

6 SEPTEMBER 2016

ISSUE 3



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

In February this year, the NSW Government announced the appointment of former High Court Justice, the Hon. Ian Callinan AC QC, to lead the statutory review of liquor laws which were introduced in 2014. Numerous submissions have been lodged by a variety of interested parties, including the Australian Medical Association, the NSW Police Force and the Office of the NSW Small Business Commissioner. The review report is due to be submitted on 13 September 2016.

On 25 August 2016, the NSW Supreme Court held that the decision declaring the "Smoking Panda Bar" in the Sydney CBD subject to the so called "lockout laws" was invalid because it was based on sub-clauses of the *Liquor Regulation 2008* (NSW) which are ultra vires.

MEDIA

New Laws to ease NSW District Court Backlog

The NSW Government is making justice faster, fairer and more accessible with new laws introduced by Attorney General Gabrielle Upton designed to reduce delays in court, under the Crimes Procedure Amendment (Summary Proceedings for Indictable Offences) Bill 2016.

<http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2016/New-Laws-to-ease-District-Court-Backlog.aspx>

A Police Force for the Future in NSW

Deputy Premier and Minister for Justice and Police Troy Grant and NSW Police Commissioner Andrew Scipione has

announced the first phase of a new and enhanced executive structure which will see the creation of five executive positions reporting directly to the Commissioner.

<http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2016/A-Police-Force-for-the-Future.aspx>

Ongoing AFP NBN Investigation

The Justice Minister is aware that operational activity occurred in relation to its investigation into the alleged unauthorised disclosure of Commonwealth information relating to the NBN Co.

<https://www.ministerjustice.gov.au/Mediareleases/Pages/2016/ThirdQuarter/ongoing-afp-nbn-investigation.aspx>

New Domestic Violence Bench Book Released for Judicial Officers

The Commonwealth Attorney-General, Senator George Brandis, announced "an important new online resource for judicial officers dealing with domestic and family violence related cases."

<https://www.attorneygeneral.gov.au/Mediareleases/Pages/2016/ThirdQuarter/New-resource-to-assist-victims-of-family-violence.aspx>

AFP successfully applies for suppression order in Curtis Cheng criminal case

Parts of the criminal case against four men charged over the fatal shooting of NSW Police accountant Curtis Cheng could be

heard in secret after the Australian Federal Police successfully applied for a suppression order.

<http://www.abc.net.au/news/2016-08-24/afp-is-granted-suppression-order-in-curtis-cheng-case/7781982>

Another \$3 million boost to target NSW bikie networks

The Minister for Justice Michael Keenan announces an additional \$3 million investment from the Commonwealth Government to extend the work of the New South Wales National Anti-Gang Squad (NAGS) Strike Team targeting drug trafficking, money laundering, extortion, firearms offences and acts of high level violence.

<https://www.ministerjustice.gov.au/Mediareleases/Pages/2016/ThirdQuarter/Another-3-million-boost-to-target-NSW-bikie-networks.aspx>

Balancing public and private interests in the exercise of judicial discretion

Government lawyers, and private lawyers who act for government bodies, will often face arguments which centre around the interests of private citizens generally being of greater importance than those of public bodies, as in the recent case of Construction, Forestry, Mining and Energy Union v Australian Competition and Consumer Commission [2016] FCAFC 97.

http://www.qls.com.au/About_QLS/News_media/News/Balancing_public_and_private_interests_in_the_exercise_of_judicial_discretion

CASES

[Stuart v O'Connor as Acting Deputy Secretary of the Department of Justice and State of New South Wales \[2016\] NSWSC 1179](#)

ADMINISTRATIVE LAW – “lockout laws” - declarations sought - whether improper subdelegation of regulation-making power by cls 53Y(1)(d) and 53Z(1)(d) of the Liquor Regulation 2008 – whether cls 53Y(1)(d) and 53Z(1)(d) ultra vires – construction of s 116I of the Liquor Act 2007
ADMINISTRATIVE LAW - whether decision of the first defendant unreasonable – whether decision made for an improper purpose – unnecessary to consider ground

[Secretary, Department of Health \(as successor to the Secretary, Department of Social Services\) v DLW Health Services Pty Ltd \[2016\] FCAFC 108](#)

