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ISSUE 9



## PUBLIC SECTOR NEWSLETTER - VICTORIA

Reform has dominated the past fortnight, with the Victorian Government releasing the terms of reference for the review into bail laws and with new laws introduced to simplify and improve the way information is provided to juries in criminal trials. Moreover, individuals and organisations have been invited to make written submissions to the inquiry into Youth Justice Centres and it has been announced the report following the inquiry into the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill will be tabled in Parliament on 21 March 2017.

Meanwhile, we now know "who judges the Judges", with four appointments announced to the new Judicial Commission and those appointments being welcomed by the Law Institute of Victoria.

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

### MEDIA

#### Terms of Reference Released for Victorian Bail Review

The Victorian Government has on 14 February 2017 released the terms of reference for the review into Bail laws responding to 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. Additionally, the ACT has also announced a review of Bail laws in response to the same attack.

<http://www.timebase.com.au/news/2017/AT04103-article.html>

#### Reforms Continue To Improve Jury Directions

The Victorian Government introduced new laws in Parliament to further simplify and improve the way information is provided to juries in criminal trials. The Jury Directions and Other Acts Amendment Bill 2017 will clarify that jury parades are not an essential part of the jury empanelment process.

<http://www.premier.vic.gov.au/category/media-release/attorney-general/>

#### Appointments to New Judicial Commission Board

The Victorian Government has appointed four eminent Victorians to the Board of the Judicial Commission of Victoria, which will be up and running from July. To ensure the Commission is ready to start work from day one, Attorney-General Martin Pakula has appointed Claire Keating, Helen Silver, Graham Atkinson and Ross Herron to the Board.

<http://www.premier.vic.gov.au/appointments-to-new-judicial-commission-board/>

#### LIV welcomes Judicial Commission appointments

The Law Institute of Victoria welcomes the appointment of four highly respected Victorians to the Judicial Commission of Victoria. The Commission is a new independent body to hear complaints about

the conduct of judicial officers and VCAT members.

<https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/February-2017/LIV-welcomes-Judicial-Commission-appointments>

### **Interview with David Watts, Commissioner for Privacy and Data Protection Victoria**

(2016) 13(10) PrivLB 214 Author(s): Sharon Givoni

Privacy Law Bulletin's general editor, Sharon Givoni, interviews David Watts, Commissioner for Privacy and Data Protection Victoria, on a range of current topics concerning privacy and data security

<http://www.sharongivoni.com.au/media/2016-IPLB-Interview-with-David-Watts.pdf>

## **CASES**

### [Boogs v Missen \[2017\] VSC 50](#)

Whether horse of acceptable quality – Guarantee provisions under s 54 of the Australian Consumer Law (Victoria) – Error by VCAT member in approach to determination of claim – No consideration of whether sale in trade or commerce – Application for leave to appeal and appeal allowed – Orders of VCAT set aside – Remitted to VCAT for rehearing

### [Roo Roofing Pty Ltd v Commonwealth \[2017\] VSC 31](#)

PRACTICE and PROCEDURE – Application for summary dismissal – Negligent misrepresentation and misleading and deceptive conduct alleged against Commonwealth – Whether conduct of the Commonwealth in promoting and administering Home Insulation Program carrying on a business or in trade or commerce – Whether no real prospect of success – Application for summary judgment dismissed.

PRACTICE and PROCEDURE – Application for summary dismissal – Unconscionable conduct alleged against Commonwealth – Whether plaintiffs at a special disability – Not possible to discern basis for alleged disability or how it was taken advantage of – Pleading deficient – Plaintiffs' claim struck out with leave to re-plead.

GROUP PROCEEDINGS – Class action – Whether claims of potential group members who already entered into deed

with regard to loss substantially the subject of this proceeding can be maintained – No evidence that any such potential plaintiff seeks to set deed aside – Whether 'just and convenient' – Group re-defined

### [Darebin City Council & Anor v Municipal Association of Victoria \[2017\] VSC 51](#)

STATUTORY INTERPRETATION – Principles – Meaning of ambiguity – Literal or grammatical meanings – Alternative constructions – Purpose of the statute – Constitution of the Municipal Association of Victoria – Appointment by a council of a councillor of another council to represent the first-mentioned council – Whether such appointment valid under Municipal Association of Victoria Act 1907 (Vic)

### [Stojilkovic v Romas & Ors \[2017\] VSC 49](#)

ADMINISTRATIVE LAW – Judicial review of an opinion of a medical panel – Jurisdictional error – Inadequacy of reasons – Where medical panel found that plaintiff fit for pre-injury duties working in a commercial laundry – Where the medical panel concluded that the work duties were a significant contributing factor to injury which occurred against the background of a constitutional condition – Where aggravation to which work duties materially contributed remained symptomatic – Ryan v The Grange at Wodonga Pty Ltd & Ors [2015] VSCA 17 applied

### [Kitanovski v Melton City Council \[2017\] VSCA 15](#)

ADMINISTRATIVE LAW – Application for leave to appeal against order of Trial Division judge dismissing application for judicial review of order of County Court judge – Conviction for offences involving use of land without planning permit – Whether charges valid – Whether Trial Division judge misconstrued Planning and Environment Act 1987 ss 6, 126(2) and Melton Planning Scheme cl 35.04-1 – Whether Trial Division judge failed to give effect to principle of legality – Criminal Procedure Act 2009 s 6, sch 1 cls 1, 3 – Application for leave to appeal refused

