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ISSUE 11



## PUBLIC SECTOR NEWSLETTER - VICTORIA

It was recently announced Victoria's crime rate rose 8% in the past year so it is not surprising crime has dominated the news, with developments in relation to violence at public events, community correction order laws and youth justice.

Meanwhile, it has been a busy period for the Supreme Court of Victoria's Judicial Review and Appeals List with the review of decisions by the Greyhound Racing Appeals and Disciplinary Board, the County Court of Victoria, the Council Conduct Panel and the Municipal Electoral Tribunal.

There was also an interesting interim report released in relation to the confiscation of the mobile telephone records of politicians and public servants.

### MEDIA

#### New Laws to Stamp Out Violence At Public Events in Victoria

The Government today introduced new public order laws and harsher penalties to stamp out violence at protests or public events. The common law offences of rout, riot and affray will be replaced by statutory offences of affray and violent disorder in the Crimes Act.

<http://www.premier.vic.gov.au/new-laws-to-stamp-out-violence-at-public-events/>

#### Ombudsman Report into Mount Buller and Mount Stirling Management Board

<http://www.premier.vic.gov.au/ombudsman-report-into-mount-buller-and-mount-sterling-management-board/>

#### Community Correction Order Laws in Force in Victoria

New laws preventing courts from using community correction orders (CCOs) as a sentencing option for the most serious crimes, such as rape and murder, come into force today.

<http://www.premier.vic.gov.au/community-correction-order-laws-in-force/>

#### Victorian response to youth justice incidents headed in wrong direction: HRLC submission

The Victorian Government must address the underlying causes of damaging incidents in youth justice centres including staffing and lockdowns, the Human Rights Law Centre has said in a submission to a Victorian Parliamentary inquiry.

<https://www.hrlc.org.au/news/2017/3/17/victorian-response-to-youth-justice-incidents-headed-in-wrong-direction-hrlc-submission>

#### Victoria's crime rate rises 8pc in a year

The number of criminal offences recorded in Victoria went up by more than 50,000 last year — an 8 per cent rise in the per-capita crime rate — with significant increases in robberies, theft and dangerous acts endangering people.

<http://www.abc.net.au/news/2017-03-16/crime-rate-jumps-8-per-cent-in-victoria/8358924>

### Victoria calls on Commonwealth to reverse savage cuts

The Government is calling on the Commonwealth Government to reverse its cruel cuts to Victorian community legal services. Under the Commonwealth's cuts, some of the centres will lose more than 50 per cent of their federal funding from 1 July 2017.

<http://www.premier.vic.gov.au/victoria-calls-on-commonwealth-to-reverse-savage-cuts/>

### CASES

[Dawson v Greyhound Racing Victoria \[2017\] VSC 123](#)

ADMINISTRATIVE LAW – Judicial review of a decision by VCAT upon review of decisions made by the Greyhound Racing Appeals and Disciplinary Board – Whether or not the Tribunal amended the particulars of a charge before it for review – Whether or not the Tribunal acted beyond power by amending the particulars of a charge – Leave to appeal granted – appeal allowed

[Fraser v County Court of Victoria & Anor \[2017\] VSC 83](#)

JUDICIAL REVIEW AND APPEALS – Application for a review of a decision of a Judge of the County Court of Victoria – Law prohibiting the display of obscene figures in public places – Whether provision inconsistent with the implied freedom of political communication – Meaning of 'obscene' – Summary Offences Act 1966 s 17(1)(b) – Application dismissed

[Kok v Lomax & Anor \[2017\] VSC 82](#)

JUDICIAL REVIEW AND APPEALS – Application for review of a decision of a Judge of the County Court of Victoria – Plaintiff found guilty of resisting a member of the police force pursuant to s 52(1) of the Summary Offences Act 1966 (Vic) – Whether judge erred by failing to consider self-defence – Application for review dismissed

[McLeod-Dryden v Supreme Court of Victoria \[2017\] VSCA 60](#)

JUDICIAL REVIEW – Review of refusal of coercive powers order – Organised crime offence – Systemic and continuing criminal activity – Meaning of – Whether systemic and continuing criminal activity must be extant at time when application for coercive

powers order is made – Major Crime (Investigative Powers) Act 2004 ss 3AA(2)(b), 5, 8.

