

24 NOVEMBER 2016

ISSUE 8



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Following the recent release of the Russell Report and the NSW Government response, the potential acquisition of the Land and Property Information agency is in the spotlight after the NSW Government recently announced that an estimated 309 enquirers may have received incorrect responses to Central Registrar of Restrictions (CRR) searches. The relevant properties are potentially affected by the proposed F6 Motorway and the Werrington Arterial Project. An investigation into the error is being conducted.

The digitalisation of services continues with certain vehicle transactions and certain digital licences becoming available. Links to releases regarding those services are available here.

[CRR enquiries relating to proposed F6 Motorway and Werrington arterials](#)

[Update on Central Register of Restrictions](#)

[NSW hooks Australia's first digital licences](#)

[Vehicle transactions go mobile on Service NSW app](#)

MEDIA

LCA: Redress Scheme helps to enable access to justice for survivors of child sexual abuse

The Council welcomes the Federal Government's announcement to establish a redress scheme, which is crucial to ensuring

that survivors can access justice for the abuse they have suffered.

http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/mediaReleases/1665_-_Redress_Scheme_helps_to_enable_access_to_justice_for_survivors_of_child_sexual_abuse.pdf

Funding for Aus class actions to face greater court management

The involvement of the Australian courts in managing charges for class action litigation funding is set to ramp up, with a landmark class action decision handed down last week. The Federal Court has endorsed the [common fund orders] mechanism, as a means of promoting transparency, equality and fairness for group members according to a leading law firm principal.

<http://www.lawyersweekly.com.au/news/19865-funding-for-australian-class-actions-face-greater-court-management>

'Revenge porn' complaints mechanism

The Office of the Children's eSafety Commissioner welcomes the Government's announcement today for the Office to establish a national online complaints mechanism, to assist Australians to access tangible support when intimate images or videos are posted without their consent.

<https://www.esafety.gov.au/about-the-office/newsroom/media-releases/revenge-porn-complaints-mechanism>

HRLC: Government's changes to Migration Act would permanently split families and condemn thousands to limbo

Prime Minister Malcolm Turnbull this morning announced government plans to amend the Migration Act to permanently ban people seeking asylum in Australia by sea from ever being able to stay or from ever coming to Australia to visit.

<http://hrlc.org.au/governments-changes-to-migration-act-would-permanently-split-families-and-condemn-thousands-to-limbo/>

NSW adult prison population continues to increase

The NSW adult prison population grew by 4.6 per cent between October 2015 and September 2016, reaching another new record high of 12,641 in September this year. The increase is attributable to a growth in prisoners on remand (i.e. unconvicted prisoners awaiting trial or sentence).

http://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2016/MR-NSW-Custody-Statistics-Sep2016.aspx

Being well in the law

The Law Society of New South Wales has published a guide focussing on mental health and well-being.

<http://lawsociety.com.au/about/YoungLawyers/Publications/Beingwellinthelaw/index.htm>

CASES

[Construction Forestry Mining and Energy Union v Director of the Fair Work Building Industry Inspectorate \[2016\] HCA 41](#)

Administrative law – Constitutional writs – Where plaintiff made admissions in proceedings in Federal Court of Australia that, because of operation of s 793 of Fair Work Act 2009 (Cth), it could be taken to have contravened s 500 of Act by conduct of its officers – Where, after judgment reserved in proceedings in Federal Court, plaintiff applied for leave to file application for leave to withdraw admissions and amend pleadings – Where leave refused – Whether decision to refuse leave amenable to appeal – Whether decision to refuse leave vitiated by jurisdictional error because of judge's failure to reach concluded view as to operation of s 793 – Whether final judgment imposing penalties for contraventions of

s 500 on basis of admissions vitiated by jurisdictional error – Whether plaintiff denied procedural fairness.

Practice and procedure – High Court of Australia – Original jurisdiction – Constitutional writs – Where plaintiff applied for order to show cause why relief in the nature of prohibition, mandamus and certiorari should not be granted – Where first defendant moved on summons seeking order pursuant to r 25.03.3(a) of High Court Rules 2004 (Cth) that application be dismissed – Considerations relevant to exercise of discretion to dismiss application – Availability of constitutional writs where Court's original jurisdiction invoked before exhaustion of statutory rights of appeal. Words and phrases – "administrative decision", "certiorari", "constitutional writs", "constructive failure to exercise jurisdiction", "error of law on the face of the record", "inappropriate invocation of jurisdiction", "jurisdictional error", "leave to file", "leave to withdraw admissions", "mandamus". Constitution, s 75(v).

