



PUBLIC SECTOR NEWSLETTER - VICTORIA

This edition comments on a number of recent developments relevant to public sector lawyers in Victoria. The past fortnight was dominated by revelations relating to several IBAC investigations on police misconduct and issues with police practices.

We also include reference to the new *Oaths and Affirmations Act 2018* that came into effect on 1 March 2019.

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

IN THE MEDIA

IBAC's Operation Gloucester public hearings conclude and identify significant issues with police practices

IBAC's public hearings into Victoria Police practices when taking witness statements has heard testimony concerning improper practices that have occurred and continue to occur IBAC's hearings

<https://www.ibac.vic.gov.au/media-releases/article/ibac-s-operation-gloucester-public-hearings-conclude-and-identify-significant-issues-with-police-practices>

We need a better system to prevent sexual harassment at work

A diverse coalition of health professionals, legal experts, unions, sexual assault and community organisations have submitted a joint statement to the Australian Human Rights Commission's national inquiry into sexual harassment at work

<http://www.legalaid.vic.gov.au/about-us/news/we-need-better-system-to-prevent-sexual-harassment-work>

Working together to improve access to justice for cross-border communities

The Cross-border justice report, released by Victoria Legal Aid and Legal Aid NSW today, outlines how the commissions will improve access to legal assistance along the Victorian/NSW border

<http://www.legalaid.vic.gov.au/about-us/news/working-together-to-improve-access-to-justice-for-cross-border-communities>

Statement by the Victorian Bar regarding Lawyer X

The High Court and the Victorian Court of Appeal have today lifted suppression orders precluding disclosure of the name of Lawyer X, also known as EF and Informer 3838. In providing information to Victoria Police while a barrister, in breach of obligations of confidence she owed to clients, she committed fundamental and appalling breaches of her ethical obligations

<https://www.vicbar.com.au/news-events/media-release-%E2%80%93-statement-victorian-bar-regarding-lawyer-x>

Victoria Police officer sentenced following IBAC investigation into police misconduct

A Victoria police officer found guilty of assault, following Operation Ross, an IBAC investigation into allegations of excessive use of force by certain officers at Ballarat police station was sentenced today in the Ballarat County Court

<https://www.ibac.vic.gov.au/media-releases/article/victoria-police-officer-sentenced-following-ibac-investigation-into-police-misconduct>

IBAC charges Victoria Police senior constable with assault

Victoria's independent police oversight body, the Independent Broad-based Anti-Corruption Commission (IBAC), has charged a Victoria Police officer with assault following an IBAC investigation into an incident at Preston in February 2016.

<https://www.ibac.vic.gov.au/media-releases/article/ibac-charges-victoria-police-senior-constable-with-assault>

Improvements needed to reduce complaints about VicRoads: Ombudsman

Victorians lodged more than 800 complaints about VicRoads with the Victorian Ombudsman last financial year, with many of the issues having serious financial, practical and emotional consequences for those involved

<https://www.ombudsman.vic.gov.au/News/Media-Releases/Improvements-needed-to-reduce-complaints-about-Vic>

First stage of Suppression Order overhaul begins

New reforms by the Andrews Labor Government will help victims of sexual or family violence offences who want to speak publicly about their experiences. The *Open Courts and Other Acts Amendment Bill 2019*, will amend existing laws to reinforce the presumption in favour of open justice and the disclosure of information in Victorian courts.

<https://www.premier.vic.gov.au/first-stage-of-suppression-order-overhaul-begins/>

IN PRACTICE AND COURTS

The Oaths and Affirmations Act 2018 ("the Act") came into effect on 1 March 2019

This new stand-alone Act contains provisions relating to oaths, affirmations, affidavits and statutory declarations, and replaces a number of provisions of the Evidence (Miscellaneous Provisions) Act 1958 outlined [here](#). The new legislation may be found [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 in March 2019

Throughout 2018 and 2019, OVIC will be working to develop professional standards in accordance with Part IB of the FOI Act. This month OVIC will release draft professional standards for feedback and comment.

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Cross-border justice: exploring ways to improve access to legal assistance along the NSW/Victorian border](#)

Victoria Legal Aid, Legal Aid New South Wales; Victoria Legal Aid: 28 February 2019

Many border communities experience complex and unique challenges in accessing justice and have a proportionally higher demand for legal services than other parts of Victoria and New South Wales.

