



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

The issue of advertising of alcohol on public transport is being reviewed. The Alcohol Advertising Review Board has released a report on the community impact of alcohol advertising on public transport sites. A link to the report is below.

We also note that the Callinan Report into the "lock out" laws referred to in our last edition has been released. The Report and its recommendations (included below) are being considered by the NSW Government. A response is anticipated before the end of the year.

MEDIA

ABA considers alternative funding options to Australia's legal assistance crisis

The Australian Bar Association says that in addition to continuing to press Federal and State Governments to appropriately fund legal assistance for those in need, it is considering new and alternative sources of funding for the sector.

<http://www.austbar.asn.au/archives/2806>

ACCC updates guidance material on information gathering powers

The Australian Competition and Consumer Commission has released updated guidelines on its use of mandatory information gathering powers under the Competition and Consumer Act 2010 (the CCA). This includes a basic guide for individuals and small businesses.

<http://www.accc.gov.au/media-release/accc-updates-guidance-material-on-information-gathering-powers>

Administrator appointed for Greyhound Racing NSW

The NSW Government has appointed experienced corporate advisor John Gibbons as Administrator of Greyhound Racing NSW (GRNSW) to manage the corporate transition of greyhound racing's governing body and affected clubs.

<http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2016/administrator-appointed-for-greyhound-racing-NSW.aspx>

Alcohol Advertising Review Report

The Alcohol Advertising Review Board (AARB) has released a report about the community impact of alcohol advertising on public transport sites. The AARB reviews complaints about alcohol advertising and commissioned the report.

<http://www.alcoholadreview.com.au/resources/AARB-Public-transport-report-FINAL.pdf>

Callinan Report released

The NSW Government released the Hon Ian Callinan AC QC's independent review of the state's liquor laws to the public immediately after receiving it. The government will now consider the report and deliver its response before the end of the year.

<http://www.liquorlawreview.justice.nsw.gov.au/>

Financial support for solar projects

Five large-scale solar installations across regional NSW will be built after securing \$34.9 million in funding from the Australian Renewable Energy Agency (ARENA). The installations in Dubbo, Glen Innes, Griffith, Parkes and Manildra have a total capacity of 162.3 megawatts and will provide enough clean electricity to power around 62,000 homes or 2800 schools and save 350,000 tonnes of greenhouse gas emissions per year.

<https://www.nsw.gov.au/news/financial-support-solar-projects>

Law Council to launch national cyber security initiative as cyber threat grows

The Law Council of Australia will launch a national cyber security information campaign for the legal profession this year, as the threat of cybercrime and cyber espionage grows exponentially across the globe.

http://www.lawcouncil.asn.au/lawcouncil/images/1655--_Law_Council_to_launch_national_cyber_security_initiative_as_threat_of_cybercrime_and_cyber-espionage_grows.pdf

New suicide prevention program for local communities

People at risk of suicide will receive more local support as the NSW Government announces an \$8 million suicide prevention program that will run over the next four years.

<https://www.nsw.gov.au/news/new-suicide-prevention-program-local-communities>

New South Wales Government: ICAC Operation Spicer

The conduct revealed in the report by the ICAC is completely unacceptable and constitutes a betrayal of public trust by both sides of politics. The Government has zero tolerance for corruption.

<https://www.nsw.gov.au/media-releases-premier/operation-spicer>

CASES

[Murphy v Electoral Commissioner \[2016\] HCA 36](#)

Constitutional law (Cth) – Legislative power – Franchise – Power of Parliament

to regulate exercise of entitlement to enrol to vote – Provisions of Commonwealth Electoral Act 1918 (Cth) precluding consideration of claims for enrolment or transfer of enrolment and amendment of Electoral Rolls during “suspension period” from 8pm on day of closing of Electoral Rolls until close of polling for election – Whether burden on constitutional mandate that Parliament be “directly chosen by the people” – Whether burden justified by substantial reason – Relevance of Roach v Electoral Commissioner (2007) 233 CLR 162; [2007] HCA 43 and Rowe v Electoral Commissioner (2010) 243 CLR 1; [2010] HCA 46.

