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PUBLIC SECTOR NEWSLETTER - VICTORIA

In another busy fortnight, and in an Australian first, the Wrongs Amendment (Organisational Child Abuse) Act 2017 will establish certain religious and government organisations owe a duty of care to protect children in their care from sexual abuse.

The Government's overhaul of the bail system has also passed parliament, the Government has established a Parliamentary Budget Office and the Government has announced a review of the laws available to prevent, investigate, monitor and respond to terrorism.

Meanwhile, three Federal Ministers avoided contempt charges over comments made in relation to the Supreme Court's sentencing of those convicted of terrorism offences.

MEDIA

New Laws In Force To Protect Children From Abuse

In an Australian first, the Wrongs Amendment (Organisational Child Abuse) Act 2017 ensures that Victorian religious institutions, childcare facilities, government bodies and community organisations have a clear 'duty of care' to protect children under their watch (01 July 2017).

[New Laws In Force To Protect Children From Abuse](#)

Committals an essential feature of a fair criminal justice system

Committal hearings are integral to ensuring fairness in criminal proceedings, the LIV has argued in a submission on proposed reforms

to criminal procedure – and any changes to committal procedure should be explored only to the extent that they do not undermine the accused's right to a fair trial. (28 June 2017).

<https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/June-2017/Committals-an-essential-feature-of-a-fair-criminal>

Major Reforms To Overhaul Bail System Pass Parliament

The Government's legislation to toughen Victoria's bail system and give a higher priority to community safety passed Parliament this week (23 June 2017).

[Major Reforms To Overhaul Bail System Pass Parliament](#)

Ministers avoid charges after apologising for slamming courts

Three ministers avoid charges after apologising for comments about "weak" terrorism sentencing in Victoria, as the state's appeals court increases the jail terms given to two would-be terrorists (23 June 2017).

[Ministers avoid charges after apologising for slamming courts](#)

Government To Establish Parliamentary Budget Office

The Government has established an independent, credible and permanent Parliamentary Budget Office (PBO) (22 June 2017).

[Labor To Establish Parliamentary Budget Office](#)

Protecting Victoria From Terror

Premier Daniel Andrews today announced that a new expert panel will carry out a root-and-branch review of the laws currently available to prevent, investigate, monitor and respond to acts of terror (18 June 2017).

[Protecting Victoria From Terror](#)

CASES

[Swebbs v Magistrates' Court of Victoria \(No 2\) \[2017\] VSC 339](#)

JUDICIAL REVIEW — Costs — Orders sought in joint memorandum made by Court — Decision of Magistrate quashed — Plaintiff's application for costs against Magistrates' Court of Victoria — Reliance on grounds additional to those on which the consent orders were based — Application refused.

[Colonial Range Pty Ltd v Akritidis \[2017\] VSC 337](#)

NATURAL JUSTICE — Rule against bias — Reasonable apprehension of bias — Private building surveyor appointed under Building Act — Application by appointor for demolition permit — Notification process — Disagreement by adjoining owner about appropriate protection work — Statutory procedure for determination of appropriate work by surveyor — Surveyor's 'advice' to appointor about permit process — Whether reasonable grounds for apprehension of bias — Legal and statutory and factual context of decision making.

DISCOVERY — Pre action discovery from prospective defendant — Beneficence of rule — Condition to be satisfied that applicant 'has reasonable cause to believe' it may have the right to obtain relief in the Court' — 'May have' — Objective test on the evidence — Inadequacy of mere assertion or suspicion or conjecture — Apprehension that private building surveyor was not impartial in performing statutory functions — Whether apprehension of bias is reasonably based — Discovery sought to reveal communications with permit applicant — Application refused.

[Colonial Range v CES-Queen \(BAB4 - Protection Works\) \[2017\] VSC 317](#)

JUDICIAL REVIEW — Appeal from the Building Appeals Board — Certiorari sought to quash Building Appeals Board determinations upholding a Building Surveyor's determinations under s 87 of the Building Act 1993 in relation to protection works proposals — Jurisdictional error —

Remitter sought under s 149(1) of Building Act 1993 — Protection works notices under s 84 of the Building Act 1993, invalidated by reason of an earlier notice under s 84 being in train — Error as a consequence of a misconception by the Building Surveyor of his statutory function — Building Regulations 2006 — Building Regulation 607 — Failure by the Building Appeals Board to seriously consider submissions — Alternatively failure to give adequate reasons for rejection of submissions.

