

15 NOVEMBER 2016

ISSUE 3



PUBLIC SECTOR NEWSLETTER - VICTORIA

This past fortnight, the Commonwealth Government announced a redress scheme for victims of institutional child sexual abuse, although the Victorian Government is yet to decide whether to join the 'opt in' scheme.

There were also some interesting decisions on class action funding and Medical Panels, including a decision on the application of the 'new' Wrongs Act threshold.

The Victorian Government also announced increased regulation of the labour hire industry and a strengthening of working with children checks.

MEDIA

Commonwealth redress scheme for survivors of institutional child sexual abuse

The Turnbull Government is today announcing a Commonwealth Redress Scheme for survivors of institutional child sexual abuse and is inviting states, territories and other non-government institutions to join in the Commonwealth scheme to deliver redress to the survivors of these wrongs.

<https://www.attorneygeneral.gov.au/Mediareleases/Pages/2016/FourthQuarter/Commonwealth-redress-scheme-for-survivors-of-institutional-child-sexual-abuse.aspx>

Funding for Aus class actions to face greater court management

The involvement of the Australian courts in managing charges for class action litigation funding is set to ramp up, with a landmark

class action decision handed down last week. The Federal Court has endorsed the [common fund orders] mechanism, as a means of promoting transparency, equality and fairness for group members according to a leading law firm principal.

<http://www.lawyersweekly.com.au/news/19865-funding-for-australian-class-actions-face-greater-court-management>

Victoria to Regulate Labour Hire Industry

The Andrews Labor Government will establish a labour hire licensing scheme to stop the widespread exploitation of Victorian workers uncovered in an independent report. This will ensure strict oversight of labour hire companies so workers are not taken advantage of as they have been in the past.

<http://www.premier.vic.gov.au/victoria-to-regulate-labour-hire-industry/>

Taking action to restore illegally demolished pub

The Andrews Labor Government and the City of Melbourne have launched joint action in the Victorian Civil and Administrative Tribunal to compel the site owners to rebuild the pub. If VCAT rules in favour of the government and council, an enforcement order would require a rebuild in line with the design, scale and layout of the demolished building.

<http://www.melbourne.vic.gov.au/news-and-media/Pages/Taking-action-to-restore-illegally-demolished-pub.aspx>

Sentencing Advisory Council Chair Reappointed

Attorney-General Martin Pakula has announced the reappointment of Professor Arie Freiberg AM as the Chair of the Sentencing Advisory Council (SAC) for a further three years.

<http://www.premier.vic.gov.au/sentencing-advisory-council-chair-reappointed/>

Why informal resolution matters: Victorian Ombudsman

Tabling the Ombudsman enquiries: Resolving complaints informally casebook in the Victorian Parliament today, Victorian Ombudsman Deborah Glass said that while her office's large own motion investigations gained the most public attention, the day-to-day work of her office can effect real change in people's lives.

<https://www.ombudsman.vic.gov.au/News/Media-Releases/Media-Alerts/Why-informal-resolution-matters-Victorian-Ombudsma>

Clearer Information and Better Processes for Juries

The Andrews Labor Government is supporting juries with clearer information and better processes when examining expert evidence in criminal trials. Introduced into the Victorian Parliament today, the *Crimes Legislation Further Amendment Bill 2016* will amend the Criminal Procedure Act 2009 and the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997.

<http://www.premier.vic.gov.au/clearer-information-and-better-processes-for-juries/>

New Laws to Better Protect Victorian Children

The Andrews Labor Government today introduced new laws to better protect Victorian children by strengthening Working with Children Checks. The *Working with Children Amendment Bill 2016* will make the application process more rigorous, addressing five key recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

<http://www.premier.vic.gov.au/new-laws-to-better-protect-victorian-children/>

CASES

[Construction Forestry Mining and Energy Union v Director of the Fair Work Building Industry Inspectorate \[2016\] HCA 41](#)

Administrative law – Constitutional writs – Where plaintiff made admissions in proceedings in Federal Court of Australia that, because of operation of s 793 of Fair Work Act 2009 (Cth), it could be taken to have contravened s 500 of Act by conduct of its officers – Where, after judgment reserved in proceedings in Federal Court, plaintiff applied for leave to file application for leave to withdraw admissions and amend pleadings – Where leave refused – Whether decision to refuse leave amenable to appeal – Whether decision to refuse leave vitiated by jurisdictional error because of judge's failure to reach concluded view as to operation of s 793 – Whether final judgment imposing penalties for contraventions of s 500 on basis of admissions vitiated by jurisdictional error – Whether plaintiff denied procedural fairness.