### [Kahan v Strauss \[2017\] VSC 8](#)

JUDICIAL REVIEW AND APPEALS – Application for leave to appeal from Victorian Civil and Administrative Tribunal ('VCAT') under s 150 of the Private Security Act 2004 (Vic) – Decision of delegate of the

Chief Commissioner of Police to cancel a Private Security Individual Operator licence under s 56 of the Private Security Act 2004 (Vic) – VCAT stands in the shoes of original decision-maker – Nature of applications for leave to appeal under s 148 of VCAT Act.

STATUTORY CONSTRUCTION – Private Security Act 2004 (Vic) s 25 – Public interest – The extent to which public confidence is relevant to the question of whether it is in the public interest that the defendant hold a licence – Breadth of test – Distinction between what is ‘of public interest’ and what is ‘in the public interest’ – Public confidence an outcome of a proper system of regulation, rather than a matter to be taken into account in determining what is in the public interest – The Tribunal has broad discretion to consider circumstances of individual cases within the purpose of the relevant Act – Secretary, Department of Justice v LMB; Secretary, Department of Justice v PMY [2012] VSCA 143; Director of Public Transport v XFJ [2011] VSCA 302 referred to and applied.

STATUTORY CONSTRUCTION – Whether Tribunal erred in finding that defendant a fit and proper person to hold a security licence – Director of Public Transport v XFJ [2011] VSCA 302 followed – Whether defendant convicted of an offence which renders him unsuitable to hold a licence.

APPEALS FROM VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL – Whether decision of Tribunal unreasonable – Whether to interfere with exercise of discretion – Reluctance of Court to conclude that a decision of Tribunal was so unreasonable as to be untenable – Bell Corp Victoria Pty Ltd v Stephenson [2003] VSC 255; (2003) 20 VAR 280, Pong Property Development Pty Ltd v Strangio (2005) VSC 217 referred to and applied.

PRACTICE AND PROCEDURE – Defendant’s decision not to participate in the proceeding – Practical utility of proceeding – Improper to seek determination as a precedent for future applications – Determination of issues in this proceeding affects the defendant’s personal record

## PRACTICE AND PROCEDURE

### Inquiry into Youth Justice Centres in Victoria

The Legal and Social Issues Committee invites written submissions from individuals and organisations addressing one or more

of the issues identified in the [terms of reference](#). To assist with your submission, please see the guidelines for [Making a Written Submission to a Parliamentary Committee](#). The submission closing date is 3 March 2017.

<http://www.parliament.vic.gov.au/lpic/inquiries/article/3195>

### Inquiry into the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016

The reporting date for this inquiry is 21 March 2017. Once the final report is tabled in the Parliament, a copy will be available for download [here](#).

### New online tool to help Victorians access legal help

[Code for Australia](#) (CfA) and Victoria Legal Aid (VLA) have released a prototype [online tool](#) that will make it easier for community members to get legal assistance.

<http://www.legalaid.vic.gov.au/about-us/news/new-online-tool-to-help-victorians-access-legal-help>

## LEGISLATION

### Victoria

#### Bills

#### Bills Introduced and Second Read in the first House week ending 24 February 2017

Jury Directions and Other Acts Amendment Bill

#### 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

#### Proclamations

#### No. 58 Estate Agents Amendment (Underquoting) Act 2016

Assent: 2/11/2016 SG (No. 332) 2/11/2016 p. 1  
Commencement: Ss 1-13 on 01/05/2017: SG (No. 35) 21/2/2107 p. 1  
Not yet in operation: Ss 1-13: on 01/05/2017: SG (No. 35) 21/2/2107 p. 1

#### Acts Assented to

#### No. 3: Transport Integration Amendment (Head, Transport for Victoria and Other Governance Reforms) Act 2017

Assent: 14/02/2017 SG (No. 28) 14/2/2017 p. 1  
Commencement: Ss 1, 2 on 15/02/2017: s. 2(1)  
Not yet in operation: Ss 3-52, Sch. 1

## 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

### PANEL RELATIONSHIP CONTACTS

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



**Cameron Roberts**

Partner  
+61 3 9641 8696  
+61 438 510 885  
croberts@tglaw.com.au



**Loretta Reynolds**

Partner, Markets  
+61 3 8080 3705  
+61 403 069 819  
lreynolds@tglaw.com.au

## 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:

- Calling 03 8080 3604; or
- 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.

### SYDNEY

Level 25  
1 O'Connell Street  
Sydney NSW 2000  
+61 2 8248 5800

### MELBOURNE

Level 39  
Rialto South Tower  
525 Collins Street  
Melbourne VIC 3000  
+61 3 8080 3500

### BRISBANE

Level 16  
Waterfront Place,  
1 Eagle Street  
Brisbane QLD 4000  
+61 7 3338 7500

### ADELAIDE

Level 7  
19 Gouger Street  
Adelaide SA 5000  
+61 8 8236 1300