PRACTICE AND PROCEDURE – Application for judicial review of refusal of coercive powers order by judge of Supreme Court – Whether Supreme Court proper defendant – Supreme Court (General Civil Procedure) Rules 2015 r 56.01

[Chapman v Greater Bendigo CC \(Review and Regulation\) \[2017\] VCAT 417](#)

Appeal from Councillor Conduct Panel – misconduct of Councillor – section 81 Local Government Act 1989

The decision of the Councillor Conduct Panel dated the 9 July 2015 is set aside. In its place I do order:

I find Elise Chapman guilty of misconduct under section 81K of the Local Government Act 1989

[Fraser v Sperling \[2017\] VSCA 53](#)

AGENCY – Undisclosed principal – Contract – Building contract executed by company controlled by applicants' son and respondents – Whether applicants party to building contract – Applicants bound as undisclosed principals.

JUDICIAL REVIEW – Tribunal made findings in alternative as to causation – Whether findings vitiated by error – Tribunal erred in identifying obligations of respondents under building contract – Error in identifying obligations necessarily affected causation analysis – Appeal allowed – Proceeding remitted to Tribunal.

JUDICIAL REVIEW – Nature of appeal under Victorian Civil and Administrative Tribunal Act 1998 s 148 – Identification of questions of law – Notice of appeal not to be construed strictly – *Cosmopolitan Hotel (Vic) Pty Ltd v Crown Melbourne Ltd* (2014) 45 VR 771, 783 [48], 805 [165], applied.

[Opal Storm Pty Ltd and Ors v AFP \[2017\] VCC 210](#)

CONFISCATIONS; Ex parte orders; constitutional validity of ss 26(4); whether power to declare another judge's order invalid; whether residual implied power to order rehearing of ex parte application for restraining order despite s 42.

[Victorian Electoral Commission v Municipal Electoral Tribunal \(No 2\) \(Review and Regulation\) \[2017\] VCAT 375](#)

Election of Melbourne City Council –

Unqualified candidate elected – Recount of ballot papers – Councillor elected at election not elected at recount – Declaration of results by Tribunal – Local Government Act 1989 (Vic) ss 45, 46, 48(2), sch 2 cl 8, 9, 9A, sch 3 part 4A, sch 3A – Electoral Act 2002 (Vic) ss 69A(1), (4), (7), 69B(1), (4) – Re Wood [1988] HCA 22; (1988) 167 CLR 145; Re Culleton (No 2) [2017] HCA 4 applied

## PRACTICE AND PROCEDURE

### Forensic Audit of Mobile Telephone Records

Commissioner for Privacy and Data Protection (Vic): 13 March 2017

On 12 January 2017, the Privacy Commissioner issued an interim report regarding a forensic audit of the mobile telephones of certain Victorian politicians and public servants being undertaken at the request or direction of the Premier of Victoria. The audit was in response to the

apparent leak of information regarding an increase in police numbers to the radio journalist, Mr Neil Mitchell.

[Forensic Audit of Mobile Telephone Records - Final Report - March 2017](#)

## LEGISLATION

### Victoria

#### Proclamations of Commencement

**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

#### Acts Assented to

#### No. 6: Crimes Legislation Further Amendment Act 2017

Assent: 15/03/2017 SG (No. 64) 15/3/2017 p. 1  
Commencement: Not yet in operation: Ss 1-18

## KEY CONTACTS

### PANEL RELATIONSHIP CONTACTS

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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:

- Calling 03 8080 3604; or
- 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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