

13 SEPTEMBER 2017

ISSUE 21



## PUBLIC SECTOR NEWSLETTER - VICTORIA

The past fortnight saw the passing of new laws in relation to labour hire employees and the appointment of Sven Bluemmel as Victoria's first Information Commissioner.

The past fortnight also saw an interesting VCAT decision as to whether it has jurisdiction to decide if an adequate search has been made for documents in response to a request made pursuant to the provisions of the Freedom of Information Act 1982 (Vic).

We hope you enjoy this edition of our Victorian Public Sector Newsletter.

### MEDIA

#### Tough New Laws To Crack Down On Labour Hire Exploitation

The Government is cracking down on the abuse and exploitation of Victorian workers with a suite of new reforms to clean up the labour hire industry, announcing the details of a new scheme to hold all labour hire firms to tough new licencing standards.

<http://www.premier.vic.gov.au/tough-new-laws-to-crack-down-on-labour-hire-exploitation/>

#### Improving Transparency and Access to Information

Special Minister of State Gavin Jennings announced the appointment of Sven Bluemmel as Victoria's first Information Commissioner, with the new Office open for business from Friday 1 September.

<http://www.premier.vic.gov.au/improving-transparency-and-access-to-information/>

#### Invisible DNA to Crack Down On Crime in Geelong

A six-month synthetic DNA trial is about to get underway in Geelong as part of a crime prevention plan by the Government to reduce residential burglaries. A key finding from successful trials in the UK and New Zealand is that the DNA technology is a deterrent to thieves.

<http://www.premier.vic.gov.au/invisible-dna-to-crack-down-on-crime-in-geelong/>

#### Office of the Victorian Information Commissioner

Victorian's will benefit from improved access to government information with Victoria's first ever Office of the Victorian Information Commissioner soon to be up and running.

<http://www.vic.gov.au/news/office-of-the-victorian-information-commissioner-a.html>

### CASES

#### [Julian Knight and Attorney-General's Department \(Freedom of information\) \[2017\] AICmr 79](#)

Freedom of Information - Whether disclosure of personal information is unreasonable - Whether contrary to the public interest to release conditionally exempt documents - (CTH) Freedom of Information Act 1982 11A(5) and 47F

#### [White v Ropata & Anor \[2017\] VSC 518](#)

JUDICIAL REVIEW - Magistrate's Court order made by judicial registrar - some grounds for judicial review summarily dismissed - Trial on remaining grounds - Allegations of fraud not made out - No error in Judicial Registrar not advertng in his reasons to a matter not put by the plaintiff to the defendant in cross examination - Error of law on the face of the record by Judicial Registrar in making a finding in his reasons for which there was no evidence.

JUDICIAL REVIEW – Consideration of discretionary refusal of judicial review – Whether a more favourable outcome on rehearing reasonably possible – Failure to utilise other mechanisms for review and appeal – Magistrates’ Court Notice of Arbitration said arbitration would be conducted by a magistrate – Notice of Order Made ambiguous as to whether the arbitration was conducted by a magistrate or a judicial registrar – Plaintiff did not know that the arbitration had been conducted by a judicial registrar until after this proceeding commenced – Failure to seek review of the judicial registrar’s order by a magistrate not a reason to refuse judicial review – Plaintiff unrepresented and no evidence of any prejudice to the defendants by reason of plaintiff pursuing judicial review rather than appeal on a question of law – Facts in *Kuek v Victoria Legal Aid and anor 3 VR 289* distinguished – Approach in *Hoe v Manningham City Council [2013] VSC 195* applied – Judicial review granted – Magistrates’ Court Act 1989 (Vic) s 16K – Magistrates’ Court (Judicial Registrars) Rules 2015 (Vic), r 16. [2017] VSC 518

[Falaras v Gouletsas \[2017\] VSC 495](#)

ADMINISTRATIVE LAW - Administrative decisions - Victorian Civil and Administrative Tribunal ('VCAT') - Jurisdiction of the VCAT under the Domestic Building Contracts Act 1995 - Leave to appeal - Extension of time - Delay - Unrepresented litigant in VCAT hearing - Failure to pay amounts in consent order - Misunderstanding whether sole director and registered building practitioner personally liable - Domestic Building Contracts Act 1995 s 55(1)(a) - Victorian Civil and Administrative Tribunal Act 1998 ss 93, 148(1) - application dismissed

[Fenn & Anor v Australian Broadcasting Corporation \[2017\] VSC 486](#)

DEFAMATION - Pleadings - Application to strike our statement of claim - Whether imputation of hypocrisy capable of arising - Whether elements of hypocrisy sufficiently temporally connected - *McMillan v the Federal Capital Press of Australia Pty Ltd [2016] ACTSC 286* - Whether pleading impermissibly rolls up allegations - Whether pleading is impermissibly vague - *Trkulja v Google Inc Llc [2010] VSC 226* - Whether pleading is impermissibly ambiguous - Supreme Court (General Civil Procedure) Rules 2015 r 23.02(c) - Civil Procedure Act 2010 s 48

[Contract Control Services v DET \[2017\] VSC 486](#)

CONTRACTS – Building Contract – Whether incorrect exclusion of non-claimable second class variations – Whether the Construction Contract contained a method for resolving disputes within the meaning of s 10A(3)(d) (ii) of the Building and Construction Industry Security of Payment Act 2002 (Vic) – *SSC Plenty Road v Construction Engineering [2016] VSCA 119* – *SSC Plenty Road v Construction Engineering [2015] VSC 631* – *Branlin Pty Ltd v Totaro [2014] VSC 492*.

