



PUBLIC SECTOR NEWSLETTER - VICTORIA

The good news story of the past fortnight would have to be the reception for Chief Justice Susan Kiefel, who was appointed Chief Justice of the High Court of Australia last November.

The past fortnight was otherwise once again dominated by the criminal justice system, with the Victorian Auditor-General Office releasing a report titled *Managing Community Correction Orders*, the Victorian Ombudsman releasing a report on youth justice and the judiciary and Law Institute of Victoria both warning of the risks associated with substantial changes to bail laws and “therapeutic justice”.

We otherwise hope to see you at the latest seminar in our Public Sector Seminar Series, ‘[Legal Professional Privilege and Public Interest Immunity](#)’, which we are hosting at our Melbourne office at 5.30pm on 23 February 2017.

MEDIA

Susan Kiefel sworn in as first female High Court Chief Justice

Appointed as Chief Justice in November and has now been received by a full High Court bench.

<http://www.abc.net.au/news/2017-01-30/susan-kiefel-sworn-in-as-first-female-high-court-chief-justice/8222868>

Building A Stronger Community Corrections System

The Victorian Government has welcomed

the findings of the Victorian Auditor-General Office (VAGO) report, *Managing Community Correction Orders*, tabled in the Victorian Parliament today. The government has introduced legislation to tighten the use of community correction orders (CCOs) to ensure that people who are convicted of the most serious crimes are incarcerated.

<http://www.premier.vic.gov.au/building-a-stronger-community-corrections-system/>

Banning Fracking Once And For All

Landmark legislation to permanently ban fracking for gas will today return to the Victorian Parliament as the Government puts regional communities first.

<http://www.premier.vic.gov.au/banning-fracking-once-and-for-all/>

Victorian anti-corruption community campaign continues

By exposing serious and systemic corruption, IBAC has been able to highlight the detrimental effect of public sector corruption, and actions that need to be taken by public sector bodies to prevent it.

<http://www.ibac.vic.gov.au/media-releases/article/victorian-anti-corruption-community-campaign-continues>

Report on youth justice: Victorian Ombudsman

The Victorian Ombudsman has today tabled a report on the state’s youth justice facilities to give Parliament and the public an insight

into recent events and to illustrate how the relevant oversight agencies are holding government to account.

<http://www.timebase.com.au/news/2017/AT04075-article.html>

Bail Review: Victoria Ponders How to Make Process Perfect

As a result of the recent tragedy in Melbourne's Bourke Street, carried out by an alleged offender who was on bail at the time of the offence, and the public outrage it sparked, the Victorian Government, has announced a review of Victoria's bail system.

<http://www.abc.net.au/news/2017-01-25/real-estate-underquoting-agent-admits-to-lying-about-prices/8212856>

New Complaints Watchdog On The Job To Protect Patients in Victoria

A new watchdog with greater powers to protect patients and crack down on dodgy unregistered health service providers and practitioners has started work. When a new statutory code of conduct is breached, the Commissioner has expanded powers to issue an order prohibiting the health provider from practicing. Individuals who breach an order face up to two years jail.

<http://www.premier.vic.gov.au/new-complaints-watchdog-on-the-job-to-protect-patients/>

Therapeutic justice the solution, not the cause of criminal activity

The LIV is concerned about recent media commentary that suggests a therapeutic approach by magistrates and the judiciary is to blame for the spate of criminal activity in Victoria over the past year.

<https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/February-2017/Therapeutic-justice-the-solution--not-the-cause-of>

Tragic case highlights Registry of Births, Deaths and Marriages' failings

The Ombudsman began an investigation into the case in August 2016 following a complaint from Ms X and amid an environment of an increasing number of complaints to the Victorian Ombudsman about the Registry.

<https://www.ombudsman.vic.gov.au/News/Media-Releases/Media-Alerts/Tragic-case-highlights-Registry-of-Births,-Deaths>

Long wait for court dates 'sad indictment' on system, Victorian magistrate says

Members of the Victorian legal fraternity are concerned wait times for hearings at magistrates courts will increase under plans by the State Government to reform the bail system.

<http://www.abc.net.au/news/2017-01-31/long-wait-for-court-dates-woeful-magistrate-says/8225794>

Tear gas used in Victorian youth detention centre, Government confirms

The Victorian Government confirms that in the past 24 hours it used tear gas in one of its youth detention centres.