CASES

[Torosidis v Department of Education and Training \[2019\] VSC 93](#)

ADMINISTRATIVE LAW – Judicial review – Decision of the Disciplinary Appeals Board established under the Education and Training Reform Act 2006 – Decision to reinstate but demote and reprimand teacher – Whether jurisdictional error committed – Legal unreasonableness

ADMINISTRATIVE LAW – Judicial review – Subsequent decision of the Disciplinary Appeals Board to not award back pay – Whether jurisdictional error committed – Procedural fairness – Whether Disciplinary Appeals Board was functus officio at time of decision –

STATUTES – Operation and Effect of Statutes – Interpretation – Education and Training Reform Act 2006 ss 2.4.60, 2.4.61, 2.4.65, 2.4.66, 2.4.68, 2.4.69, 2.4.80.

STATUTES – Interpretation – Presumption that a statutory power may be exercised from time to time – Interpretation and Legislation Act 1984 s 40(a)

EVIDENCE – Weight of evidence in administrative fact-finding – Witnesses – Consideration of the best evidence rule at common law

[Wei v Yu \[2019\] VSC 102](#)

ADMINISTRATIVE LAW – Victorian Civil and Administrative Tribunal – Decision as to costs – Whether error of law – Plaintiffs' grounds challenge substantive decision of VCAT rather than costs order – Right of appeal against substantive decision already exhausted – No grounds established – Leave to appeal refused – Victorian Civil and Administrative Tribunal Act 1998 ss 109, 148.

PRACTICE AND PROCEDURE – Application by defendant for removal of plaintiffs' affidavits from Court file – Whether affidavits contain 'scandalous, irrelevant, or otherwise oppressive matter' – Application granted – Supreme Court (General Civil Procedure) Rules 2015 r 27.07

[Elhan v Randhawa \[2019\] VSC 95](#)

ADMINISTRATIVE LAW – Victorian Civil and Administrative Tribunal – Residential tenancy – Disposal of tenant's goods – Conduct of hearings – Whether notice of hearing to party – Whether procedural fairness afforded – Victorian Civil and Administrative Tribunal 1998 ss 98, 120, 148

[Kerkofs v Abdallah \(Human Rights\) \[2019\] VCAT 259](#)

Equal Opportunity Act 2010 – s 92 sexual harassment – defence under section 109- pain and suffering damages – aggravated damages

[City of Melbourne v Neppessen \[2019\] VSC 84](#)

ADMINISTRATIVE LAW – Judicial review – Medical panel – Assessment of impairment – Ankle injury – Whether misapplication of the American Medical Association Guides to the Assessment of Permanent Impairment (Fourth Edition) – No jurisdictional error – No legal unreasonableness – Wrongs Act 1958 Part VBA

[Kyriazis v Coelho \[2019\] VSC 74](#)

ADMINISTRATIVE LAW – Judicial review – Prison management – Visitation regime – Power to restrict access for security reasons – Plaintiff banned from Victorian prisons for three month period – Where ban expired prior to judicial review – Relief unavailable or inutile – Hot Holdings Pty Ltd v Creasy [1996] HCA 44; (1996) 185 CLR 149; Wingfoot Australia Partners Pty Ltd v Kocak [2013] HCA 43; (2013) 252 CLR 480 followed – Corrections Act 1986 s 43(1A).

[Fitzherbert v Department of Health and Human Services \(Review and Regulation\) \[2019\] VCAT 201](#)

Freedom of Information Act 1982 ss 30(1), 34(4)(a) (ii), 34(1)(b) – Access sought to documents relating to maintenance and cleaning at public housing tower – Whether documents exempt as internal working documents or documents of a business, commercial or financial undertaking exposing the agency or undertaking unreasonably to disadvantage – Meaning of an “officer”.

LEGISLATION

Victoria

Bills Progress

[Statute Law Revision Bill 2018](#)

Date of second reading speech: 21 February 2019

[Open Courts and Other Acts Amendment Bill 2019](#)

Date of second reading speech: 20 February 2019

Victorian legislation can be accessed [here](#).

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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.