



PUBLIC SECTOR NEWSLETTER - VICTORIA

Over the past fortnight the Sentencing Advisory Council has released a report on offender paid compensation and the Victorian Law Reform Commission has been asked to report on the state's committal system with particular emphasis on best practice for supporting victims.

Meanwhile IBAC has charged a Police Sergeant and Inspector with 23 offences.

The Supreme Court has delivered a landmark judgment on patients rights in compulsive electroconvulsive treatment cases. The Court has also reviewed some medical panel determinations.

We hope you enjoy this edition of our Public Sector Newsletter.

IN THE MEDIA

Report released on offender-paid compensation in Victoria

The Sentencing Advisory Council has released a report examining whether restitution and compensation orders should become sentencing orders, and other ways to improve offender-paid compensation in Victoria. The report follows a request for advice from the Attorney-General, arising from a recommendation of the Victorian Law Reform Commission <https://www.vicbar.com.au/news-events/brief-issue-889#item-15>

IBAC charges Victoria Police Inspector and Sergeant with 23 offences

Victoria's independent police oversight body, IBAC, has charged two Victoria Police officers with a range of offences including perjury, misconduct in public office, obtaining property by deception and theft. <https://www.ibac.vic.gov.au/media-releases/article/ibac-charges-victoria-police-inspector-and-sergeant-with-23-offences>

Landmark judgment strengthens patients' rights in compulsory electroconvulsive treatment cases

The Supreme Court of Victoria has made a landmark decision that strengthens the rights of mental health patients who are facing electroconvulsive treatment (ECT) or 'electro-shock treatment' against their will <http://www.legalaid.vic.gov.au/about-us/news/landmark-judgment-strengthens-patients-rights-in-compulsory-electroconvulsive-treatment-cases>

IN PRACTICE AND COURTS

Victoria

Supreme Court: the Court's first electronic directions heard out of Justice Elliott's Chambers

In-Chambers directions e-Hearings are being conducted through the Court's digital transformation project to distinguish how the Court can continue to best use resources to deliver high-quality, expeditious and efficient justice

<https://www.supremecourt.vic.gov.au/news/directions-e-hearing>

Victorian Law Reform Commission review: the state's committal system

Under the terms of reference, the Commission will consider best practices for supporting victims. The Commission will consult widely in undertaking its review, including with courts, government stakeholders, the legal profession and victims' groups. The review will report back to government in March 2020. A copy of the full terms of reference is available at lawreform.vic.gov.au

CASES

[PBU & NJE v Mental Health Tribunal \[2018\] VSC 564](#)

ADMINISTRATIVE LAW – appeal – decisions of Victorian Civil and Administrative Tribunal ('VCAT') that two persons with mental illness be compulsorily subjected to electroconvulsive treatment ('ECT') – determination that they lacked the capacity to give informed consent to or refuse treatment – whether VCAT properly

interpreted and applied requirement that person be able to 'use or weigh' information relevant to decision – further requirement that there be no less restrictive way for the person to be treated – whether this requirement only met where treatment immediately needed to prevent serious deterioration in person's health or serious self-harm or harm to another – 'capacity to give informed consent' – Mental Health Act 2014 (Vic) ss 68, 69, 70, 72, 93 and 96.

HUMAN RIGHTS – two persons having mental disability found by VCAT to lack capacity to give informed consent to or refuse ECT – whether incompatible with human rights to self-determination, to be free of non-consensual medical treatment and to personal inviolability – assessing capacity compatibly with those rights and the right to health – applicable principles – dignity of risk – Charter of Human Rights and Responsibilities Act 2006 (Vic) ss 8(3), 10(c), 13(a), International Covenant on Economic, Social and Cultural Rights art 12(1), Convention on the Rights of Persons with Disabilities arts 12(4), 24

[Tait v Rehabilitation Care Solutions Pty Ltd \[2018\] VSC 657](#)

ADMINISTRATIVE LAW – Judicial review – Medical questions referred by Magistrates' Court of Victoria to Medical Panel under s 274 of the Workplace Injury Rehabilitation and Compensation Act 2013 – Application to quash certified opinion of Medical Panel – Alleged Medical Panel mistook or misunderstood oral history of incident alleged to have caused injury given by plaintiff during examination – Whether failure to accord natural justice – Whether failure to take into account mandatory consideration – Error shown – Certified opinion quashed – Workplace Injury Rehabilitation and Compensation Act 2013 ss 274, 313(2).

