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ISSUE 6



## PUBLIC SECTOR NEWSLETTER - VICTORIA

Welcome to the first edition of Thomson Geer's Victorian Public Sector Newsletter for 2017. We hope you had a safe and happy holiday and we wish you well for the year ahead.

The Victorian Government's decision in relation to the housing of some young offenders has dominated the news for the first two weeks of January, with the decision also the subject of a number of applications for judicial review. In other news, the Federal Government has announced the establishment of a National Anti-Gangs Squad and IBAC has laid charges against five people as a result of operation Ord.

Judicial review of Medical Panel determinations have again featured, with the important decision of Mitchell v Latrobe Regional Hospital in relation to the application of the amendments to Part VBA of the Wrongs Act 1958 to be the subject of a separate Case Note.

On the topic of judicial review, it is worth noting the Supreme Court's new case management procedures for the Judicial Review and Appeals List.

### MEDIA

#### Boost for national anti-gangs initiative

The Federal Government's National Anti-Gangs Squad (NAGS) is being established in the nation's capital. The announcement adds to the NAGS Strike Teams in New South Wales, Queensland, Victoria, Western Australia and South Australia, and Liaison Officers in Tasmania and the Northern Territory.

<https://www.ministerjustice.gov.au/Mediareleases/Pages/2017/FirstQuarter/Boost-for-national-anti-gangs-initiative.aspx>

#### IBAC lays charges in relation to 'banker schools' corruption

Victoria's anti-corruption commission, IBAC, has charged five people with a range of criminal offences as a result of Operation Ord.

<http://www.ibac.vic.gov.au/media-releases/article/ibac-lays-charges-in-relation-to-banker-schools-corruption>

#### Pollie perks probe spurs High Court appeal

The Victorian Government is launching a High Court appeal over an ombudsman investigation into allegations Labor MPs rorted their parliamentary entitlements.

<http://www.abc.net.au/news/2017-01-05/victorian-govt-to-launch-high-court-appeal-over-ombudsman-probe/8164168>

#### Housing teens in maximum security prison unlawful, Victorian court rules

The Victorian Government fails in its bid to overturn a Supreme Court ruling over the housing of juvenile detainees at Victoria's maximum security prison.

<http://www.abc.net.au/news/2016-12-28/housing-teens-in-maximum-security-prison-unlawful-court-rules/8151278>

**Department charged over Ravenhall riot**

Following a comprehensive investigation into the riot at the Ravenhall Metropolitan Remand Centre in June 2015, WorkSafe has charged the Department of Justice and Regulation with four breaches of the Occupational Health and Safety Act 2004.

<http://www.worksafenews.com.au/news/item/540-department-charged-over-ravenhall-riot.html>

**Coroners Court Appeal Process To Be Reviewed**

The Victorian Government will review the existing laws for appealing or setting aside findings made by Victorian coroners. The Coronial Council of Victoria will conduct the review of the current appeal and re-opening of investigation provisions under the Coroners Act 2008 to ensure laws are working appropriately.

<http://www.premier.vic.gov.au/coroners-court-appeal-process-to-be-reviewed/>

**Local government transparency a postcode lottery: Victorian Ombudsman**

Victorians should not be subjected to a 'postcode lottery' when it comes to local government transparency, says Victorian Ombudsman Deborah Glass. Ms Glass welcomed the current Victorian Government review of the Local Government Act.

<https://www.ombudsman.vic.gov.au/News/Media-Releases/Media-Alerts/Local-government-transparency-a-postcode-lottery-V>

**CASES****[Minogue v Lourey \[2016\] VSC 812](#)**

JUDICIAL REVIEW – Prison staff failed to allow plaintiff access to mail and opened mail dispatched by plaintiff to his legal representatives – Defendant admitted contravention of s 47(1)(n) of Corrections Act 1986 – Discretion to grant of declaratory relief notwithstanding contravening conduct not ongoing – Declarations granted – Corrections Act 1986 s 47(1)(n)

**[Minogue v Shuard \[2016\] VSC 797](#)**

JUDICIAL REVIEW – Plaintiff undertaking diploma of counselling – Study not approved by Corrections Victoria –

Plaintiff initially advised to cease study – Plaintiff subsequently informed that his study was not supported but that receipt and dispatch of mail would be subject to normal protocols – Claim for declaratory relief dismissed on discretionary grounds – Corrections Act 1986 ss 47(1)(n) and (o) – Charter of Human Rights and Responsibilities Act 2006 s 15(2)

**[Combined Enterprises Pty Ltd v Brister \[2016\] VSC 807](#)**

ADMINISTRATIVE LAW – Judicial review – Jurisdictional error – Inadequacy of reasons – Application for review of decision of medical panel – Where medical panel had determined whether first defendant had no current work capacity, with that situation likely to continue indefinitely – Meaning of 'no current work capacity' – Meaning of 'suitable employment' – Richter v Driscoll [2016] VSCA 142, Gruma v Oceania Pty Ltd v Bakar [2014] VSCA 252, Wingfoot Australia Partners Pty Ltd v Kocak [2013] HCA 43; (2013) 252 CLR 480 applied