ADMINISTRATIVE LAW – Judicial review – Decision of adjudicator appointed under the Building and Construction Industry Security of Payment Act 2002 (Vic) – Whether certiorari should be granted to quash the decision.

[Advisory Services Pty Ltd v Augustin & Anor \[2017\] VCC 1195](#)

STATUTORY INTERPRETATION - Real estate agent appointed to sell property under an exclusive sales authority - agent sued clients for commission - whether exclusive sales authority omitted statement required by s49A(4)(c) of the Estate Agents Act 1980 (Vic) - whether strict or substantial compliance required

[Aurumstone Pty Ltd v Yarra Bank Developments Pty Ltd \[2017\] VSC 503](#)

PROPERTY LAW – Application under s 49(1) Property Law Act 1958 – Meaning of condition enuring for the benefit of the purchaser under Sale of Land Act 1962 s 27(2) – Whether rescission notice is ineffective?

STATUTORY INTERPRETATION – Applicable principles – Beneficial legislation for protection of purchasers of land.

CONTRACT – Principles of interpretation of commercial contracts – Categories of contractual terms – Implication of terms

**[Joseph v Worthington & Anor \[2017\] VSC 501](#)**

JUDICIAL REVIEW – CRIMINAL LAW – Application for order in the nature of certiorari quashing orders made by the County Court of Victoria finding the plaintiff guilty of contravening the Long Service Leave Act 1992, sub-s 72(2) – Whether error on the face of the record or jurisdictional error – *Craig v South Australia* [1995] HCA 58; (1995) 184 CLR 163; *Gurappaji v Tonkin* [2015] 45 VR 324.

INDUSTRIAL LAW – Long Service Leave Act 1992 – Entitlement to long service leave after 10 years continuous employment with one employer – Failure to pay long service leave entitlements on the day the employment ended – Limitation period for prosecution for contravention one year – Prosecution commenced more than one year after the day the employment ended – Whether continuing offence – Whether jurisdiction in the Industrial Division of the Magistrates' Court of Victoria under the Long Service Leave Act 1992 – *R v Industrial Appeals Court; Ex part Barelli's Bakeries Pty Ltd* [1965] VicRp 79; [1965] VR 615; *R v Industrial Appeals Court; Ex parte Circle Realty Pty Ltd* [1980] VicRp 44; [1980] VR 459.

**[O'Brien v Jennings \[2017\] VCAT 1395](#)**

Freedom of Information Act 2982, whether the Tribunal has jurisdiction to consider whether an adequate search for documents has been carried out. The Tribunal finds that it does not have jurisdiction to consider whether the respondent has undertaken an adequate search for documents.

**LEGISLATION**

Victoria

Acts Assented to

**[No. 37: Jury Directions and Other Acts Amendment Act 2017](#)**

Assent: 29/08/2017 SG (No. 291) 28/8/2017  
p. 1 Commencement: Ss 21, 23 on 30/08/2017;  
s. 2(1) Not yet in operation: Ss 1-20, 22, 24

**[No. 38: Justice Legislation Amendment \(Court Security, Juries and Other Matters\) Act 2017](#)**

Assent: 29/08/2017 SG (No. 291) 29/8/2017  
p. 1 Commencement: Pt 1 (ss 1, 2), Pts 7, 8 (ss 53-63), Pt 9 Divs 3, 4 (ss 67-69), 6 (ss 72, 73), Pt 10 (ss 74-99) on 30/08/2017: s. 2(1) Not yet in operation:

Pts 2-6 (ss 3-52), Pt 9 Divs 1, 2 (ss 64-66), 5 (ss 70, 71)

**[No. 39: Public Administration Amendment \(Public Sector Communication Standards\) Act 2017](#)**

Assent: 29/08/2017 SG (No. 291) 29/8/2017  
p. 1 Commencement: NYP Not yet in operation: Ss 1-7

Statutory Rules made

**[No. 92: County Court \(Chapter | Email Service Amendment\) Rules 2017](#)**

Date of Making: 29/08/2017  
Commencement: 01/09/2017: rule 3 Not yet in operation: N/A Sunset Date: 29/08/2017

## 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:

- (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.

### 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