<http://www.abc.net.au/news/2017-01-31/tear-gas-used-in-vic-youth-detention-centre/8226396>

Victorian government refuses to disclose taxpayer-funded legal costs

Victorians have footed the legal bill for the state government to defend itself over the jailing of youths in adult prisons, the lack of consultation over Skyrail, and claims that Labor rorted an election – but Premier Daniel Andrews is refusing to say how much he's spending.

<http://www.theage.com.au/victoria/andrews-government-refuses-to-disclose-taxpayerfunded-legal-costs-20170210-quakqm.html>

CASES

[The Secretary of the Department of Health and Human Services v AA and AB \[2017\] VSC 34](#)

CONSTITUTIONAL LAW – Questions of law reserved by the Children's Court in the form of a special case stated under s 533 of the Children, Youth and Families Act 2005 (Vic) – Whether inconsistency between detention provisions in the Commonwealth Migration Act 1958 and child protection provisions in the Victorian Children, Youth and Families Act 2005 – Whether 'covering the field inconsistency' or 'direct inconsistency' – Whether 'operational inconsistency' – No inconsistency – Victorian provisions not invalid – Commonwealth Constitution, s 109 – Migration Act 1958 (Cth), ss 4, 4AA, 13, 14, 189, 196, 197AA, 197AB, 197AC, 197AD, 197AE, 197AF, 197AG – Children, Youth and Families Act 2005 (Vic), ss 1, 4, 5, 162, 240, 241, 242, 262, 263, 264, 266, 267, 268, 274,

275, 280, 281, 282, 533

COSTS – Special case stated – Indemnity certificates – Appeal Costs Act 1998, s 19

[Secretary to the Department of Justice and Regulation v Fletcher \(No 4\) \[2017\] VSC 32](#)

PUBLIC LAW – Application by Secretary for renewal of a supervision order – Whether respondent represents an unacceptable risk of committing a relevant offence – Supervision order revoked – Serious Sex Offenders (Detention and Supervision) Act 2009.

[Re Fleurie Pty Ltd \(in liq\) \(No 1\) \[2017\] VSC 30](#)

CIVIL PROCEDURE – Supreme Court (General Civil Procedure) Rules 2015 (Vic) rr 11.01 and 11.06 – Application to add as a third party the secretary of the Department of Economic Development, Jobs, Transport and Resources (the Department) – Whether application is made against the Crown and is prohibited by the Crown Proceedings Act 1958 (Vic) – Alleged misrepresentation by officers of the Department – Whether such conduct alleged to be misleading and deceptive occurred in trade or commerce – Whether claims made in the proposed third party notice are unsubstantiated at law – Application granted.

[Walker v Heathcote Health \(Human Rights\) \[2017\] VCAT 171](#)

Application for declaration, reinstatement of employment, damages and other relief for alleged discrimination (direct and indirect) and failure to make reasonable adjustments under the Equal Opportunity Act 2010 (Vic) – whether employer knew of disabilities – whether requirement to work day shifts for performance management was reasonable – whether reasonable adjustments could have been made – Equal Opportunity Act 2010 ss 6,7,8,9,18,20

LEGISLATION

Victoria

Bills

Sentencing (Community Correction Order) and Other Acts Amendment Bill 2016 Assented.

20 March 2017 - Act (except Part 5) commenced by proclamation: Gazette S 17, Tuesday 31 January 2017, p 1

Bills Introduced and Second Read in the first House – week ending 10 February 2017

- [Electricity Safety Amendment \(Bushfire Mitigation Civil Penalties Scheme\) Bill 2017](#)
- [Fair Work \(Commonwealth Powers\) Amendment Bill 2017](#)
- [Statute Law Revision Bill 2017](#)

UPCOMING SEMINAR

Legal Professional Privilege and Public Interest Immunity

5.30pm, Thursday 23 February

Join us as Barrister, Melanie Szydzik and Thomson Geer Partner, Cameron Roberts address:

- the operation and use of Legal Professional Privilege in claims management and litigation;
- the use of Legal Professional Privilege by in-house legal counsel;
- common interest Legal Professional Privilege;
- what is Public Interest Immunity and what does it cover; and
- issues for government and in-house legal counsel in seeking to use Public Interest Immunity.

[Download invitation](#)

KEY CONTACTS

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



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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

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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