

21 MARCH 2017

ISSUE 10



PUBLIC SECTOR NEWSLETTER - VICTORIA

Family violence dominated the past fortnight, with new laws introduced into parliament to boost family violence protections, new Magistrates appointed with experience in family violence and the Victorian Sentencing Advisory Council releasing a paper on approaches for family violence offenders.

Meanwhile, the past fortnight saw interesting decisions handed down in relation to the *Freedom of Information Act's* application to screen shots of web browser histories of ministerial offices and the application of the *Charter of Human Rights* to the right to a fair trial.

Finally, a reminder about our upcoming seminar on [Legal Professional Privilege and Public Interest Immunity](#) on 23 March 2017 at 12.30pm.

MEDIA

New Victorian laws to boost family violence protections

Victims of family violence will be better protected under new legislation introduced into Parliament Responding to 11 recommendations from the *Royal Commission into Family Violence. The Family Violence Protection Amendment Bill 2017* will increase protections for women and children, and enhance the justice system's response to family violence.

<http://www.premier.vic.gov.au/wp-content/uploads/2017/03/170307-New-Laws-To-Boost-Family-Violence-Protections.pdf>

Four New Magistrates Appointed in Victoria

Experience in family violence and prosecutions has been prioritised in the appointment for four new magistrates by the Attorney General Martin Pakula.

<http://www.premier.vic.gov.au/four-new-magistrates-appointed/>

Victorian Sentencing Advisory Council Release Paper On Approach For Family Violence Offenders

The Victorian Sentencing Advisory Council has released a discussion paper on 'swift, certain and fair approaches to sentencing family violence offenders' as part of a review commissioned in 2016 by the Attorney-General.

<http://www.timebase.com.au/news/2017/AT04110-article.html>

Corruption Body Slams Massive Bendigo Hospital Project

Victoria's anti-corruption watchdog has slammed practices which occurred during construction of the new \$1.1 billion Bendigo Hospital, saying lax procedures enabled a former construction manager to engage in corrupt conduct and also finding the chief executive officer engaged in conduct contrary to the values of the public service.

<https://sourceable.net/corruption-body-slams-massive-bendigo-hospital-project/>

Lakes Oil to fight on despite Victoria's gas ban

The company suing the government for \$2.7 billion over its ban on gas exploration has vowed new laws retrospectively shielding the state from liability claims will not kill its legal action. Lakes Oil, which is backed by Gina Rinehart's Hancock Prospecting, declared it could continue the case, which the government believes it has effectively quashed since its anti-gas legislation passed parliament this week.

<http://www.weeklytimesnow.com.au/news/national/lakes-oil-to-fight-on-despite-victorias-gas-ban/news-story/2c114fe01b4ce8ad82027c19a015578d>

CASES

[Hon Tim Smith MP v Hon Daniel Andrews MP \(Premier\) \(Review and Regulation\) \[2017\] VCAT 340](#)

Review and Regulation List – right of access to documents under the Freedom of Information Act 1982 – request for screen shots of web browser histories of ministerial officers in the Office of the Premier – whether 'official document of a Minister' – whether 'relate to the affairs of an agency' – Freedom of Information Act 1982, ss 5, 13(b)

[Matsoukatidou v Yarra Ranges Council \[2017\] VSC 61](#)

CRIMINAL LAW – judicial review – practice and procedure – applications before judge in County Court of Victoria for orders reinstating struck out appeals from sentences of Magistrates' Court of Victoria – applicants self-represented – whether judge ensured fair trial by giving them due advice and assistance – relationship between that duty and human rights to equality and fair hearing – equal access to justice – Criminal Procedure Act 2009 (Vic) s 267(3), Charter of Human Rights and Responsibilities Act 2006 (Vic) ss 6(2)(b), 8(3) and 24(1), Supreme Court (General Civil Procedure) Rules 2005 (Vic) O 56.

HUMAN RIGHTS – equality – fair hearing – equal access to justice – daughter and mother sentenced in Magistrates' Court for offences – appeals to County Court struck out – applications made for orders reinstating appeals – applicants self-represented – daughter an invalid pensioner with disability and mother her carer – applications dismissed – human rights applying to hearings in court and

tribunals – application and scope of procedural dimension of right to equality – application and scope of right to fair hearing – whether judge made adjustments and accommodations to hearing procedure to ensure daughter did not suffer discrimination by reason of disability – whether judge ensured that daughter and mother effectively participated in and thereby obtained fair hearing – 'equality of arms' – Charter of Human Rights and Responsibilities Act 2006 (Vic) ss 6(2)(b), 8(3) and 24(1)