EVIDENCE – Admissibility of notes taken by members of Medical Panel in relation to examination – Notes provided by way of 'voluntary informal discovery' – Whether doubt as to provenance – Hearsay – Business records exception to hearsay – Compellability of members of Medical Panel to give evidence – Notes admissible – Evidence Act 2008 ss 59, 63, 64, 66A, 67, 69, 190(1), 190(3), Dictionary (pt 1 (definition of 'business'); pt 2 cl 1, 4) – Workplace Injury Rehabilitation and Compensation Act 2013 ss 272, 303, 310, 541 – Civil Procedure Act 2010 ch 2.

[Thomas v University of Melbourne \[2018\] VSC 647](#)

JUDICIAL REVIEW – Application for ex parte order for review pursuant to s 3 Administrative Law Act 1978 (Vic) – Applicant complained about racial discrimination and bullying by persons supervising his candidature for the degree of PhD – Applicant aggrieved by findings of investigation of that complaint – Applicant sought internal appeal against those findings – University said no appeal available – Whether that decision amenable to an order for review – Consideration of the University regulatory framework and various policies – Whether a prima facie case for an order for review established – Held: no – Application refused. Administrative Law Act 1978 (Vic) ss 2, 3 and 4

[Thomas v Victorian Legal Services Board and Commissioner \[2018\] VSC 645](#)

JUDICIAL REVIEW – Application for ex parte order for review pursuant to s 3 Administrative Law Act 1978 (Vic) – Applicant made complaint about a legal practitioner to the Victorian Legal Services Commissioner – The Commissioner closed the complaint on 26 July 2018 – Applicant sought to 'appeal' that decision on 1 August 2018 – Commissioner treats the 'appeal' as an application for internal review – No decision yet made as to whether or not to conduct an internal review – Whether a decision in relation to internal review is amenable to an order for review – Whether a prima facie case shown that the Commissioner has 'failed or refused' to make that decision – Held: no – Application refused. Administrative Law Act 1978 (Vic) ss 2, 3 and 4

[Poon v Vicinity Custodian Pty Ltd & Ors \[2018\] VSC 631](#)

JUDICIAL REVIEW AND APPEALS – Application by plaintiff for judicial review of a medical panel ('Panel')'s opinion in respect to finding that she had not suffered a physical injury which met the threshold under s 28LB of the Wrongs Act 1958 – Plaintiff alleged that she fell and injured her right arm while visiting the first defendant's shopping centre – Plaintiff alleged that she has had a tremor in her right arm since the injury – Panel made finding that there was no physical cause of the tremor – Whether Panel made a critical finding of fact for which there was no evidence or no probative evidence – Whether Panel engaged in a fact finding process which was illogical, irrational and legally unreasonable – No jurisdictional error or error of law – No impairment for the Panel to assess given Panel's finding that there was no organic cause of the plaintiff's tremor – Panel not obliged to identify an alternative explanation for the plaintiff's tremor – Panel not bound to reach a conclusion as to the cause of any impairment outside the bounds of the medical question referred to it – Whether any denial of procedural fairness – No finding that Panel failed to afford procedural fairness – Application dismissed

LEGISLATION

Statutory Rules

[No 187 Victorian Civil Administrative Tribunal \(Miscellaneous Amendments\) Rules 2018](#)

These rules come into operation on 1 November 2018, to amend functions of principal registrar

Access Victorian legislation at www.legislation.vic.gov.au

KEY CONTACTS

PANEL RELATIONSHIP CONTACTS

Your contacts responsible for navigating our firm, connecting you with appropriate expertise and achieving maximum efficiency and your Newsletter editors.



Cameron Roberts

Partner
+61 3 9641 8696
+61 438 510 885
croberts@tglaw.com.au



Loretta Reynolds

Partner, Markets
+61 3 8080 3705
+61 403 069 819
lreynolds@tglaw.com.au

HELP DESK SERVICES

Thomson Geer is delighted to offer access to the Victorian 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 the Victorian 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
- a dedicated library resource to assist Victorian Government departments and agencies research relevant case law, statutes, regulations and articles.

(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 03 8080 3604; 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.