



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

For our final editorial for 2016, we have chosen to highlight:

- the sentencing on 15 December 2016, of former NSW parliamentarian Edward Obeid Snr, to five years in jail for his conduct in relation to the Circular Quay leases. Mr Obeid Snr's lawyers have indicated he will appeal. The editorial committee of this newsletter acted in the City of Sydney's litigation against Streetscape Projects and Moses Obeid; and
- a recent decision of the New South Wales Civil and Administrative Tribunal in the case of *Gold and Copper Resource Pty Limited v NSW Trade and Investment [2016] NSWCATAD 267*.

Gold and Copper Resource applied for administrative review of the decision by NSW Trade and Investment in relation to an application for access to documents. Gold and Copper Resource had applied for documents under the *Government Information (Public Access) Act 2009* in order to understand the basis for the quick passage of the *Mining Amendment (Development Consent) Bill 2013 (NSW)*.

An initial decision was made by NSW Trade and Investment to withhold specific items of information because in its view there was a public interest against disclosure of the information. The basis of the overriding public interest was because parts of the information were:

- subject to the legal professional privilege,
- characterised as cabinet information, and
- subject to parliamentary privilege.

On the question of legal professional privilege, an argument was raised by Gold

and Copper Resource that any privilege that had existed had been waived as a result of a press release which included the following words:

*"The Government sought and obtained legal advice that an adverse decision in this court case could jeopardise investment and existing mines operations state-wide"*.

The question was whether the press release amounted to a waiver of privilege. The Tribunal carefully considered recent decisions in relation to the disclosure of the substance of legal advice and drew a distinction between a statement which disclosed the conclusion of the legal advice as distinct from one disclosing **the reasoning** and the conclusion of the legal advice.

In the Tribunal's view, although there had been a disclosure of the conclusion of the legal advice there had not been a disclosure of the reasoning and, in the Tribunal's view, that provided a significant basis for limiting the degree of the disclosure by reference to the legal advice given to NSW Trade and Investment in the context of the Bill and certain existing court proceedings.

The Tribunal concluded that the media release did not waive privilege and for that reason there remained a conclusive presumption of an overriding public interest against disclosure of the information for which NSW Trade and Investment claimed legal professional privilege.

We hope you have found our newsletter informative throughout the year. We would like to take this opportunity to wish you a safe and happy holiday season.

## MEDIA

### NSW parliamentary pension entitlements

The NSW Government will amend the Parliamentary Contributory Superannuation Act 1971 to ensure that a former Member of Parliament who is convicted of a serious offence committed during their time in office will lose their pension entitlement, even if they left office before charges were laid.

<https://www.nsw.gov.au/media-releases-premier/parliamentary-pension-entitlements>

### Appointment of Solicitor-General

His Excellency the Governor-General has accepted the advice of the Government to appoint Dr Stephen Donaghue QC as Solicitor-General of the Commonwealth of Australia.

<https://www.attorneygeneral.gov.au/MediaReleases/Pages/2016/FourthQuarter/Appointment-of-Solicitor-General.aspx>

### Parliament delivers protections and accountability for members of registered organisations

The Fair Work (Registered Organisations) Bill 2014 establishes a new Registered Organisations Commission to oversee unions and employer groups, with strong powers to enforce the law. It means officials from registered organisations will be subjected to similar standards as company directors under Corporations law.

<https://ministers.employment.gov.au/cash/parliament-delivers-protections-and-accountability-members-registered-organisations>

### Deal on whistleblowers wins first double-dissolution bill

Malcolm Turnbull has secured the first leg of the government's industrial relations legislation, to toughen the governance of trade unions. The amendments broaden the range of people who can make protected disclosures, as well as expanding remedies available to whistleblowers so they can pursue compensation, reinstatement to employment, injunctions and apologies.

<https://theconversation.com/deal-on-whistleblowers-wins-first-double-dissolution-bill-69176>

## CASES

[Gold and Copper Resource Pty Limited v NSW Trade and Investment \[2016\] NSWCATAD 267](#)

GIPA Act – Government Information – Access – Confidential information – Legal Professional privilege- Whether privilege waived by disclosure of advice -Cabinet material – Privilege of Parliament

['JV' and Australian Federal Police \[2016\] AICmr 72](#)

Freedom of Information – Whether documents subject to legal professional privilege – Whether disclosure of personal information is unreasonable – Whether contrary to public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 42, 47F

[TFS Manufacturing Pty Limited and Department of Health \[2016\] AICmr 73](#)

Freedom of Information – Whether inclusion of certain matter would cause reasons for decision to be an exempt document – Whether disclosure of documents would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency – Whether contrary to the public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A, 22, 26, 47E(d)

['JZ' and Department of the Prime Minister and Cabinet \[2016\] AICmr 78](#)

Freedom of Information – Whether material in documents irrelevant to request – Whether documents brought into existence for the dominant purpose of submission for consideration by Cabinet – Whether documents brought into existence for the dominant purpose of briefing a Minister on a Cabinet document – Whether disclosure of a document would reveal a Cabinet deliberation or decision – Whether documents contain deliberative matter prepared for a deliberative process – Whether disclosure of personal information is unreasonable – Whether contrary to public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A, 22, 34, 47C, 47F

[Ben Butler and Australian Securities and Investments Commission \[2016\] AICmr 79](#)

Freedom of Information – Whether

documents contain deliberative matter prepared for a deliberative process – Whether disclosure could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency – 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 the public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5), 47C, 47E, 47G