ADMINISTRATIVE LAW – aged care – appeal against decision of the Administrative Appeals Tribunal – Tribunal set aside decisions of delegates of the Department of Health to reduce classification levels of aged care recipients – whether Classification Principles 1997 may only classify aged care recipients based on the needs of care recipients, relative to the care needs of other recipients – whether the Classification Principles purport to classify care recipients based on the care actually provided as opposed to care needs – construction of the Classification Principles – Tribunal erred in its construction – appeal allowed

[Hinton v Alpha Westmead Private Hospital \[2016\] FCAFC 107](#)

PRACTICE AND PROCEDURE - Federal Circuit Court of Australia - disability discrimination – Federal Circuit Court summarily dismissed application at first directions hearing – whether primary judge erred in finding no reasonable prospect of success – whether denial of procedural fairness
Australian Human Rights Commission Act 1986 (Cth) s 46PO
Disability Discrimination Act 1992 (Cth) ss 3, 4, 5, 7, 11, 24, 29A, 123

[Luck v Secretary, Department of Human Services \(No 4\) \[2016\] FCA 950](#)

ADMINISTRATIVE LAW – in 2009, applicant requested from first respondent provision of certain documents under Freedom of Information Act 1982 (Cth) – unsatisfied with outcome, applicant lodged application for review of decision in Administrative Appeals Tribunal – first respondent alleged that AAT lacked jurisdiction to deal with decision of which review was sought – AAT sought clarification from applicant as to decision of which review was sought – AAT convened hearing for purpose of ventilating question of its jurisdiction – first respondent did not lodge documents contemplated by s 37(1)(b) of Administrative Appeals Tribunal Act 1975 (Cth) prior to jurisdictional hearing – applicant sought adjournment or stay of jurisdictional hearing including for reasons of ill health – AAT declined to adjourn or

stay jurisdictional hearing, sent transcript to applicant, invited submissions – AAT held that it lacked jurisdiction to review decision of which applicant sought review – whether AAT erred in holding that it lacked jurisdiction – AAT did not err – consideration of whether AAT erred in failing to require first respondent to provide s 37(1)(b) documents – AAT did not err – consideration of whether in failing to stay or adjourn jurisdictional hearing, AAT and Deputy President constituting AAT failed to afford procedural fairness to applicant – applicant not denied procedural fairness – appeal dismissed

[Clement v Australian Bureau of Statistics \[2016\] FCA 948](#)

PRACTICE AND PROCEDURE – summary judgment – whether no reasonable prospects of success – where case doomed from outset

PRACTICE AND PROCEDURE – whether notices should be given under s 78B of the Judiciary Act 1903 (Cth) – where constitutional point said to be raised is frivolous

PUBLIC SERVICE – claim for compensation for reprisals under the Public Interest Disclosure Act 2013 (Cth) – “public interest disclosure” – defined to apply only to disclosures occurring from commencement date – where alleged reprisals relate to alleged beliefs concerning disclosures occurring before commencement date

[Dr David Amos v Western New South Wales Local Health District \[2016\] NSWSC 1162](#)

ADMINISTRATIVE LAW – visiting medical officer received Warning Letter – subject of adverse findings in report – consideration of suspension – possible report under s 99A of Health Services Act 1997 – status of visiting medical officer – whether position created under or regulated by statute – issue of Warning Letter – whether amenable to judicial review – whether step taken under and for purposes of Health Services Act 1977 – whether apt to affect interest of visiting medical officer – HELD – no obligation to afford natural justice in relation to Warning Letter – external expert engaged to provide report – whether report is step taken under and for purposes of Health Services Act – whether report apt to affect interest of plaintiff – HELD – no obligation to afford procedural fairness prior to making report

– suspension decision – whether injunction should issue to restrain suspension – whether plaintiff demonstrated sufficient likelihood that breach of natural justice will occur – HELD – likelihood of breach not established – summons dismissed

[Kinloch v Newcastle City Council \[2016\] NSWLEC 109](#)

JUDICIAL REVIEW: Instrument of Delegation – whether Council assessing officer required to refer the decision-making function to Development Assessment Committee of Newcastle City Council consistent with Instrument of Delegation – relevant test for delegation to the Development Assessment Committee – conflicts with Council’s adopted objectives and policies more than minor – whether strict compliance unreasonable or unnecessary – development consent declared invalid – consequential restraining orders made.