Practice and procedure – High Court of Australia – Original jurisdiction – Constitutional writs – Where plaintiff applied for order to show cause why relief in the nature of prohibition, mandamus and certiorari should not be granted – Where first defendant moved on summons seeking order pursuant to r 25.03.3(a) of High Court Rules 2004 (Cth) that application be dismissed – Considerations relevant to exercise of discretion to dismiss application – Availability of constitutional writs where Court's original jurisdiction invoked before exhaustion of statutory rights of appeal. Words and phrases – "administrative decision", "certiorari", "constitutional writs", "constructive failure to exercise jurisdiction", "error of law on the face of the record", "inappropriate invocation of jurisdiction", "jurisdictional error", "leave to file", "leave to withdraw admissions", "mandamus". Constitution, s 75(v).

[Kennedy v Secretary, Department of Industry \[2016\] FCA 1251](#)

ADMINISTRATIVE LAW – application for extension of time and leave to appeal from an interlocutory judgment – judgment of case management judge – where judgment refused an extension of time and adjournment of proceedings – whether

there is a satisfactory explanation for the delay – whether the application has reasonable prospects of success – where grounds of appeal not properly particularised – whether there was a denial of procedural fairness – whether the test for confidential information was misapplied – whether the principles to restrain a law firm from acting were misapplied
PRACTICE AND PROCEDURE – suppression orders – Federal Court of Australia Act 1976 (Cth) s 37AF – whether suppression orders necessary to prevent prejudice to the proper administration of justice – where exhibits tendered are scandalous and vexatious

[Tan v Gibbons \[2016\] VSC 652](#)

JUDICIAL REVIEW – Medical negligence claim – Medical Panel’s determination as to degree of impairment – Whether finding of ‘operative fractures’ without evidentiary basis – Whether Panel misdirected itself in applying s 28LL(3) of the Wrongs Act 1958 – Jurisdictional error – Error of law on the face of the record – Statutory amendment of whole-person impairment threshold – Whether new threshold applies – Supreme Court (General Civil Procedure) Rules 2015 O 56; Wrongs Act 1958 ss 28LH, 28LL(3), 28LZG, 28LZS.

STATUTES – Interpretation – Amending legislation – Effect on proceedings when Medical Panel assessment involves jurisdictional error - Interpretation of Legislation Act 1984 s 14(2); Wrongs Amendment Act 2015 s 28 LZS (2)

[Stankoski v Flickers Australia Pty Ltd \[2016\] VSC 648](#)

JUDICIAL REVIEW – Medical Panel – Adequacy of reasons – Whether path of reasoning disclosed – Reasons inadequate – Error of law on the face of the record – Jurisdictional error – Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) ss 3, 313(2), Accident Compensation Act 1985 (Vic) s 5; Supreme Court (General Civil Procedure) Rules 2015 (Vic) O 56

[Alcoa of Australia Ltd v Edwards & Ors \[2016\] VSC 630](#)

ADMINISTRATIVE LAW – Medical Panel – Whether reasons of panel inadequate – Whether panel failed to have regard to relevant considerations – Panel’s reasons disclosed clear path of reasoning

– No failure by panel to have regard to relevant considerations - Workplace Injury Rehabilitation and Compensation Act 2013 s 284

PRACTICE AND PROCEDURE

Inquiry into Electronic Voting - Public hearing

The Electoral Matters Committee will hold a public hearing on Monday 5 December on its inquiry into electronic voting.

<http://www.parliament.vic.gov.au/emc/inquiry/419>

Supreme Court of Victoria: Volunteer Fire Brigades Victoria Inc v Country Fire Authority

The proceeding Volunteer Fire Brigades Victoria Inc v Country Fire Authority (S CI 2016 02269) was today resolved in the Supreme Court of Victoria. The court commends the parties for their resolution, in the short-term, of the issues which were going to be the subject of what was potentially a lengthy and complex piece of litigation.

[Volunteer Fire Brigades Victoria Inc v Country Fire Authority](#)

LEGISLATION

Victoria

Acts Assented to

- No. 57: Corrections Legislation Amendment Act 2016
- No. 60: Legal Profession Uniform Law Application Amendment Act 2016

Bills Introduced and Second Read in the first House - 28 October 2016

- **Crimes Legislation Further Amendment Bill:** the new laws will allow courts to hear evidence from prosecution and defence expert witnesses together or consecutively, giving juries the chance to evaluate all the relevant evidence at the same time. The Bill makes miscellaneous amendments to the Criminal Procedure Act 2009, the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997, the Crimes Act 1958 and the Jury Directions Act 2015.

- **Family Violence Reform Implementation Monitor Bill:** now establishes the appointment, functions and reporting obligations of the Implementation Monitor under statute.
- **Working with Children Amendment Bill:** under the reforms, any criminal charges laid against an applicant for serious sexual, violent or drug offences will be considered as part of Working With Children (WWC) Check assessments, regardless of whether they resulted in a conviction or finding of guilt.

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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 librarian, Warwick Johns, 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 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.

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