[Russo v Brack \[2016\] NSWCATAP 261](#)

Denial of natural justice – Procedural fairness – opportunity to present case

[Tsui v Commissioner for Fair Trading \[2016\] NSWCATOD 143](#)

ADMINISTRATIVE REVIEW – Home Building Act – endorsed contractor licence – general building category – relevant industry experience

[Turner v Justice & Forensic Mental Health Network \[2016\] NSWCATAD 265](#)

ADMINISTRATIVE LAW – access to government information – access application – reasonableness of searches - excluded information

## PRACTICE AND PROCEDURE

### AAT Bulletin

[Issue no 48 2016](#)

[Issue no 49 2016](#)

### ADVOs now in plain English

New Plain English Apprehended Domestic Violence Orders (ADVO) will roll out state wide on 3 December so perpetrators have no excuses for not understanding the orders.

<http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2016/no-more-excuses-advos-plain-english.aspx>

### High Court of Australian Bulletin [2016] HCAB 9

ICAC: Statements and alerts  
[Prosecution briefs with the DPP and outcomes](#)

### ICAC: Department of Justice officers and contractors found corrupt

The ICAC has found that a former assistant director at the Department of Justice engaged in serious corrupt conduct by agreeing to improperly exercise his official functions by awarding contracts to two companies that were paid almost \$1.3 million despite doing little or no work.  
<http://www.icac.nsw.gov.au/media-centre/media-releases/article/5056>

### JUDCOM: Sentencing Bench Book Update 36

[Updates include sentencing Commonwealth offenders, fraud offences in NSW and conspiracy](#)

### NSW Case: Application for recusal refused

The Supreme Court of NSW decision in [Jorgensen v Shorten \[2016\] NSWSC 1631](#), is an application for recusal, where there was an apprehension of bias, was refused. The Court found that a “fair minded lay observer” would conclude that a judge who had acted for one of the parties when at the NSW Bar would still bring an impartial mind to the resolution of issues between the parties.

### NSW: New Rule - Supreme Court (Amendment No 430)

The [Supreme Court \(Amendment No 430\) Rule 2016 No. 714 \(NSW\)](#) amends the Supreme Court Rules 1970 No. 1 (NSW). The object of the amending Rule is to make provision, consequent on the abolition of the Industrial Court, for the practice and procedure to be followed in the Supreme Court in relation to applications concerning contraventions of dispute orders and the recovery of civil penalties under the Industrial Relations Act 1996 No. 17 (NSW). The amending Rule will commence on 8 December 2016.

### NSW: New Rule - Uniform Civil Procedure (Amendment No 80) Rule

The [Uniform Civil Procedure \(Amendment No 80\) Rule 2016 No. 715 \(NSW\)](#) amends the Uniform Civil Procedure Rules 2005 No. 418 (NSW). The object of the amending Rule is to make provision, consequent on the abolition of the Industrial Court, for matters relating to: the originating process for certain proceedings commenced in the Supreme Court; the referral of certain proceedings commenced in the Supreme Court and the award of costs in certain proceedings in

the Supreme Court that could have been commenced in the Local Court under the IR Act rather than the Supreme Court. The amending Rule will commence on 8 December 2016.

## Productivity Commission

[Data Availability and Use: Draft report](#)

## LEGISLATION

### Commonwealth

#### Bills

- [Commonwealth Electoral Amendment \(Donation Reform and Transparency\) Bill 2016](#)

Registered 29/11/2016 Introduced Senate 28/11/2016

A Bill for an Act to amend the Commonwealth Electoral Act 1918 to improve donation transparency and accountability, and introduce new offences and penalties related to the new measures and increase the penalties for existing offence provisions

### New South Wales

#### Regulations and other instruments

- [Bail Amendment \(Exceptional Circumstances\) Regulation 2016 \(2016-723\)](#) published LW 2 December 2016
- [Crimes \(Domestic and Personal Violence\) Amendment \(Apprehended Violence Orders\) Regulation 2016 \(2016-718\)](#) — published LW 1 December 2016

- [Election Funding, Expenditure and Disclosures \(Adjustable Amounts\) Further Amendment Notice 2016 \(2016-724\)](#) — published LW 2 December 2016
- [Liquor Amendment \(Special Licence Conditions\) Regulation \(No 2\) 2016 \(2016-697\)](#) — published LW 25 November 2016
- [Supreme Court \(Amendment No 430\) Rule 2016 \(2016-714\)](#) — published LW 25 November 2016
- [Uniform Civil Procedure \(Amendment No 80\) Rule 2016 \(2016-715\)](#) — published LW 25 November 2016

#### Proclamations

- [Bail Amendment Act 2015 No 44 \(2016-721\)](#) — published LW 2 December 2016
- [Crimes \(Administration of Sentences\) Amendment Act 2016 No 47 \(2016-722\)](#) — published LW 2 December 2016
- [Crimes \(Serious Crime Prevention Orders\) Act 2016 No 15 \(2016-694\)](#) — published LW 25 November 2016
- [Crimes \(Domestic and Personal Violence\) Amendment \(Review\) Act 2016 No 33 \(2016-716\)](#) — published LW 1 December 2016

#### Bills assented to

- Independent Commission Against Corruption Amendment Act 2016 No 65 — Assented to 23 November 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

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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.

## SUB-PANEL APPOINTMENTS

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

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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