**[Pearce v Dr John Lloyd & Ors \[2016\] VSC 806](#)**

ADMINISTRATIVE LAW – Judicial review – Procedural fairness – Adequacy of reasons – Jurisdictional error – Workers' Compensation – Medical panel – Application to quash opinion of medical panel – Opinion quashed

**[Mattock v Handrinos & Ors \[2016\] VSC 798](#)**

ADMINISTRATIVE LAW – Judicial review – Order 56 Supreme Court (General Civil Procedure) Rules 2015 – Accident Compensation Act 1985 - Workplace Injury Rehabilitation and Compensation Act 2013 – Review of Medical Panel Opinion – Whether or not Panel failed to take into account a relevant consideration – Whether or not reasons inadequate – Whether or not the plaintiff was afforded procedural fairness.

**[Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children \[2016\] VSC 796](#)**

CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES – Protection of children in their best interests – Protection from cruel, inhuman or degrading treatment – Humane treatment when deprived of liberty – Public authorities – Proper consideration – Effect of failure to give proper consideration – Declaration of failure

to afford human rights – Charter of Human Rights and Responsibilities Act 2006 (Vic) ss 1, 10(b), 17(1), 17(2), 22(1), 38(1), 38(2)  
 CHILDREN – Detention of children in remand centres – Youth justice centres – Opening of Grevillea unit inside Barwon Prison – Validity of Orders in Council – Children Youth and Families Act 2005 (Vic) ss 1, 478 – 484

ADMINISTRATIVE LAW – Habeas Corpus – Certiorari – Improper or extraneous purpose – Failure to take into account relevant considerations – Use of power to establish remand centre and youth justice centre for the purpose of ‘emergency accommodation’ – Whether valid – Interpretation of Legislation Act 1984 (Vic) s 35(1)

[Lower Our Tracks Inc v Minister for Planning \[2016\] VSC 803](#)

JUDICIAL REVIEW – Planning – Amendment to planning scheme – Incorporated document – Removal of level crossings – Elevated rail design – Minister’s decision to exempt himself from statutory exhibition and notice requirements – Whether decision unreasonable or irrational – Whether decision made for an improper purpose – Whether Minister’s discretion fettered – Planning and Environment Act 1987 ss 17, 18, 19, 20(4)

[Adamopoulos v ASA Nominees Pty Ltd & Anor \[2016\] VSC 802](#)

PRACTICE AND PROCEDURE – Application by plaintiff to re-open application for leave to appeal from Victorian Civil and Administrative Tribunal (‘Tribunal’) after reasons for decision pronounced but before final orders drawn up or entered – Discovery of fresh evidence since hearing of the Supreme Court application – Whether evidence is material and would affect the result of the application for leave to appeal – Whether with the exercise of reasonable diligence the evidence could have been discovered before the Tribunal hearing or the application in the Supreme Court – Re Australian Meat Industry Employee’s Union (WA Branch); ex parte Ferguson (1986) 67 ALR 491; Smith v New South Wales Bar Association (No 2) [1992] HCA 36; (1992) 176 CLR 256; Spotlight Pty Ltd v NCO Australia Ltd [2012] VSCA 232; Madden v Madden [2014] NSWSC 1098; Inspector-General in Bankruptcy v Bradshaw [2006] FCA 22.  
 ADMINISTRATIVE LAW – Application for

leave to appeal from the Tribunal to the Supreme Court– Orders to be made in favour of successful appellant under the Victorian Civil and Administrative Tribunal Act 1998 (Vic), s 148(7) (‘the VCAT Act’) – Whether appropriate to make orders under Subdivision Act 1988 (‘Subdivision Act’), s 34D – Whether only one conclusion is open on the correct application of the law to the facts found by the Tribunal – Whether factual matter has to be determined as a consequence of the appeal – Whether the outstanding issue involves a factual, evaluative or ministerial judgment within the Tribunal’s jurisdiction – Whether Tribunal should consider again the exercise of the discretion under s 34D of the Subdivision Act – Proceeding remitted to the Tribunal to be heard and decided again - Roy Morgan Research Centre Pty Ltd v Commissioner of State Revenue [2001] HCA 49; (2001) 207 CLR 72; Osland v Secretary to the Department of Justice [No 2] [2010] HCA 24; (2010) 241 CLR 320

[Minister v Certain Children \[2016\] VSCA 343](#)