[Colonial Range v CES-Queen \(Gantry\) \[2017\] VSC 256](#)

JUDICIAL REVIEW — Failure to consider a relevant matter in making an administrative decision — Whether council failed to have regard to significant evidence relevant to its statutory function to make an administrative decision — Failure to give adequate reasons for an administrative decision — Whether council met the requisite standard of written reasons.

STATUTORY DUTIES OF LOCAL GOVERNMENT BODIES — Building work precautions — Protection of the public — Respective roles of building surveyor and council under Building Regulations 2006 including Building Regulation 604 — Whether councils must have regard to public safety under Building Regulations 2006, Building Regulation 604(4) — Whether councils must have regard to the objects and purposes of Local Government Act 1989 s 3C — Interaction of Building Act 1993 and Local Government Act 1989.

JUDICIAL REVIEW — Order in the nature of certiorari quashing a tribunal's decision — Whether the tribunal must be differently constituted after its initial decision is quashed — Practicality and expense of reconstituting tribunal — Perception of a fair hearing.

[Seven Network \(Operations\) Limited v Victoria Police \(Review and Regulation\) \[2017\] VCAT 878](#)

Freedom of Information Act 1982 (Vic), sections 25 and 33(1) — application for release of footage taken outside police station — whether release of footage would unreasonably disclose information relating to the personal affairs of people in footage — whether practicable to delete exempt material from footage.

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

Statutory Rules made:

No. 38: Judicial Commission of Victoria Regulations 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

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

No. 54: Subordinate Legislation (Disability Regulations 2007) Extension Regulations 2017

Date of Making: 20/06/2017
Commencement: 20/06/2017 Not yet in operation: N/A
Sunset Date: 26/06/2018: reg. 4

No. 55: Witness Protection Regulations 2017

Date of Making: 20/06/2017
Commencement: 01/07/2017: reg. 3 Not yet in operation:
Regs 1-14: on 01/07/2017: reg. 3 Sunset Date: 20/06/2027

No. 59 Working with Children Amendment (Reportable Conduct) Regulations 2017

Date of Making: 27/06/2017
Commencement: 01/07/2017: reg. 3 Not yet in operation:
Regs 1-7: on 01/07/2017: reg. 3 Sunset Date: 27/06/2027

No. 60 Corrections Amendment Regulations 2017

Date of Making: 27/06/2017
Commencement: Regs 1-5, 8, 9, 11 on 28/06/2017: reg. 3(1)
Regs 6, 7, 10 on 01/08/2017: reg. 3(2)
Not yet in operation: Regs 6, 7, 10: on 01/08/2017: reg. 3(2)
Sunset Date: 27/06/2027

Proclamations and Acts Assented to:

No. 26: Bail Amendment (Stage One) Act 2017

Assent: 27/06/2017 SG (No. 219) 27/6/2017 p. 1 Commencement: NYP
Not yet in operation: Ss 1-29 Bail Amendment (Stage One) Act 2017

No. 25: Sex Offenders Registration Amendment (Miscellaneous) Act 2017

Assent: 20/06/2017 SG (No. 207) 20/6/2017 p. 1 Commencement: NYP Not yet in operation:
Ss 1-59

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

Commencement: Ss 4-16, 18 on 01/07/2017: SG (No. 216) 27/6/2017 p. 1
Ss 1-3, 17 on 01/03/2017: s. 2(1) Not yet in operation: Ss 4-16, 18: on 01/07/2017: SG (No. 216) 27/6/2017 p. 1

No. 57 Corrections Legislation Amendment Act 2016

Commencement: Ss 1-7, 9-15, 17 on 03/11/2016: s. 2(1)
S. 16 on 28/06/2017: SG (No. 216) 27/6/2017 p. 1 Not yet in operation:
S. 8

Bills Introduced and Second Read in the first House – week ending 23 June 2017

Crimes Amendment (Ramming of Police Vehicles) Bill - confirms Parliament's intention that a sentence of not less than 2 years should be imposed for an offence covered by section 10AE.

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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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