



PUBLIC SECTOR NEWSLETTER - VICTORIA

The past fortnight witnessed a flurry of legislative activity with new laws introduced to protect victims of crime and witnesses, to protect Victorians from terrorism, to crack down on youth crime, to legalise voluntary assisted dying and to provide for transparency in political donations.

IBAC was active over the past fortnight releasing its annual report, investigating drug misuse and associated corruption amongst paramedics and charging a drug and alcohol counsellor.

Victoria now has a new Legal Services Commissioner with the appointment of Fiona McLeay.

Meanwhile, there were some interesting Administrative Law decisions on prison administration, although none which captured the headlines to the same extent of Rebel Wilson's defamation award.

Please enjoy our latest edition of the Public Sector Newsletter.

MEDIA

Giving a voice to victims of crime

The Government announced it will introduce new laws to make it easier for victims of crime to share their stories and experiences publicly. The Labor Government will amend the Children, Youth and Families Act 2005 to clarify the current law and change the way that publication restrictions in the Children's Court apply to victims of crime.

<http://www.premier.vic.gov.au/giving-a-voice-to-victims-of-crime/>

Expert panel on terrorism

The Victorian Government will introduce a suite of far reaching new laws to protect Victorians from terror attacks as part of the biggest overhaul of counter-terror laws since they were first introduced.

<http://www.vic.gov.au/news/expert-panel-on-terrorism.html>

Exposing and preventing corruption and police misconduct - IBAC annual report

The achievements of Victoria's independent anti-corruption commission are provided in the 2016/2017 IBAC annual report, tabled before Parliament on the 21st of September 2017.

<http://www.ibac.vic.gov.au/media-releases/article/exposing-and-preventing-corruption-and-police-misconduct-ibac-annual-report>

Laws to crack down on youth crime pass parliament

The Government's legislation to crack down on youth crime has passed Parliament. The *Children and Justice Legislation (Youth Justice Reform) Bill 2017* was introduced in May as part of Victoria's largest ever suite of legislative measures to keep the community safe.

<http://www.premier.vic.gov.au/laws-to-crack-down-on-youth-crime-pass-parliament/>

Historic voluntary assisted dying bill now in parliament

The Government has introduced a Bill into Parliament to legalise voluntary assisted dying in Victoria, with a vote expected before the end of the year. The legislation delivers on all 68 safeguards recommended by the Ministerial Advisory Panel to protect individuals and the community.

<http://www.premier.vic.gov.au/historic-voluntary-assisted-dying-bill-now-in-parliament/>

New Legal Services Commissioner appointed

The Government announced the appointment of Fiona McLeay as Victoria's new Legal Services Commissioner. The appointment is a dual role and Ms McLeay will also serve as CEO of the Victorian Legal Services Board.

<http://www.premier.vic.gov.au/new-legal-services-commissioner-appointed/>

Victoria to have nation's strictest donation laws

The Government will introduce the strictest and most transparent political donation laws in Australia. These new laws will eliminate large political donations and usher in Australia's most transparent donation disclosure law.

<http://www.premier.vic.gov.au/victoria-to-have-nations-strictest-donation-laws/>

Supporting victims and witnesses

Victims of crime and witnesses will find it easier to navigate the criminal justice system thanks to a new Office of Public Prosecutions' website launched by the Victorian Government.

<http://www.vic.gov.au/news/supporting-victims-and-witnesses.html>

IBAC uncovers drug misuse and corrupt conduct by Ambulance Victoria paramedics

An investigation by Victoria's independent anti-corruption commission, IBAC, has exposed drug misuse and associated corrupt conduct by Ambulance Victoria paramedics.

<http://www.ibac.vic.gov.au/media-releases/article/ibac-uncovers-drug-misuse-and-corrupt-conduct-by-ambulance-victoria-paramedics>

Rival groups face off in Melbourne under new anti-mask laws

Hundreds of opposing protestors are kept apart in central Melbourne as police test new powers to prevent violence by masked offenders.

<http://www.abc.net.au/news/2017-09-17/rival-groups-stand-off-in-melbourne-as-anti-mask-laws-tested/8954486>

New laws to crack down on violence at events in force

The Government's new public order laws to crack down on violent behaviour at protests and public events are now in force. *The Crimes Legislation Amendment (Public Order) Act 2017* has commenced and creates two offences of affray and violent disorder, and gives police more power to protect the community.

<http://www.premier.vic.gov.au/new-laws-to-crackdown-on-violence-at-events-in-force/>

Drug and alcohol counsellor charged following IBAC investigation

Victoria's independent anti-corruption commission, IBAC, charged a 69 year old Keilor Lodge man as part of an IBAC investigation into allegations of serious corruption.

<http://www.ibac.vic.gov.au/media-releases/article/drug-and-alcohol-counsellor-charged-following-ibac-investigation>

IN PRACTICE AND COURTS**Protective data security in the Victorian public sector: Parliament of Victoria**

This paper provides an overview of the Victorian Protective Data Security Framework and its role in protecting information held by Victorian government agencies, as well as background of the global and domestic development of public sector information security guidance and standards.