[Burke v Health Education and Training Institute \[2016\] NSWCATAD 194](#)

GOVERNMENT INFORMATION – Information concerning workplace investigation – Public interest considerations in favour of disclosure – Whether disclosure of the information could reasonably be expected to reveal or substantiate misconduct or negligent, improper or unlawful conduct – Whether alleged breaches of procedural fairness constitute public interest consideration in favour of disclosure – Tribunal not to undertake collateral review of merits or validity of official action GOVERNMENT INFORMATION – Public interest considerations against disclosure – Disclose information provided in confidence – Prejudice the effective exercise by an agency of its functions – Prejudice the conduct of an investigation – Meaning of “conduct” of an investigation – Reveal personal information and contravene privacy principle – To discharge burden, respondent must identify relevant privacy principle and explain why there would be reasonable expectation of contravention – Balancing of public interest considerations

[Ku-ring-gai Council v NSW Department of Premier and Cabinet \[2016\] NSWCATAD 181](#)

Government Information (Public Access) Act – access to Cabinet information – reasonable grounds for claim that

information is Cabinet information – earlier decision of Tribunal making the same finding in relation to the same documents on substantially the same affidavit material – comity between Tribunal members – decision followed – independently came to same conclusions

PRACTICE AND PROCEDURE

AAT Bulletin

[Issue no 33 2016](#)

[Issue no 34 2016](#)

Australian Law Reform Commission (ALRC)

[Elder Abuse and Commonwealth Laws – Issues Paper](#)

ICAC: Statements and alerts

- [Operation Spicer investigation](#)
- [Operation Scania witness list](#)
- [Prosecution briefs with the DPP and outcomes](#)
- [Public inquiry into corruption allegations concerning Western Sydney Regional Illegal Dumping Squad officer](#)

NSW Information and Privacy Commission

[New resource to assist regulated sectors to comply with the GIPA Act](#)

Crime and Corruption Commission (Qld)

[Public forum to be held in October to discuss whether publicising allegations of corrupt conduct is in the public interest.](#)

LEGISLATION

New South Wales

Regulations and other instruments

- [Children \(Criminal Proceedings\) Regulation 2016 \(2016-555\)](#) – published LW 26 August 2016
- [Civil and Administrative Tribunal \(Amendment No 4\) Rule 2016 \(2016-532\)](#) – published LW 26 August 2016
- [Coroners Amendment \(Domestic Violence Death Review Team\) Regulation 2016 \(2016-514\)](#) – published LW 19 August 2016
- [Court Security Regulation 2016 \(2016-541\)](#) – published LW 26 August 2016
- [Guardianship Regulation 2016 \(2016-556\)](#) – published LW 26 August 2016
- [Law Enforcement \(Powers and Responsibilities\) Regulation 2016 \(2016-544\)](#) – published LW 26 August 2016

- [Legal Aid Commission Regulation 2016 \(2016-545\)](#) – published LW 26 August 2016
- [Powers of Attorney Regulation 2016 \(2016-548\)](#) – published LW 26 August 2016
- [Security Industry Regulation 2016 \(2016-557\)](#) – published LW 26 August 2016
- [Sheriff Regulation 2016 \(2016-550\)](#) – published LW 26 August 2016
- [Smoke-free Environment Regulation 2016 \(2016-558\)](#) – published LW 26 August 2016
- [Supreme Court \(Amendment No 429\) Rule 2016 \(2016-534\)](#) – published LW 26 August 2016
- [Terrorism \(Police Powers\) Regulation 2016 \(2016-520\)](#) – published LW 19 August 2016
- [Young Offenders Regulation 2016 \(2016-560\)](#) – published LW 26 August 2016

Proclamations

- [Courts Legislation Amendment \(Disrespectful Behaviour\) Act 2016 No 26 \(2016-535\)](#) – published LW 26 August 2016
- [Crimes \(Domestic and Personal Violence\) Amendment \(Review\) Act 2016 No 33 \(2016-513\)](#) – published LW 19 August 2016
- [Law Enforcement \(Powers and Responsibilities\) Amendment Act 2014 No 31 \(2016-536\)](#) – published LW 26 August 2016

Government Bills

- [Criminal Procedure Amendment \(Summary Proceedings for Indictable Offences\) Bill 2016](#)

Revised Bills

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

Bills passed by both Houses

- [Greyhound Racing Prohibition Bill 2016](#)
- [Local Government Amendment \(Governance and Planning\) Bill 2016](#)

KEY CONTACTS

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

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Scope

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

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

(Help Desk Services)

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

Key Contact and Help Desk Process

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

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

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

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