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ISSUE 6



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Two controversial decisions of the NSW State Government have been in the news recently, the ban on greyhound racing in NSW and the amalgamation of councils.

The ban on greyhound racing in NSW has been overturned. Instead, new measures are proposed which will focus on animal welfare.

Appeals against the merger of various local councils have been dismissed. Oberon, Cabonne and Gundagai Councils were unsuccessful in challenging the decision to merge with other rural councils (Oberon with Bathurst, Cabonne with Blayney Shire and Orange City and Gundagai with Cootamundra Shire). These councils join Woollahra Council in unsuccessfully challenging the amalgamations.

MEDIA

NSW cabinet reverses decision on greyhound ban

Premier Mike Baird admits to making the wrong decision in banning greyhound racing as the NSW cabinet adopts a new policy that gives the industry another chance. Strict new measures will be introduced with a focus on animal welfare.

<http://www.abc.net.au/news/2016-10-11/greyhound-ban-baird-government-confirms-backflip/7921000>

Gender Balance on Australian Government Boards Report 2015-16

The Gender Balance on Australian Government Boards Report is prepared annually by the Australian Government

Office for Women, and reports on the Government's performance against its gender diversity target.

<http://www.dpmc.gov.au/resource-centre/office-women/gender-balance-australian-government-boards-report-2015-16>

Judges admit to emotion in court but say they avoid bias

Australian judges and magistrates admit to experiencing strong personal feelings toward cases they have presided over, new research finds.

<http://www.abc.net.au/news/2016-09-29/judges-admit-to-emotion-in-court-but-say-they-avoid-bias/7885508>

<http://www.flinders.edu.au/ehl/law/research-activities/judicial-research-project/current-research-directions/judicial-performance-and-emotion.cfm>

ACCC reviewing sharing economy policies as part of international sweep

The ACCC is assessing the review policies of sharing economy platforms as part of an international initiative targeting online reviews and endorsements. This review is part of the International Consumer Protection and Enforcement Network (ICPEN)'s annual internet sweep, involving over 50 consumer protection agencies around the world.

<http://www.accc.gov.au/media-release/accc-reviewing-sharing-economy-policies-as-part-of-international-sweep>

New community engagement grants program

The Fair Work Ombudsman has released the guidelines for a new grants program aimed at delivering advice and assistance on workplace laws to vulnerable groups in the community. Applications from not-for-profit community organisations would now be received for the Program, which would begin on 1 January 2017.

<https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/september-2016/20160923-community-engagement-grants-mr>

The impact of the NSW Bail Act 2013 on trends in bail

The NSW Bail Act (2013) and subsequent amendments have had only a modest effect on the percentage of defendants refused bail, according to NSW Bureau of Crime Statistics and Research (BOCSAR). The Act replaced a complex set of presumptions concerning bail with a single 'unacceptable risk' test.

http://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2016/mr-The-impact-of-the-NSW-Bail-Act-2013-on-trends-in-bail.aspx

5th Annual GovInnovate Summit

The national public sector forum, hosted in Canberra from November 14-16, encourages excellence in service design, digital delivery and security. GovInnovate will provide a mission critical arena for the public sector to align government business needs with excellence in citizen service design and delivery.

<http://www.govinnovate.com.au/>

Law Society of New South Wales

As part of the Law Society of New South Wales' Advancement of Women Initiative, a Charter has been developed and is available for signature by all law practices including government. The Charter provides examples of practices designed to help meet commitments regarding women in the profession with diversity and inclusion, removing gender bias and discrimination, retention of women legal practitioners and equitable briefing as examples.

<https://www.lawsociety.com.au/ForSolicitors/AdvancementofWomen/Charter/index.htm>

Government agencies compliance with the GIPA Act

In a recent report, the NSW Auditor-General found some NSW Government agencies were not publicly releasing all the required information on contracts with the private sector, nor were they publishing it in a timely manner. The report assessed whether 13 agencies were complying with Part 3 Division 5 of the GIPA Act, relating to Government contracts with the private sector.

<http://www.audit.nsw.gov.au/publications/latest-reports/special-report-agency-compliance-gipa-act>

CASES

[Lyons v Queensland \[2016\] HCA 38](#)

Discrimination law – Disability discrimination – Where deaf person summoned for jury service – Where deaf person required assistance of Auslan interpreters to participate as juror – Where deaf person excluded from jury panel – Whether exclusion was unlawful discrimination. Juries – Persons constituting jury – Jury deliberations – Whether permissible for interpreter to be present in jury room during deliberations – Whether deaf person who requires assistance of interpreter in jury room eligible for jury service under Jury Act 1995 (Qld)

[Knight v Commonwealth of Australia \[2016\] FCA 1160](#)