ADMINISTRATIVE LAW – Judicial review – Jurisdictional error – Relevant considerations – Power to establish centres for detention of young persons – Decisions of Governor-in-Council – Whether decision-maker failed to take into account relevant considerations – Whether power exercised for improper purpose – Appeal dismissed – Minister for Aboriginal Affairs v Peko-Wallsend Ltd [1986] HCA 40; (1986) 162 CLR 24 applied – Children, Youth and Families Act 2005 ss 362, 478, 482

[Mitchell v Latrobe Regional Hospital \[2016\] VSCA 342](#)

STATUTES – Statutory construction – Amendment – Amendment of statute – Transitional provision – Whether amendment had retrospective operation – Whether any right acquired or accrued under an earlier version of the statute – Whether amendment had any affect upon previous operation of the statute or anything duly done under earlier statutory provision – Whether contrary intention expressly appeared – Wrongs Act 1958 ss 28LB, 28LF, 28LZH and 28LZS – Interpretation of Legislation Act 1984 s 14(2)

[Commissioner of State Revenue v Antonino Arrigo \[2016\] VSCA 339](#)

JUDICIAL REVIEW – Appeal – Questions

of law – Whether construction of statute and trust deed are questions of law – Whether application of Duties Act 2000 to facts is question of law – *Haritos v Federal Commissioner of Taxation* [2015] FCAFC 92; (2015) 233 FCR 315; *Hope v Bathurst City Council* [1980] HCA 16; (1980) 144 CLR 1, applied

#### [Rich v Ryan \[2016\] VSCA 337](#)

ADMINISTRATIVE LAW – Judicial review – Prison administration – Application for review of administrative decisions – Applicant prisoner sought access to CD containing legal materials – Access refused – Interlocutory application for mandatory order – Whether order available – Whether applicant's access to court impeded – Leave to appeal refused

#### [CSR Limited v Amaca Pty Ltd \[2016\] VSCA 320](#)

EVIDENCE – Hearsay – Exceptions to hearsay – Whether statements made to doctors by unavailable witnesses were admissible to prove a person's exposure to asbestos – Revival of memory – Reading aloud parts of a document – Evidence Act 2008, ss 32(3), 63(2), 136 and 192(2).  
LIMITATION OF ACTIONS – Statutory construction of s 24(4) of the Wrongs Act 1958 as it applied to torts committed on or before 31 December 1971 – Statutory construction of s 24(4) of the Wrongs Act 1958 as it applied to torts committed after 31 December 1971 – Wrongs Act 1958, s 24 – Limitation of Actions Act 1958, s 5(1)(d) – Wrongs Act 1972, s 3

## PRACTICE AND PROCEDURE

### New Rules - High Court

The [High Court Rules 2004 - Compilation No. 19](#) (9 December 2016) have been made under the [High Court of Australia Act 1979 No. 137 \(Cth\)](#), the [Judiciary Act 1903 No. 6 \(Cth\)](#), the [Nauru \(High Court Appeals\) Act 1976 No. 151 \(Cth\)](#) and the [Commonwealth Electoral Act 1918 No. 27 \(Cth\)](#), and were registered on the Federal Register of Legislation (FRL) on 15 December 2016.

### Attorney-General Appointments announced for 2017

- [Appointments to the Administrative Appeals Tribunal](#)
- [Appointment to the Federal Circuit](#)

**Court:** announce the appointment of Ms Amanda Tonkin to the Federal Circuit Court of Australia. She will commence in the Canberra Registry on 1 January 2017.

- [Appointment of Solicitor-General:](#) His Excellency the Governor-General has accepted the advice of the Government to appoint Dr Stephen Donaghue QC as Solicitor-General of the Commonwealth of Australia.

### Victoria Supreme Court: New Practice Notes for 2017

New Practice Notes affecting litigation in the Supreme Court will come into effect from 30 January 2017.

#### [Practice Notes for 2017](#)

### Notice to the Profession - Management of matters in the Judicial Review and Appeals List

The Supreme Court is introducing new case management procedures for matters in the Judicial Review and Appeals List ('JRAL'). This new approach will expedite the hearing and determination of applications for leave and appeals. A revised Practice Note will be issued in early 2017.

#### [Notice to the Profession - Management of matters in the Judicial Review and Appeals List](#)

## LEGISLATION

### Victoria

#### Statutory Rules made

- No. 137: Magistrates' Court General Civil Procedure and Miscellaneous Civil Proceedings (Costs Amendment) Rules 2016
- No. 138: Supreme Court (Chapter I Appendices A and B Amendment) Rules 2016
- No. 139: Supreme Court (Chapter I Litigation Guardian Amendment) Rules 2016
- No. 140: Supreme Court (Chapter V Publication of Notices Amendment) Rules 2016
- No. 141: Supreme Court (Chapter VI Confiscation Amendment) Rules 2016

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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 03 8080 3604; or
- (b) Emailing [legalhelpdesk@tglaw.com.au](mailto: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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