



PUBLIC SECTOR NEWSLETTER - VICTORIA

Happy New Year and welcome to the first edition of our Public Sector Newsletter for 2019.

In this edition, we note the OVIC has published a new guide in relation to child information sharing, some interesting observations from the profession in relation to complaints against police and a review of the National Disability Agreement.

We also note some interesting decisions in relation to applications for information pursuant to the *Freedom of Information Act 1982*.

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

IN THE MEDIA

IBAC charges a former Frankston City Council manager and a council service provider

Victoria's independent anti-corruption commission, IBAC, has charged a former Frankston City Council manager with 79 charges including obtaining property by deception, making false documents, using false documents and misconduct in public office. IBAC also charged a supplier of services to Frankston City Council, who is the owner of an electrical company, with 78 similar offences, on 7 January 2019.

<https://www.ibac.vic.gov.au/media-releases/article/ibac-charges-a-former-frankston-city-council-manager-and-a-council-service-provider-with-multiple-offences>

Could ideas from Northern Ireland and New York help keep Victorian police honest

Fresh allegations of excessive force by Victorian police prompt legal experts to call for an overhaul of how complaints against police are handled, and end the practice of police investigating their own.

<https://www.abc.net.au/news/2019-01-23/victoria-police-complaints-oversight-northern-ireland-new-york/10736648>

HRLC: Lawyers call for police complaints system overhaul as shocking new reports of police abuse emerge

Lawyers, advocates and victims of police abuse are again calling on the Government to take action and introduce an independent body to investigate police misconduct, as horrific new cases of police brutality come to light.

<https://www.hrlc.org.au/news/2019/1/20/lawyers-call-for-police-complaints-system>

IN PRACTICE AND COURTS

Notification of draft third Professional Standards Scheme of the Victorian Bar

The Bar's current Professional Standards Scheme, which was approved by the Councils in 2014, will expire on 30 June 2019. The third draft scheme and public consultation document can be reviewed on our [Professional Standards Scheme](#) or via the links below: [Public Consultation Document](#); [Third Draft Scheme](#).

OVIC: New child information sharing scheme for Victoria

The OVIC has co-published a guidance document along with the Office of the Health Complaints Commissioner following the introduction of the Amending Act. The guidance is a series of FAQs that explain the amendments to the PDP Act and the HR Act, and outline how an information sharing entity's obligations under privacy law interact with the new child information sharing scheme. The FAQs can be downloaded [here](#).

<https://ovic.vic.gov.au/blog/new-child-information-sharing-scheme-for-victoria/>

Victorian Legal Services Board Grants Program: 2019 funding round open

The Board is looking to fund human-centred design and/or technological projects that interrupt, streamline or change legal services and the justice system to improve access to justice. For more information visit the [Board's Grant page](#).

New report released on serious offending by people serving a community correction order: 2017-18

The Council has released a report on examining the number of people sentenced in 2017-18 for committing a serious offence while serving a community correction order. The report's findings for 2017-18 are remarkably consistent with 2016-17. Available for download [here](#).

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

[OVIC Professional standards 2019](#)

Throughout 2018 and 2019, OVIC will be working to develop professional standards in accordance with Part IB of the FOI Act. We will be consulting extensively with agencies and other stakeholders as part of this process.

In March 2019, OVIC will release draft professional standards for feedback and comment.

PUBLISHED - ARTICLES, PAPERS, REPORTS**[Review of the National Disability Agreement: Study report](#)**

Productivity Commission: 01 February 2019

The report has found that a new National Disability Agreement (NDA) between the Australian, State and Territory Governments is needed to facilitate cooperation, enhance accountability and clarify roles and responsibilities.

CASES**[Vergara v Chartered Accountants Australia and New Zealand \[2018\] VSC 811](#)**

ADMINISTRATIVE LAW – Application for summary dismissal – Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd [2013] VSCA 158 – Civil Procedure Act 2010 ss 62, 63, 64 – Manderson M & F Consulting (a firm) v Incitec Pivot Ltd [2011] VSCA 444; (2011) 35 VR 98 – Whether Chartered Accountants Australia and New Zealand is a professional body amenable to judicial review – Whether decision of professional body amenable to judicial review – Whether the principles in R v Panel on Take-overs and Mergers; ex parte Datafin plc [1986] EWCA Civ 8; [1987] QB 815 apply in this jurisdiction – CECA Institute Pty Ltd v Australian Council for Private Education and Training [2010] VSC 552; (2010) 30 VR 555 – Whether decision of professional body created by Royal Charter reviewable by a state superior court – Whether declaratory relief is available.

