)

Freedom of Information – Whether work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations – (CTH) Freedom of Information Act 1982 ss 24, 24AA, 24AB

### [‘JB’ and Therapeutic Goods Administration \[2016\] AICmr 46](#)

Freedom of Information – Access grant – Whether disclosure would unreasonably affect an organisation in respect of its lawful business, commercial or financial affairs – Whether disclosure could reasonably be expected to prejudice the future supply of information to the Commonwealth

– Whether contrary to public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5), 47G

### [Duffy v Independent Liquor and Gaming Authority \[2016\] NSWSC 1062](#)

ADMINISTRATIVE LAW – judicial review – licensee of hotel with extended trading authorisation applies to surrender ETA and application is approved by Authority without notifying the owners of the hotel – licensee under mistaken belief that surrender was temporary applies to Authority to rescind surrender – whether owners entitled to procedural fairness before surrender accepted – whether acceptance of surrender was a nullity – procedural fairness not denied ADMINISTRATIVE LAW – judicial review – whether licensee’s mistake was analogous to fraud – whether error in Authority’s refusal to revoke surrender – whether Authority could re-exercise its power to accept surrender – power to revoke under Interpretation Act s 48 – whether provisions of Liquor Act showed contrary intention to operation of s 48 – whether acceptance of surrender could be set aside for having been made on a wrong factual basis – whether wrong factual basis shown – decision not made on wrong factual basis LIQUOR LAW – licensing – extended trading authorisation – surrender by licensee – whether owners entitled to procedural fairness – whether Authority entitled to deal with licensee

### [Moloney v Taylor \[2016\] NSWCA 199](#)

ADMINISTRATIVE LAW – statutory appeals from administrative bodies – Civil and Administrative Appeal Panel – approach to be followed by Appeal Panel in determining an internal appeal. Civil and Administrative Tribunal Act 2013 (NSW)

### [Clark v Commissioner for Corrective Services \[2016\] NSWCA 186](#)

ADMINISTRATIVE LAW – prisoner involved in litigation – judicial review of decisions affecting conditions of appellant’s incarceration – whether Court has powers to make orders pursuant to the power of the Court to exercise control over its own processes – whether making of orders would constitute interference in prison administration and management Judicial

review of decisions as to management of prisoner – classification – accommodation alone in cell – access to laptop computer and legal papers – access to large monitor for computer – order sought for medical/psychiatric evaluation

[Lonsdale v University of Sydney \[2016\] NSWCATAD 176](#)

GIPA Act – Government Information  
– Access – Confidential information  
– Commercial in confidence – Could reasonably be expected to reveal  
– Prejudice – Evidence – Opinion – Consideration of personal factors. Freedom of Information Act 1989; Government Information (Public Access) Act 2009

[People for the Plains Incorporated v Santos NSW \(Eastern\) Pty Limited and Ors \[2016\] NSWLEC 93](#)

STATUTORY INTERPRETATION – rights of license or lease holders confined, relevantly, to prospecting for petroleum and/or assessing deposits “on the land comprised in the” license or lease – is the meaning of “on the land” confined to the nominated petroleum title or should a wider, purposive interpretation be taken – approach to be taken to importing words into statutory provisions – when taken, the narrowest appropriate approach is to be preferred – additional words should be imported – purposive reading results in proposed facility to be regarded as permitted

## PRACTICE AND PROCEDURE

[High Court of Australian Bulletin \[2016\] HCAB 6](#)

**Federal Court of Australia: Spam Email**

The Federal Court of Australia (FCA) has reissued its caution about fraudulent emails purportedly sent by the Federal Court on behalf of the Federal Circuit Court, subpoenaing people to attend court at a specified time.

[Media Release](#)

**CoAG Energy Council meeting**

The next meeting of the Council of Australian Governments (CoAG) Energy Council was held on 19 August in Canberra

[Media Release](#)

## AAT Bulletin

[Issue no 31 2016](#)

[Issue no 32 2016](#)

## ICAC: Prosecution briefs with the DPP and outcomes

[Updated 11 August 2016](#)

## JUDCOM: Equality before the Law Bench Book Update 10

[Section 6 “Children and young people” has been updated](#)

## Law Society of NSW Submissions

[Productivity Commission inquiry into data availability and use](#)

## NSW Information and Privacy Commission Information Commissioner’s Regulatory Plan 2016-2017

## NSW Parliamentary research papers

[Local Government Amendment \(Governance and Planning\) Bill 2016](#)

[NSW Economic Update Winter 2016](#)

## LEGISLATION

### New South Wales

#### Regulations and other instruments

- [Air Transport Regulation 2016 \(2016-511\)](#) - published LW 12 August 2016
- [Criminal Appeal \(Amendment No 1\) Rule 2016 \(2016-494\)](#) - published LW 12 August 2016
- [Gaming and Liquor Administration Regulation 2016 \(2016-495\)](#) - published LW 12 August 2016
- [Human Tissue Amendment \(Blood Donor Certificate\) Regulation 2016 \(2016-512\)](#) - published LW 12 August 2016
- [Liquor Amendment \(Special Events Extended Trading\) Regulation \(No 2\) 2016 \(2016-496\)](#) - published LW 12 August 2016
- [Public Health \(Tobacco\) Regulation 2016 \(2016-476\)](#) - published LW 5 August 2016
- [Strata Schemes Management Regulation 2016 \(2016-501\)](#) - published LW 12 August 2016
- [Subordinate Legislation \(Postponement of Repeal\) Order 2016 \(2016-477\)](#) - published LW 5 August 2016

- [Superannuation Regulation 2016 \(2016-484\)](#) - published LW 5 August 2016

#### Proclamations

- [Strata Schemes Management Act 2015 No 50 \(2016-492\)](#) – published LW 12 August 2016

#### Government Bills

- [Greyhound Racing Prohibition Bill 2016](#)

#### Non-Government Bills

- [Abortion Law Reform \(Miscellaneous Acts Amendment\) Bill 2016](#)
- [Greyhound Racing Amendment \(Greyhound Racing Integrity Commission\) Bill 2016](#)

## KEY CONTACTS

### PANEL RELATIONSHIP CONTACTS

Your contacts responsible for navigating our firm, connecting you with the appropriate expertise and achieving maximum efficiency.

Instructions may be emailed to [nswgovtlegal@tglaw.com.au](mailto:nswgovtlegal@tglaw.com.au) at anytime.



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### DEDICATED LIBRARIAN

Available to assist NSW Government and agencies as required, at no charge.



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## HELP DESK SERVICES

Thomson Geer is delighted to offer access to NSW Government to its Legal Help Desk on our usual terms of engagement and as set out below.

#### Scope

We are pleased to be able to work collaboratively with NSW Government to offer the following services (at no charge):

- advice regarding discrete and non-complex legal queries – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate or, short written advice (max. 1 page);
- the opportunity to 'brainstorm' or discuss topical and complex legal issues with industry specialists – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate; and
- advice regarding potential transactions – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate.

#### (Help Desk Services)

Please note that the Help Desk Services are only available in respect of any matter which is currently unallocated i.e. to this firm or any other firm.

#### Key Contact and Help Desk Process

You can access the Help Desk by:

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

Once relevant details are received from you (whether that be by email or over the phone) it will be directed to the appropriate Thomson Geer Partner, Special Counsel or Senior Associate. The Help Desk number and email address will be monitored during normal business hours (9.00 am to 5.00 pm (EST), Monday to Friday).

Thomson Geer will use its best endeavours to provide the Help Desk Services within one business day of the query being logged.

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