[TSC Nominees Pty Ltd v Canham Commercial Interiors Pty Ltd & Ors \[2017\] VSC 86](#)

PRACTICE AND PROCEDURE – Application to extend time within which to apply to set aside judgment and to set aside judgment pursuant to Supreme Court (General Civil Procedure) Rules 2015, rr 3.02 and 49.02(2) – Plaintiffs failed to appear and trial – Plaintiffs assert that they were unaware of trial date – Whether they received notification from their lawyer informing them of trial date – Application of overarching obligations under Civil Procedure Act 2010 – Applicable tests for extension of time and setting aside judgment considered – Application to extend time refused – Application to set aside judgment refused – joint venture

[DEK Rendering v Gaffy & Ors \[2017\] VSC 53](#)

ADMINISTRATIVE LAW – Judicial review of an opinion of a medical panel – jurisdictional error – Statutory interpretation – Meaning of 'further or additional employment or work' – Remitter to Convenor of Medical Panels - Civil Procedure Act 2010 (Vic), s 9 – Accident Compensation Act 1985 (Vic), s 93CD(4) – Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) – Supreme Court (General Civil Procedure) Rules 2015 (Vic) – Colonial Range Pty Ltd v CES-Queen (Vic) Pty Ltd

[Marrogi v The Magistrates' Court of Victoria \[2017\] VSC 80](#)

JUDICIAL REVIEW – Plaintiff charged with murder – Magistrate's compulsory procedure order that plaintiff provide a DNA sample – Whether valid exercise of power or discretion – Alleged errors in exercise of power or discretion – Existing DNA sample as a result of order in 2005 – Whether valid exercise of power – Statutory obligation

to reasons and state evidence relied on – Whether error on face of the record – Crimes Act 1958 s 464T(3), 464ZE(1)(a)

[Versa-Tile Pty Ltd v 101 Construction Pty Ltd \[2017\] VSC 73](#)

DOMESTIC BUILDING CONTRACTS – Decision of VCAT – Application to appeal on questions of law – Domestic Building Contracts Act 1995 s 53, Victorian Civil and Administrative Tribunal Act 1998, s 148 PROCEDURAL FAIRNESS – Finding that contract contained a mutual mistake as to parties to contract – Finding that party to contract an agent for undisclosed principal – Subsequent order setting-off of damages ordered in two proceedings – Parties not heard on the possibility of the findings or resulting set-off order – Denial of procedural fairness

[Victorian Electoral Commissioner v Municipal Electoral Tribunal \(Review and Regulation\) \[2017\] VCAT 294](#)

Election Melbourne City Council – Unqualified candidate elected – Recount of ballot papers – Extraordinary vacancy – Local Government Act 1989 (Vic) ss 45, 46, sch 2 cl 8, 9, 9A, sch 3 part 4A, sch 3A – Re Wood [1988] HCA 22; (1988) 167 CLR 145; Re Culleton (No 2) [2017] HCA 4 applied

PRACTICE AND PROCEDURE

Managing Public Sector Records

This audit examined whether selected agencies manage public records according to legislative requirements, and whether the Department of Premier and Cabinet and the Public Record Office Victoria are effectively assisting them to do this.

http://www.audit.vic.gov.au/reports_and_publications/latest_reports/2016-17/20170308-public-sector-records.aspx

Operation Liverpool special report

IBAC: Tabled Parliament 09 March 2017
The Operation Liverpool special report provides the findings and recommendations from IBAC’s investigation into allegations against two senior Bendigo Health officers: former construction manager, Adam Hardinge and Chief Executive Officer, John Mulder. Both Bendigo Health and DHHS are to report to IBAC by 30 September 2017 on steps taken to address the recommendations

<http://www.ibac.vic.gov.au/publications-and-resources/article/liverpool-special-report>

LEGISLATION

Victoria

Bills

Bills Introduced and Second Read in the first House – 10 March

- Drugs, Poisons and Controlled Substances Miscellaneous Amendment Bill
- Family Violence Protection Amendment Bill

Proclamations of Commencement

Children Legislation Amendment (Reportable Conduct) Act (No. 4/2017)

Commencement: Part 1 (ss. 1 to 3): 01/03/2017 (s. 2(1)) S. 17: 01/03/2017 (s. 2(1)) Remainder: NYP [01/09/2017 if not proclaimed earlier] (s. 2(3))

Regulations

County Court (Chapter II Confiscation Amendment) Rules (No. 5/2017)

Operational ALL: 06/03/2017 (rl. 3)

UPCOMING SEMINAR

Legal Professional Privilege and Public Interest Immunity

12.30pm, Thursday 23 March

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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