[Kennedy v Secretary, Department of Industry \[2016\] FCA 1251](#)

ADMINISTRATIVE LAW – application for extension of time and leave to appeal from an interlocutory judgment – judgment of case management judge – where judgment refused an extension of time and adjournment of proceedings – whether there is a satisfactory explanation for the delay – whether the application has reasonable prospects of success – where grounds of appeal not properly particularised – whether there was a denial of procedural fairness – whether the test for confidential information was misapplied – whether the principles to restrain a law firm from acting were misapplied. PRACTICE AND PROCEDURE – suppression orders – Federal Court of Australia Act 1976 (Cth) s 37AF – whether suppression orders necessary to prevent prejudice to the proper administration of justice – where exhibits tendered are scandalous and vexatious

[Golden v V'landys \[2016\] NSWCA 300](#)

JUDICIAL REVIEW - decision of Racing NSW to warn off applicant from race courses - apprehended bias - whether fair minded observer might reasonably apprehend decision-maker might not apply impartial mind - whether logical connection between letter of demand from decision-maker's solicitors and apprehended deviation from

making decision on merits - whether role in initiating warning off decision incompatible with making decision - whether claim of improper purpose established - failure to bring appeal within time - whether relief should be withheld as a matter of discretion - appeal allowed in part and decision quashed TORTS - misfeasance in public office - whether decision-maker knew, or was recklessly indifferent to, the invalidity of the warning off decision - appeal as to misfeasance in public office dismissed.

[Buckley & Anor v Independent Liquor and Gaming Authority & Anor \[2016\] NSWSC 1533](#)

ADMINISTRATIVE LAW - application for judicial review of decision of the Independent Liquor and Gaming Authority refusing a gaming machine threshold increase application - where Authority determined the proposed new hotel was in the "immediate vicinity" of a nearby primary school - whether Authority erred in failing to refer to the conflicting evidence and to explain its reasoning process - whether Authority took into account an irrelevant consideration - whether Authority erred in assessing "immediate vicinity" by reference to lot boundary WORDS AND PHRASES - "immediate vicinity"

PRACTICE AND PROCEDURE

AAT Bulletin
[Issue no 44 2016](#)

Law Council of Australia Submissions

- [Regulator Performance Framework Self-Assessment Report \(3196\)](#)
- [Proposed changes to Guidance Note 12 Frustrating Action \(3194\)](#)
- [OECD Public Consultation on Liability of Legal Persons](#)

OAIC: Have your say on the draft Open Government National Action Plan

The Australian Government has released the draft of the first [Open Government National Action Plan](#) for public consultation. Anyone can provide feedback on the plan through a written submission, up until 14 November.
<https://ogpau.govspace.gov.au/files/2016/10/Australias-first-Open-Government-National-Action-Plan-Draft->

NSW Complaints Register: Empowering Consumers with Location Data
NSW Fair Trading's Complaints Register

September data was released today and, for the first time, the location of the business is listed.

<https://www.finance.nsw.gov.au/about-us/media-releases/complaints-register-empowering-consumers-location-data>

NSW IPC: Annual report 2015 - 2016 to NSW Parliament

IPC delivers annual report 2015 - 2016 to NSW Parliament.

<http://www.ipc.nsw.gov.au/news-media/news/ipc-delivers-annual-report-2015-2016-nsw-parliament>

NSW JudCom Sentencing Benchbook

The latest edition, No 35, October 2016 - The text of the Sentencing Bench Book reflects the law as it stands at any given time and provides the latest updates to sentencing practice.

https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/currency.html#SBB_35

Data availability and use: draft report

The Productivity Commission is recommending a major overhaul of Australia's data policy framework, including the introduction of a Comprehensive Right to give people more control over their data.

http://apo.org.au/files/Resource/prod_comm_data_availability_and_use_draft_report_2016.pdf

OAIC Annual Report 2015-16

We have released our annual report for 2015-16, which documents a pivotal and highly successful year for the OAIC.

<https://www.oaic.gov.au/media-and-speeches/news/oaic-annual-report-2015-16>

LEGISLATION

Commonwealth

Regulations

- [Transport Security Legislation Amendment \(Identity Security\) Regulation 2016](#)

New South Wales

Regulations and other instruments

- [Civil Liability \(Non-economic Loss\) Amendment Order 2016 \(2016-652\) - published LW 28 October 2016](#) - The object of this Order is to amend the Civil Liability (Non-economic Loss) Order 2010 to adjust, for the year

commencing 1 October 2016, the maximum amount that may be awarded for damages for non-economic loss under the Civil Liability Act 2002

- [Law Enforcement \(Powers and Responsibilities\) Amendment \(Directions under Part 14\) Regulation 2016](#) (2016-643) – published LW 28 October 2016

Proclamations commencing Acts

- [Criminal Procedure Amendment \(Summary Proceedings for Indictable Offences\) Act 2016 No 44 \(2016-661\)](#)

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.

SUB-PANEL APPOINTMENTS

Thomson Geer are appointed to the following NSW Government sub-panels:

- | | |
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| 1(c) Major commercial matters (incl. ICT) | 4(f) Discrimination |
| 2(a) Commercial and contractual matters | 6(b) General litigation and dispute resolution |
| 4(a) Employment and industrial relations law | 6(c) Debt recovery |

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