<https://www.parliament.vic.gov.au/publications/research-papers/summary/36-research-papers/13824-protective-data-security-in-the-victorian-public-sector>

CASES**[Radojevic v JDA Design Group Pty Ltd \[2017\] VSC 554](#)**

JUDICIAL REVIEW — Practice and Procedure — Dispute between building owners and architect — Owners suing architect for damages in Magistrates' Court and architect's counterclaim for fees — Owners seeking stay of Magistrates' Court proceeding alleging VCAT had jurisdiction to determine a domestic building dispute — Stay application dismissed — Owners also seeking transfer of proceeding to County Court — Judicial review of Magistrate's decision — Application by architect to dismiss judicial review proceeding - Whether judicial review proceeding an abuse of process or lacked utility — Domestic Building Contracts Act 1995 s 57; Civil Procedure Act 2010 s 7(2), 19, 24, 25, 28.

BUILDING CONTRACTS — Dispute between building owners and architect — Owners' proceeding in Magistrates' Court for damages and architect's counterclaim for fees — Owners' application to stay Magistrates' Court proceeding because VCAT had jurisdiction — Stay application dismissed — Judicial review of Magistrate's decision — Domestic Building Contracts Act 1995 s 57.

PRACTICE AND PROCEDURE — Judicial review proceeding — Summons to dismiss on grounds that proceeding lacked utility or was an abuse of process.

[Tom v Anodin \[2017\] VSC 549](#)

ADMINISTRATIVE LAW - Application for leave to appeal on questions of law - No grounds of appeal with sufficient prospects of success to warrant the granting of leave to appeal - *Victorian Civil and Administrative Tribunal Act 1998* s 148 - *Planning and Environment Act 1987* ss 60(1)(a), 84B(2)(a)

[Minogue v Shuard \[2017\] VSCA 267](#)

ADMINISTRATIVE LAW – Judicial review
– Decision required applicant to cease undertaking a distance education course while in custody – Decision never implemented and reversed prior to trial
– Judge held that question of legality of decision was rendered hypothetical and dismissed proceeding – Application for leave to appeal refused.

PRACTICE AND PROCEDURE – Applicant alleged that respondent and her legal practitioners had engaged in conduct which, if true, would have constituted breaches of over arching obligations under Civil Procedure Act 2010 – Allegations lacked substance.

[Bodycorp Repairers Pty Ltd v Maisano \[2017\] VSCA 252](#)

JUDGMENTS – Principles for setting aside judgment obtained by fraud – *Wentworth v Rogers* [No 5] (1986) 6 NSWLR 534 considered.

PRACTICE AND PROCEDURE – Summary dismissal of application to set aside judgment allegedly obtained by fraud – Whether principles for setting aside judgment for fraud misstated and misapplied – Whether judge failed to properly consider alleged malpractice of legal advisers – Whether matters relied upon were ‘fresh facts’ – Whether the alleged fraud satisfied the principles for setting aside original judgment – Leave to appeal granted but appeal dismissed.

[Jurecek v Director of Transport Safety Victoria \(Human Rights\) \[2017\] VCAT 1488](#)

Application for reinstatement - proceeding brought under the *Privacy and Data Protection Act 2014* (Vic) struck out by consent pending determination of appeal of related proceeding - whether proceeding should be reinstated.

[Wilson v Bauer Media Pty Ltd \[2017\] VSC 521](#)

DEFAMATION – Defences – Qualified privilege
– Extent of questions for jury – Statutory qualified privilege - Issue of reasonableness under s 30(1)(c) left to jury – Common law qualified privilege – Correcting the record in respect of celebrity entertainment news - Whether community of interest – Privilege defeated by jury finding of malice - Defamation Act 2005 (Vic), ss 22, 24, 30.

DEFAMATION – Damages – Statutory cap – Whether applicable where circumstances of publication aggravated the plaintiff’s damage – Interpretation of statutory provision – Whether defendant aggravated the plaintiff’s damage in circumstances of publication - Defamation Act 2005 (Vic), s 35.

DEFAMATION – Damages – Trial by jury
– Eight publications stating plaintiff was a serial liar and had lied about her name, age and other aspects of her personal life and background – Defences of justification, triviality and qualified privilege not made out – Seriousness of imputations – Mass media and internet distribution – Grapevine effect - Whether aggravated damages warranted by conduct in publication and since publication – Mitigating factors - Defamation Act 2005 (Vic), ss 34, 38, 39.

DEFAMATION – Damages – Special loss claimed – Plaintiff a successful Hollywood actress – Whether plaintiff lost opportunity for further film roles – Causation – Circumstantial case – Grapevine effect and special damages considered – Remoteness - Assessment of existence of the chance – Assessment of the value of the lost opportunity – Andrews damages.

