



PUBLIC SECTOR NEWSLETTER - VICTORIA

The past fortnight saw the States agreeing on new anti-terror measures and the Department of Education responding to anti-corruption agency investigations.

However the good news story was a fall in Victoria's crime rate for the first time in six years.

In the courts, there was an interesting decision for us insurance tragics on the VWA's rights of subrogation when an employer denies employment. There was also an interesting decision on the remedies available to quash infringement notices.

We hope you enjoy this edition of our public sector newsletter.

IN THE MEDIA

COAG agree on national facial biometric matching capability

The Council of Australian Governments (COAG) signed off an Intergovernmental Agreement on Identity Matching Services following a unanimous agreement at the special counter terrorism meeting. <https://www.coag.gov.au/meeting-outcomes/special-meeting-council-australian-governments-counter-terrorism-communicue>

Department of Education and Training responds to IBAC investigations

Victoria's independent anti-corruption agency, IBAC, today published a response from the Department of Education and Training (DET) to two major IBAC investigations into corrupt conduct at the Department: Operations Ord and Dunham. <http://www.ibac.vic.gov.au/media-releases/article/department-of-education-and-training-responds-to-ibac-investigations>

State government employees confident they understand corruption, but unsure how to report it

Victorian state government employees say they have a sound understanding of what corruption is, but many are unsure how to report it, and a significant proportion fear personal repercussions if they did report it. <http://www.ibac.vic.gov.au/media-releases/article/state-government-employees-confident-they-understand-corruption-but-unsure-how-to-report-it>

Victorian crime rate falls for first time in six years

Assaults and aggravated burglaries have continued to increase in Victoria, but the overall crime rate has fallen in the past 12 months, new data shows. <http://www.abc.net.au/news/2017-09-28/victorian-crime-rate-falls-statistics-show/8996276>

CASES

[Crowther v Whitehorse City Council \[2017\] VSCA 276](#)

ADMINISTRATIVE LAW - Judicial review - Municipal City Council as enforcement agency for infringements of road safety rules - Issuing of infringement notice to driver and imposition of penalty - Expiation of offence on payment - Council's refusal to withdraw infringement notice - Driver's refusal to pay penalty - Statutory requirement to proceed to Court prosecution - Prosecution instigated - Availability of certiorari to quash decision to issue infringement notice - Availability of prohibition or injunction to prevent prosecution - Infringements Act 2006 (Vic).

[Victorian WorkCover Authority v BSA Ltd \[2017\] VSCA 276](#)

ACCIDENT COMPENSATION – Workplace injuries – Statutory compensation scheme – Claims assessment and management – Claim by worker for compensation – Authority subrogated to employer’s rights – Employer disputed fact of claimant’s employment – Authority rejected claim on other grounds – Claimant instituted proceedings against employer – Whether Authority subrogated to employer’s right to defend proceeding – Whether right of subrogation dependent on proof that claimant was employed – Appeal allowed – Workplace Injury Rehabilitation and Compensation Act 2013 ss 71(4), 493(1).

JUDICIAL REVIEW – Magistrates’ Court proceeding – Claim by worker against employer – Authority defending proceeding pursuant to right of subrogation – Employer intervened to dispute right of subrogation – Interlocutory ruling by magistrate – No right of appeal – Authority sought judicial review – Whether appropriate procedure – Fragmentation – Circumventing legislative policy – Magistrates’ Court Act 1989 s 109, Supreme Court (General Civil Procedure) Rules 2015 O 56.

[Ross v Building Practitioners Board & Anor \[2017\] VSCA 274](#)

JUDICIAL REVIEW – Statutory Interpretation – Transitional provisions – Building Practitioners Board issued notices of inquiry into allegations against registered building practitioner – Hearing not commenced – Act amended to abolish Building Practitioners Board – Transitional provisions empowered Board to complete inquiries which commenced before specified date – Whether inquiry commenced before that date – Inquiry is a process and involves more than single event of hearing – Appeal dismissed – Building Act 1993, Building Legislation (Consumer Protection) Act 2016.

LEGISLATION

Acts

No 36: Local Government (Central Goldfields Shire Council) Act 2017

Date of commencement: 26 September 2017

No. 39: Public Administration Amendment (Public Sector Communication Standards) Act 2017

Commencement: Ss 1-7 on 26/09/2017: SG (No. 325) 26/9/2017 p. 1 Not yet in operation: N/A

No. 43: Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017

Assent: 26/09/2017 SG (No. 324) 26/9/2017 p. 1 Commencement: NYP Not yet in operation: Ss 1-66

No. 45: Justice Legislation Amendment (Protective Services Officers and Other Matters) Act 2017

Assent: 26/09/2017 SG (No. 324) 26/9/2017 p. 1 Commencement: Pt 4 (ss 28-49), s. 60 on 26/09/2017: s. 2(2) Not yet in operation: Ss 1-27, 50-59, 61

Proclamations

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) Pt 6 (ss 44-52) on 11/10/2017: SG (No. 331) 3/10/2017 p. 1 Not yet in operation: Pts 2-5 (ss 3-43), Pt 9 Divs 1, 2 (ss 64-66), 5 (ss 70, 71)

Statutory Rules made

No. 96: Children’s Services Amendment Regulations 2017

Commencement: 01/10/2017: reg. 3 Not yet in operation: Regs 1 - 12: on 01/10/2017: reg. 3 Sunset Date: 19/09/2027

Access Victorian legislation at www.legislation.vic.gov.au

KEY 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:

- (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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