[Attorney-General v Honourable Mark Dreyfus \[2016\] FCAFC 119](#)

ADMINISTRATIVE LAW – appeal on a question of law from a decision of the Administrative Appeals Tribunal – Freedom of Information request – request for access to electronic diary of the Attorney-General in a “weekly agenda” format for the period 18 September 2013 to 12 May 2014 – whether any error of law in the Tribunal concluding that the Attorney-General had not discharged his onus of establishing that the primary decision was justified or that the Tribunal should give a decision adverse to the applicant such that (i) the Tribunal was not satisfied that a practical refusal reason existed in relation to the request and (ii) the Tribunal decided that the work involved in processing the request would not substantially and unreasonably interfere with the performance of the Attorney-General’s functions – Held: Appeal dismissed.

[Department of Employment and ‘JI’ \[2016\] AICmr 56](#)

Freedom of Information – Vexatious applicant declaration – Whether person should be declared a vexatious applicant – Whether person has repeatedly engaged in access actions that involve an abuse of process – Whether the access actions unreasonably interfere with the operations of an agency – (CTH) Freedom of Information Act 1982 ss 89K, 89L, 89M

[AQO v Minister for Finance and Services \[2016\] NSWCA 248](#)

STATUTORY INTERPRETATION – where applicant made privacy complaint seeking internal review of Minister’s alleged conduct in obtaining and using applicant’s personal and health information – Privacy

and Personal Information Protection Act 1998 (NSW), s 53 – Health Records and Information Privacy Act 2002 (NSW), s 21 – whether definition of “public sector agency” in each Act extended to a Minister – Privacy and Personal Information Protection Act 1998 (NSW), s 3 – Health Records and Information Privacy Act 2002 (NSW), s 4
STATUTORY INTERPRETATION – whether later amendments to principal Act relevant to statutory interpretation
STATUTORY INTERPRETATION – interpretation of legislation in pari materia
WORDS & PHRASES – “person or body” – Privacy and Personal Information Protection Act 1998 (NSW), s 3 – Health Records and Information Privacy Act 2002 (NSW), s 4

[Pycon Homes and Constructions Pty Ltd v Port Macquarie Hastings Council \[2016\] NSWCATAD 206](#)

GIPA Act- Copyright - Government information – Striking or unusual features – Whether a substantial part of a work had been reproduced – Significant public interest in favour of disclosure in such circumstances - Expose a person to harm or risk – Limit on exposure in context where information already revealed - Limit on exposure in context where information already exposed – Lack of significant weight to considerations against disclosure in such circumstances

PRACTICE AND PROCEDURE

AAT Bulletin
[Issue no 35 2016](#)
[Issue no 36 2016](#)

ACMA: Privacy guidelines 2016
 The updated guidelines reflect amendments to codes of practice since 2011, including new case studies of key ACMA privacy investigation decisions over the past five years. They also update references to personal information and clarify the ACMA’s approach to consent, material in the public domain and children’s privacy.
[ACMA privacy guidelines for broadcasters](#)

High Court of Australia: High Court Amendment (Confidential Documents) Rules 2016
 New Rules commenced on 30 August affecting: Rule 1.06; Rule 1.08; and Rule

4.07.4. The amendment complements Practice Direction No.1 of 2016. The Amendments Rules are intended to ensure that the terms of any suppression order, non-publication order or other confidentiality order made by a court in relation to documents filed in the High Court are identified at the time of filing the documents. The amendment also covers the provisions in the High Court Rules permitting inspection and copying of documents on the court file do not impede the operation of such orders.

