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ISSUE 16



PUBLIC SECTOR NEWSLETTER - VICTORIA

Terrorism was front and centre this fortnight with the judicial and executive arms of government both commenting in relation to the sentencing of, and new laws being passed in relation to same.

The past fortnight also saw the announcement of a new approach to help keep victims of family violence safe, new laws announced to simplify legal process and a new appointment to the County Court.

Meanwhile, the judicial commission is about to commence and IBAC has announced hearings into the vocational education and training, and transport sectors.

Finally, the past fortnight saw the Supreme Court consider the right of self-represented litigants to use the bar table and the retrospective operation of the amendments to the thresholds for general damages prescribed by the Wrongs Act. The retrospective operation has previously been the subject of a case note we prepared and we would be happy to let readers have a copy of same on request.

MEDIA

'Worrying gap' between sentencing of terrorism between Victoria, NSW

Victoria's Court of Appeal says there seems to be an "extremely worrying" difference between Victoria and New South Wales in sentencing for terrorism offences, with longer terms north of the border where there is less emphasis on youth and

rehabilitation prospects (09 June 2017).

['Worrying gap' between sentencing of terrorism between Victoria, NSW](#)

Political attacks on the courts a very worrying trend

The Law Council, speaking on behalf of the Australian legal profession, is calling for an end to political attacks on the judiciary, especially in cases where they might be perceived to interfere with matters currently before the courts (13 June 2017).

<https://www.lawcouncil.asn.au/media/media-releases/political-attacks-on-the-courts-a-very-worrying-trend>

Ministers called to court to defend comments critical of Victorian judiciary

Three Government ministers are required to appear in court on Friday over their comments attacking Victoria's judiciary for being weak on sentencing for terrorism offences, according to a letter seen by the ABC which was sent to Attorney-General George Brandis (14 June 2017).

[Ministers called to court to defend comments critical of Victorian judiciary](#)

States and territories agree to crack down on parole laws after Brighton siege

Criminals who support or have links to terrorism may find it harder to get bail or parole, after state and territory governments commit to tougher laws (09 June 2017).

[State governments agree to parole law crackdown after Brighton siege](#)

Curfews, GPS tracking considered for potential terrorists in Victoria

Victorian Premier Daniel Andrews says he is willing to curb the rights of a few individuals to protect the state from the threat of terrorism as he announces a report into how anti-terrorism laws should be strengthened in the state (18 June 2017).

[Curfews, GPS tracking considered for potential terrorists in Victoria](#)

New approach to help keep children and families safe from family violence

A new approach that combines specialist legal assistance and social support is now available for families affected by family violence who are involved in family law proceedings. Launched on Tuesday 6 June the new [Family Advocacy and Support Services](#) place lawyers and specialist family violence support workers in both of the state's daily family law courts, Melbourne and Dandenong (06 June 2017).

<http://www.legalaid.vic.gov.au/about-us/news/new-approach-to-help-keep-children-and-families-safe-from-family-violence>

New Laws To Simplify Legal Processes For Victorians

The Government is making it easier for Victorians to make oaths, affirmations and affidavits. The Oaths and Affirmations Bill 2017 introduced today will consolidate, modernise and streamline legal processes to improve accessibility and equality before the law (06 June 2017).

[New Laws To Simplify Legal Processes For Victorians](#)

Senior Crown Prosecutor Appointed To County Court

Attorney-General Martin Pakula today announced the appointment of Senior Crown Prosecutor Douglas Trapnell QC as a new judge of the County Court.

[Senior Crown Prosecutor Appointed To County Court](#)

CASES

[Goldberg v Stocker & County Court of Victoria \[2017\] VSCA 126](#)

JUDICIAL REVIEW — Application for leave to appeal from decision of Trial Division judge on judicial review of County Court decision dismissing appeal from Magistrates' Court —

Traffic offences — Self-represented litigant not permitted to use the Bar table — Procedural fairness — Whether judge not permitting self-represented litigant to use the Bar table amounted to denial of applicant's right or a denial of procedural fairness or gave rise to an apprehension of bias — Inherent right of a judge to regulate the proceedings of his or her court — Application for leave to appeal refused. PRACTICE & PROCEDURE — Application for recusal — Basis unclear — Actual or apprehended bias — Whether applicant entitled to have matter dealt with by judges who had not previously found against him — Manner in which proceedings conducted — No basis for application — Application refused.

[Williams v Coles Supermarkets Aust Pty Ltd \[2017\] VSC 318](#)

JUDICIAL REVIEW — Medical Panel — Threshold for non-economic claim — Amendment to threshold — Retrospective effect — Panel applied wrong threshold — Opinion quashed — Remitted for redetermination — Wrongs Act 1958 Part VBA; Wrongs Amendment Act 2015 s 11. COSTS — Defendant adopting a Hardiman approach during proceeding — Cost consequences.

[Minesco Pty Ltd v Anderson Sunvast Hong Kong Ltd \[2017\] VSC 299](#)

ADMINISTRATIVE LAW — Judicial review — Delay in commencing proceeding — Extension of time — Supreme Court (General Civil Procedure) Rules 2015 (Vic) — O 56 — r 56.02(3).

ADMINISTRATIVE LAW — Building and Construction Industry Security of Payment Act 2002 (Vic) — Natural justice — Whether lack of appearance of procedural fairness in adjudication process amounts to breach of natural justice.

BUILDING AND CONSTRUCTION — Claim for relief in the nature of certiorari quashing an adjudication determination — Whether adjudicator denied respondent natural justice — The Hickory principle (Hickory Developments Pty Ltd v Schiavello (Vic) Pty Ltd & Anor [2009] VSC 156; (2009) 26 VR 112, 143 [142] considered — Building and Construction Industry Security of Payment Act 2002 (Vic) s 21.

[Melbourne Steel Erectors v M&I Samaras \[2017\] VSC 308](#)

ADMINISTRATIVE LAW — Judicial Review — Determination of an Adjudicator appointed

under the Building and Construction Industry Security of Payment Act 2002 (Vic) – Withdrawal of payment claim – Duplication of Final Payment Claim in respect of the same reference date – Whether error of law amounting to jurisdictional error – Certiorari sought – Building and Construction Industry Security of Payment Act 2002 (Vic), ss 14(6) and 14(8).

LEGISLATION

Victoria

Acts Assented to:

[Family Violence Protection Amendment \(Information Sharing\) Act 2017](#)

Act Number: 23/2017; Assent: 14/06/2017 SG (No. 194) 14/6/2017 p. 1
Commencement: NYP
Not yet in operation: Ss 1 -45

Bills Introduced and Second Read in the first House – 07 June 2017

[Oaths and Affirmations Bill 2017](#)

Statutory Rules made:

No. 36: County Court (Chapter I Recovery of Pro Bono Costs Amendment) Rules 2017
Commencement: 06/06/2017: rule 3 Not yet in operation: Rules 1 -4: on 06/06/2017: rule 3
Sunset Date: 26/05/2027

No. 38: Judicial Commission of Victoria Regulations 2017

Date of Making: 6/06/2017
Commencement: 01/07/2017: reg. 3 Not yet in operation: Regs 1-20: on 01/07/2017: reg. 3
Sunset Date: 06/06/2027

No. 39: Crimes (Child Abuse Material) Regulations 2017

Date of Making: 6/06/2017
Commencement: 01/07/2017: reg. 3 Not yet in operation: Regs 1-7: on 01/07/2017: reg. 3
Sunset Date: 06/06/2027

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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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