[Austin v Dwyer \[2018\] VSC 770](#)

JUDICIAL REVIEW – Application to review decision of the Magistrates' Court of Victoria – Relief sought in the nature of a writ of certiorari and mandamus – Supreme Court (General Civil Procedure) Rules 2015 O 56.

PRACTICE AND PROCEDURE – Summary judgment – Application for summary judgment under s 63 of the Civil Procedure Act 2010 – Civil Procedure Act 2010 ss 62, 63 – Application for summary judgment granted.

[Cat Protection Society v Arvio \[2018\] VSC 757](#)

ADMINISTRATIVE LAW – Judicial review – Relief in the nature of certiorari – Injunctions – Declarations – Whether Adjudication Determination is vitiated by jurisdictional error – Review of jurisdictional facts – Supreme Court (General Civil Procedure) Rules 2015 (Vic), r 56.

BUILDING CONTRACTS – Adjudication Determination – Reference dates – Nature of payment claim – Whether payment claim is 'final claim' – Significance of a final claim – Where construction contract makes no provision for payment claim – Whether construction contract ousts default statutory provision for reference dates – Where contract is terminated – Whether default statutory provision for reference dates applies if construction contract is terminated – Building and Construction Industry Security of Payment Act 2002 (Vic), ss 9, 14.

WORDS AND PHRASES – 'deposit moneys' – 'de novo hearing' – 'final claim' – 'final payment claim' – 'jurisdictional fact' – 'payment claim' – 'progress claim' – 'reference date' – 'retention moneys'.

[RXF v Department of Health & Human Services \(Review and Regulation\) \[2019\] VCAT 65](#)

Freedom of Information Act 1982, s 33(i), whether document contains information relating to personal affairs of any person, whether disclosure would be unreasonable

[AOZ v JLV \(Review and Regulation\) \[2010\] VCAT 31](#)

Review and Regulation List – Freedom of Information Act 1982 ss 30; 33, 34, 34; Open Courts Act 2013 s.17. Held: the Department cannot claim exemption under s.33(6) of the Freedom of Information Act 1982 to conduct the requested search the subject of (Potential) Document 25

[Perekrestov v Ward \(Human Rights\) \[2019\] VCAT 115](#)

Equal Opportunity Act 2010 – sections 4, 6, 7, 8, 10, 21, 105, 125 – whether section 21 applies to the application – whether First Respondent directly discriminated against Applicant on the basis of her age and/or sex – whether Second or Third Respondents authorised or assisted conduct of First Respondent

[Proudfoot v Victoria University \(Review and Regulation\)
\[2019\] VCAT 106](#)

Victorian Civil and Administrative Tribunal Act 1998 (Vic), section 75 application for summary dismissal – Freedom of Information Act 1982 (Vic), sections 17, 19 and 53 – whether request valid – decision to grant access made after application to Tribunal – whether access decision can be reviewed by Tribunal - obligation to provide written document containing information sought in request – whether evidence required to be heard.

[Architistic Designs Group Pty Ltd v Hobsons Bay CC
\[2019\] VCAT 99](#)

Application to reopen order under section 120 Victorian Civil and Administrative Act 1998 – rejection of application by principle registrar under section 71 Victorian Civil and Administrative Act 1998 – application made by a person not entitled to make it – request to review rejection pursuant to section 71(2) – rejection confirmed by Tribunal under section 71(5) Victorian Civil and Administrative Act 1998

LEGISLATION

Victoria

Acts

[Victims and Other Legislation Amendment Act 2018](#)

Date of commencement: 31 December 2018 Act Number: 42/2018 - Part 6 (section 35) of this Act came into operation on 31 December 2018

Consolidated Acts

[Fines Reform Act No 47](#) of 2014 Version 013 31.12.2018

[Gambling Regulation Act](#) No 14 of 2003 Version 079 1.1.2019

Consolidated Statutory Rules

[Magistrates' Court General Civil Procedure Rules](#)

140/2010 Version 032 1.1.2019

[Magistrate's Court \(Miscellaneous Civil Proceedings\)](#)

[Rules](#) 141/2010 Version 021 1.1.2019

[Supreme Court \(General Civil Procedure\) Rules](#)

103/2015 Version 026 1.1.2019

Statutory Rules - 01 February 2019

[No 1 Gambling Amendment \(Cashless Gaming\) Regulations 2019](#)

[No 3 Children, Youth and Families \(Children's Court Family Division\) Amendment \(Witness Summons\) Rules 2019](#)

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.