[High Court Amendment \(Confidential Documents\) Rules 2016](#)

ICAC: Statements and alerts

- [Operation Scania witness list](#)
- [Prosecution briefs with the DPP and outcomes](#)

Law Council of Australia: Productivity Commission submission
[Consumer Law Enforcement and Administration Issues Paper](#)

NCAT legal bulletin
[Issue 5 of 2016](#)

NSW Parliamentary committee on the ICAC
[Review of the Inspector’s Report to the Premier: The Inspector’s Review of the ICAC](#)

OAIC: ARC Mercantile (ARC) enforceable undertaking

The Australian Privacy Commissioner has accepted an enforceable undertaking from ARC, following a 2015 data breach that disclosed the personal information of some Optus customers on an external website.
[OAIC statement](#)

LEGISLATION

Commonwealth

Bills

[Broadcasting Legislation Amendment \(Media Reform\) Bill 2016](#)

Amends the Broadcasting Services Act 1992 to: abolish the ‘75% audience reach rule’ which prohibits commercial television broadcasting licensees from controlling licences whose combined licence area populations exceed 75 per cent of the population of Australia; abolish the ‘2 out of 3 cross-media control rule’.

[Fair Work Amendment \(Gender Pay Gap\) Bill 2015](#)

A Bill for an Act to amend the Fair Work Act 2009, this Bill seeks to reduce the gender pay gap by removing legal prohibitions on workers discussing their own pay.

[Fair Work Amendment \(Protecting Australian Workers\) Bill 2016](#)

A Bill for an Act to amend the Fair Work Act 2009, to provide increased protections for vulnerable employees against unlawful conduct on the part of employers by creating new criminal offences and increased civil penalties for certain breaches of the Fair Work Act 2009.

[Parliamentary Joint Committee on Intelligence and Security Amendment Bill 2015](#)

A Bill for an Act to amend the Intelligence Services Act 2001 and other legislation in relation to the membership, powers and functions of the Parliamentary Joint Committee on Intelligence and Security.

[Racial Discrimination Amendment Bill 2016](#)

A Bill for an Act to amend the Racial Discrimination Act 1975, The Federal Government has withdrawn its commitment to amend the Act. As a result, this Bill is introduced in its stead. The Racial Discrimination Amendment Bill 2016 amends paragraph 18C(1)(a) of the Racial Discrimination Act 1975 (the Act) to omit the words 'offend' and 'insult'.

[Statute Law Revision Bill 2016](#)

A Bill for an Act to make various technical amendments of the statute law of the Commonwealth.

[Statute Law Revision \(Spring 2016\) Bill 2016](#)

A Bill for an Act to make various technical amendments of the statute law of the Commonwealth, to repeal certain obsolete Acts.

[Statute Update Bill 2016](#)

A Bill for an Act to make various amendments of the statute law of the Commonwealth with new prescribed penalty units.

Notice of royal assent

- [Budget Savings \(Omnibus\) Act 2016 \(No 55\)](#) – 16 September 2016
- [Primary Industries Levies and Charges Collection Amendment Act 2016 \(No 56\)](#) – 16 September 2016
- [Registration of Deaths Abroad Amendment Act 2016 \(No 57\)](#) – 16 September 2016

New South Wales

Regulations and other instruments

- [Legal Profession Uniform Conduct \(Barristers\) Amendment \(Work of a Barrister\) Rule 2016 \(2016-570\)](#) – published LW 2 September 2016
- [Legal Profession Uniform General Amendment \(Receipting of Trust Money\) Rule 2016 \(2016-571\)](#) – published LW 2 September 2016
- [Subordinate Legislation \(Postponement of Repeal\) Order \(No 2\) 2016 \(2016-561\)](#) – published LW 29 August 2016
- [Subordinate Legislation \(Postponement of Repeal\) Order \(No 3\) 2016 \(2016-569\)](#) – published LW 31 August 2016
- [Uniform Civil Procedure \(Amendment No 77\) Rule 2016 \(2016-578\)](#) – published LW 9 September 2016

Proclamations

- [Criminal Legislation Amendment \(Organised Crime and Public Safety\) Act 2016 No 16 \(2016-577\)](#) – published LW 8 September 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 at anytime.



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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

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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