[Blacker v Boss Trailers & Ors \[2017\] VSC 538](#)

ADMINISTRATIVE LAW – Judicial review of an opinion of a medical panel – Extension of time – Rule 56.02 Supreme Court (General Civil Procedure) Rules 2015 – Jurisdictional error – Adequacy of reasons – Whether panel failed to have regard to, or explain why it disregarded, nerve conduction study results – Minister for Aboriginal Affairs v Peko-Wallsend [1986] HCA 40; (1986) 162 CLR 24 – *Ryan v The Grange at Wodonga Pty Ltd & Ors* [2015] VSCA 17 – *Wingfoot Australia Partners Pty Ltd v Kocak* [2013] HCA 43; (2013) 252 CLR 480.

[Victorian Building Authority v Tsaganas \[2017\] VSCA 248](#)

ADMINISTRATIVE LAW – Appeal pursuant to s 148 Victorian Civil and Administrative Tribunal Act 1998 – Disciplinary action – Professional misconduct by building practitioner – Appeal from decision of Victorian Civil and Administrative Tribunal (VCAT) on review of Building Practitioners Board – Whether decision to suspend rather than cancel professional registrations consequent on findings that practitioner had failed to carry out professional duties in a manner envisaged by the Act resulting in ‘real and apparent risk of injury or death to persons’ and that practitioner was ‘not a fit and proper person to practise as a building practitioner’ vitiated by errors of law – Whether decision so unreasonable it lay outside range of decisions VCAT was authorised to make under s 179 of the Building Act 1993 – Whether suspension manifestly inadequate to serve overriding purposes and objectives of Building Act 1993 and thereby failed to take into account relevant considerations – Building Act 1993 ss 178, 179 – Appeal dismissed.

[Rich v Howe \[2017\] VSC 483](#)

ADMINISTRATIVE LAW – Judicial review – Prison administration – Application for review of decision to refuse ‘supervised internet access’ for purpose of filing application for special leave to High Court – Whether remedies sought available – Whether any grounds for review in any event – Whether discretion should be exercised to refuse any relief – Whether any unlawful conduct pursuant to the Charter of Human Rights and Responsibilities Act 2006 (Vic) in respect of right to fair hearing/adequate facilities under ss 23 or 24 – Whether case should be dismissed in any event on the basis that application should be determined by the High Court.

LEGISLATION**Victoria****Proclamations****No. 32: Crimes Legislation Amendment (Public Order) Act 2017**

Assent: 15/08/2017 SG (No. 274) 15/8/2017 p. 1 Commencement: Ss 1-13 on 13/09/2017: SG (No. 303) 12/9/2017 p. 1 Not yet in operation: N/A

A person who uses or threatens to use unlawful violence, and whose conduct would cause another person at the scene to be terrified, can be charged with the new statutory offence of affray. The offence carries a maximum penalty of five years imprisonment and that increases to seven years jail if committed by a person wearing a face covering.

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

Assent: 20/06/2017 SG (No. 207) 20/6/2017 p. 1 Commencement: Ss 1 - 3, 49 on 23/09/2017: SG (No. 314) 19/9/2017 p. 1 Not yet in operation: Ss 1 - 3, 49: on 23/09/2017: SG (No. 314) 19/9/2017 p. 1 Ss 4 - 48, 50 - 59

No. 41: Administration and Probate and Other Acts Amendment (Succession and Related Matters) Act 2017

Assent: 19/09/2017 SG (No. 313) 19/9/2017 p. 1 Commencement: NYP Not yet in operation: Ss 1

Acts**[Local Government \(Central Goldfields Shire Council\) Act 2017](#)**

Date of commencement: 26 September 2017
Act Number: 36/2017

[Sex Offenders Registration Amendment \(Miscellaneous\) Act 2017](#)

Date of commencement: 23 September 2017
Act Number: 25/2017

Bills Introduced and Second Read in the First House - week ending 22 September 2017**[Firearms Amendment Bill 2017](#)****[Gambling Regulation Amendment \(Gaming Machine Arrangements\) Bill 2017](#)****[Voluntary Assisted Dying Bill 2017](#)****Bills passed****No. 7: [Children and Justice Legislation Amendment \(Youth Justice Reform\) Bill 2017](#)**

Passed in Parliament 19/09/2017 - Under the Labor Government's reforms, young offenders will face longer detention periods of up to four years, risk having their cases being heard in higher courts, and creates new offences for adults recruiting young people to crime.

Acts Assented to**No. 41: Administration and Probate and Other Acts Amendment (Succession and Related Matters) Act 2017**

Assent: 19/09/2017 SG (No. 313) 19/9/2017 p. 1 Commencement: NYP Not yet in operation: Ss 1 - 31

Statutory Rules made**No. 96: Children's Services Amendment Regulations 2017**

Date of Making: 19/09/2017
Commencement: 01/10/2017: reg. 3 Not yet in operation: Regs 1 - 12 on 01/10/2017: reg. 3 Sunset Date 19/09/2017

Access Victorian legislation [here](#).

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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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