CONSTITUTIONAL LAW – Constitution, s 51(xxxi) – acquisition of property on just terms – where the applicant was denied payment under a reparation scheme established as an exercise of Commonwealth executive power – whether the constitutional guarantee of just terms for the acquisition of property under the Parliament's power to make laws pursuant to s 51(xxxi) extends to an exercise of executive power – no basis for concluding that the guarantee so extends – application dismissed

[Oberon Council v Minister for Local Government; Cabonne Shire Council v Minister for Local Government; McAlister and Graham v Minister for Local Government \[2016\] NSWLEC 131](#)

JUDICIAL REVIEW – proposals for amalgamation of local government areas – whether proposals made in accordance

with Local Government Act 1993 – whether proposals made by Minister – whether decision to make proposals manifestly unreasonable – referral of proposals to Departmental Chief Executive for examination and report – whether referral of proposals manifestly unreasonable – inquiries required to be held – whether reasonable public notice given of the holding of inquiries – whether inquiries held in accordance with Act – whether examination and report on proposals in accordance with Act – whether Departmental Chief Executive had regard to relevant considerations in s 263(3) of Act – whether affected councils denied procedural fairness by Departmental Chief Executive – review and comment on Departmental Chief Executive’s reports by Boundaries Commission – whether review conducted in accordance with Act – whether affected councils denied procedural fairness by Boundaries Commission – publicly accessible material in support of proposals represented that analysis and modelling of consultant was independent – whether representations misleading – whether allegedly misleading representations invalidated statutory process of amalgamation – whether Minister made decisions under Act to recommend implementation of proposals to Governor – whether Minister’s decision to recommend to Governor that a proposal be implemented was invalid

[Spice v Mosman Council \[2016\] NSWCATAD 215](#)

ADMINISTRATIVE LAW -- access to government information – deliberative process of government or agency – overriding public interest against disclosure

[Turner v Commissioner of Police, NSW Police Force \[2016\] NSWCATAD 222](#)

ADMINISTRATIVE LAW – access to government information – access application – previous request – decision to refuse to deal with application

PRACTICE AND PROCEDURE

AAT Bulletin

[Issue no 39 2016](#)

[Issue no 40 2016](#)

ICAC: Statements and alerts

[Prosecution briefs with the DPP and outcomes](#)

ICAC: 11th National Investigations Symposium

The 11th National Investigations Symposium is to be held 9 to 11 November 2016 at the Four Seasons, Sydney.

[Registration now open](#)

NSW Information and Privacy Commission

The Acting NSW Information Commissioner has updated the learning module on contract registers to provide guidance to entities regulated by the Government Information (Public Access) Act 2009 (GIPA Act). This resource has been revised in consultation with our stakeholders to assist agencies in understanding how to comply with their contracts register obligations under the GIPA Act.

[Register via IPC e-learning portal](#)

LEGISLATION

Commonwealth

Bills

[Racial Discrimination Law Amendment \(Free Speech\) Bill 2016](#)

The Racial Discrimination Law Amendment (Free Speech) Bill 2016 repeals Part IIA of the Racial Discrimination Act 1975 (the Act). Part IIA – inserted into the Act in 1995 – is nominally concerned with the ‘Prohibition of Offensive Behaviour based on Racial Hatred’

Acts

[Statute Update Act 2016](#)

Act No. 61 of 2016 as made - The purpose of the Act is to update provisions in various Acts to take account of changes to drafting precedents and practice. Specifically, the Act:

- updates references to penalties expressed as a number of dollars with penalties expressed as a number of penalty units;
- replaces references to “maximum penalty” with “penalty”; and
- amends provisions that deal with the evidentiary status of a certificate or other instrument, or of a register, to provide that it is prima facie evidence of the matters stated in it.

This Act will commence on 21 October 2016.

Legislative Instruments

[Human Services \(Centrelink\) Amendment \(Protected Symbols\) Regulation 2016](#)

Amends the Human Services (Centrelink) Regulations 2011 and will make 'myGov' a 'protected name' and the two logos associated with myGov 'protected symbols'. This will protect the 'myGov' branding against unauthorised use, as it is an offence to use protected names or symbols under the Human Service (Centrelink) Act 1997, for specified purposes, without the consent of the Department of Human Services.

[Parliamentary Proceedings Broadcasting Regulation 2016](#)

Prescribes the national broadcasting station in the Australian Capital Territory known as

2PB for the purpose of paragraph 4(1)(b) of the Parliamentary Proceedings Broadcasting Act 1946.

New South Wales

Regulations and other instruments

- [Administrative Arrangements \(Administration of Acts—Amendment No 2\) Order 2016 \(2016-611\)](#) — published LW 7 October 2016

Bills assented to

- Criminal Procedure Amendment (Summary Proceedings for Indictable Offences) Act 2016 No 44 — Assented to 28 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:

- Calling 02 8248 5810; or
- 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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