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ISSUE 9



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

The Honourable Justice Susan Kiefel AC has been appointed as the new Chief Justice of the High Court to replace the current Chief Justice his Honour Justice French. His Honour Justice Edelman has also been appointed to the High Court.

The focus of political interest has been on the structure of the Independent Commission Against Corruption (ICAC) with an Amendment Bill put before Parliament on 15 November 2016 and passed. The amendments are based on the work of a committee which recommended a set of reforms. The Premier has said that the legislative changes are designed to improve the structure, governance, decision-making and oversight of the ICAC.

The changes include the establishment of a panel of three Commissioners each of whom will be able to exercise the powers and functions of the Commission with only a small number of matters reserved for a new position of Chief Commissioner. The changes also provide that a decision of the ICAC to conduct a public inquiry must be authorised by the Chief Commissioner and at least one other Commissioner. The current Commissioner, the Hon Megan Latham, ceases to hold office and will be invited to express interest in being appointed as a commissioner of the new three-member commission.

We will watch this space to consider the effect of the changes.

MEDIA

High Court of Australia appointments

His Excellency the Governor-General has accepted the advice of the Government to appoint the Honourable Justice Susan Mary Kiefel AC as the next Chief Justice of the High Court of Australia. Justice Kiefel will become Australia's thirteenth Chief Justice when the Honourable Justice Robert French AC leaves the Court on 29 January 2017.

His Excellency the Governor-General has also accepted the Government's advice to appoint the Honourable Justice James Joshua Edelman to the High Court. He will fill the vacancy created by the appointment of Justice Kiefel as Chief Justice.

<http://www.pm.gov.au/media/2016-11-29/appointments-high-court-australia>

NSW making it easier to solve legal problems

The NSW Government is making it easier to tackle everyday legal problems including mobile phone bills or getting a refund for a faulty product. A consultation paper on plans to reform the state's civil justice system that will help people to get the best advice, information and services has been released.

http://www.justice.nsw.gov.au/justicepolicy/Pages/lpclrd/lpclrd_consultation/Civil-Justice-Consultation.aspx

New Face Verification Service to tackle identity crime

The first phase of Australia's new biometric Face Verification Service (FVS) is now operational, providing the Department of Foreign Affairs and Trade and the Australian Federal Police access to citizenship images held by the Department of Immigration and Border Protection.

<https://www.ministerjustice.gov.au/Mediareleases/Pages/2016/FourthQuarter/New-face-verification-service-to-tackle-identity-crime.aspx>

Government launches innovation strategy

The NSW Government has launched an Innovation Strategy aimed at fostering a culture of new ideas and innovation throughout the Government and wider society. The strategy includes a range of initiatives that will strengthen entrepreneurship and harness NSW's reputation as an innovation and economic powerhouse.

<https://www.finance.nsw.gov.au/about-us/media-releases/nsw-government-launches-innovation-strategy>

NSW public sector fraud doubles to \$10 million

Public sector fraud in NSW has more than doubled in four years, with fiddling timesheets and stealing petty cash being the most common infractions. There were 1077 cases of fraud reported by the NSW agencies to the NSW Auditor General between 2012 and 2015. Almost all cases involved internal perpetrators (92 per cent) and the most common method of detection were tip offs and through managerial reviews.

<http://www.audit.nsw.gov.au/publications/latest-reports/special-report-fraud-survey>

Turnbull announces inquiry into Racial Discrimination Act

The Federal Government has set up a parliamentary inquiry into the Racial Discrimination Act to determine whether it imposes unreasonable limits on free speech and to recommend whether the law should be changed.

<http://www.abc.net.au/news/2016-11-08/malcolm-turnbull-announces-racial-discrimination-act-inquiry/8004640>

Telecommunications Ombudsman finds internet complaints increase as mobile complaints decline

Complaints about internet services and providers of the National Broadband Network rose by nearly 100 per cent in the past financial year, while billing, payments and faults were the biggest source of individual complaints, according to the Telecommunications Industry Ombudsman.

<https://www.tio.com.au/publications/media/internet-and-nbn-complaints-rise-from-australian-consumers-as-mobile-complaints-fall>

CASES

'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

SG v New South Wales Crime Commission [2016] NSWSC 1615

ADMINISTRATIVE LAW – power of NSW Crime Commission and effect of statutory secrecy provisions discussed. STATUTORY CONSTRUCTION – the scheme and purposes of the Crime Commission Act 2012 – the interpretation of the secrecy provisions. LEGAL PROFESSIONAL PRIVILEGE – some documents created as a result of illegality – privilege does not apply – but illegality limited and some documents (or parts of documents) privileged. PRACTICE AND PROCEDURE – abuse of process on account of illegality underpinning commencement of proceedings – discussion – motion to dismiss refused.

Azshion v Ombudsman NSW [2016] NSWCATAD 249

ADMINISTRATIVE LAW – jurisdiction

Quipolly Water Action Group v NSW Department of Industry [2016] NSWCATAD 252

GIPA – Government Information – Preliminary decision – Third party right to appear and be heard – Nature of decision

under review – Whether external review to original or subsequent decision - Rights of third party – Applicant’s rights - Need to provide decision consistent with object and purpose of the Act – Procedural fairness – Natural justice

[Jaffarie v Workers Compensation Commission \[2016\] NSWCATAD 256](#)

ADMINISTRATIVE LAW – access to government information – access application – whether the Workers Compensation Commission is a tribunal – reasonableness of searches - excluded information

[CJO v NSW Police Force \[2016\] NSWCATAD 262](#)

ADMINISTRATIVE LAW – access to government information – access application – whether release would expose a person to a risk of harm or of serious harassment or serious intimidation

PRACTICE AND PROCEDURE

AAT Bulletin

[Issue no 46 2016](#)

[Issue no 47 2016](#)

ALRC

Speech, NSW Bar Association, 10 November 2016, Sydney, Professor Rosalind Croucher AM.

[Encroachments on freedom: The ALRC Freedoms Inquiry](#)

Federal Court of Australia:

Chief Justice Allsop AO; 2016 Hochelaga Lecture, Centre for Comparative and Public Law, Faculty of Law, University of Hong Kong.

[Values in Law: How they Influence and Shape Rules and the Application of Law](#)

ICAC: Statement regarding the Independent Commission Against Corruption Amendment Bill 2016

ICAC Commissioner, the Hon Megan Latham: The Bill is inconsistent with the need for a strong ICAC and creates a fundamentally weaker organisation. The Bill effectively strips the Commission of the authority of a “Chief Commissioner”, and vests significant operational decisions and powers in each of the three commissioners which may be exercised independently of each other.

<http://www.icac.nsw.gov.au/media-centre/media-releases/article/5051>

ICAC: Statements and alerts

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

NCAT annual report

[2015-16 performance and outcomes](#)

NSW Local Court

[Eleven new magistrates appointed](#)

LEGISLATION

New South Wales

Regulations and other instruments

- [Confiscation of Proceeds of Crime Amendment \(Forms\) Regulation 2016 \(2016-690\)](#) – published LW 18 November 2016
- [Legal Profession Uniform Admission Amendment \(Qualifications and Supervision\) Rule 2016 \(2016-679\)](#) – published LW 18 November 2016
- [Local Government Amendment \(Amalgamations\) Proclamation 2016 \(2016-662\)](#) – published LW 7 November 2016
- [Mutual Recognition \(New South Wales\) Temporary Exemptions Regulation 2016 \(2016-676\)](#) – published LW 17 November 2016
- [Road Transport Legislation Amendment \(Mobile Phones – P2 Licences\) Regulation 2016 \(2016-667\)](#) – published LW 11 November 2016
- [Trans-Tasman Mutual Recognition \(New South Wales\) Temporary Exemptions Regulation 2016 \(2016-677\)](#) – published LW 17 November 2016

Proclamations

- [Drug Misuse and Trafficking Amendment \(Drug Exhibits\) Act 2016 No 6 \(2016-678\)](#) – published LW 18 November 2016
- [Fines Amendment \(Electronic Penalty Notices\) Act 2016 No 39 \(2016-663\)](#) – published LW 11 November 2016
- [Industrial Relations Amendment \(Industrial Court\) Act 2016 No 48 \(2016-674\)](#) – published LW 15 November 2016

Non-Government Bills

- [Greyhound Racing \(Repeal of Ban\) Bill 2016](#)

- [Human Tissue Amendment \(Trafficking in Human Organs\) Bill 2016](#)

Bills passed by both Houses

- [Independent Commission Against Corruption Amendment Bill 2016](#)
- [Law Enforcement Conduct Commission Bill 2016](#)
- [Regulatory and Other Legislation \(Amendments and Repeals\) Bill 2016](#)

Bills assented to

- Regulatory and Other Legislation (Amendments and Repeals) Act 2016 No 60 – Assented to 14 November 2016
- Law Enforcement Conduct Commission Act 2016 No 61 – Assented to 14 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 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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