



PUBLIC SECTOR NEWSLETTER - VICTORIA

Over the past fortnight, the Honourable Justice Redlich was appointed to lead IBAC and Dr Matt Collins was elected President of the Victorian Bar Council.

The past fortnight also witnessed the delivery of some really interesting Supreme Court judgments affecting VCAT's jurisdiction, the powers of the Victorian Legal Services Board and the interpretation of the *Freedom of Information Act 1982*. The Supreme Court was also asked to consider apprehended bias and the validity of the Court itself!

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

IN THE MEDIA

Victorian Bar elects new President and Council members

Leading media law barrister Dr Matt Collins QC has been elected President of the Victorian Bar Council. Eight new members have been elected to the 21-member Council, which comprises of twelve women and nine men.

<https://www.vicbar.com.au/news-events/victorian-bar-elects-new-president-and-council-members>

Prominent Victorian Judge to lead corruption agency

Special Minister of the State Gavin Jennings announced that the Honourable Justice Robert Redlich has been appointed as the IBAC Commissioner for a five year term, commencing 1 January 2018.

<https://www.premier.vic.gov.au/prominent-victorian-judge-to-lead-corruption-agency/>

CASES

[Kemp v Medical Board of Australia \[2017\] VSC 691](#)

JUDICIAL REVIEW - Evidence (Miscellaneous Provisions) Act 1958 (Vic), s 28(2) - Whether a referral to the Victorian Civil and Administrative Tribunal under the National Law is a 'civil suit action or proceeding' within the meaning of s 28(2) of the Act - Access to patient's medical records without consent - Statutory

interpretation - Departure from previous decision of a trial judge - Health Practitioner Regulation National Law (Victoria) Act 2009 (Vic) Royal Women's Hospital v Medical Practitioners Board [2005] VSC 225.

[Kuek v Wade \[2017\] VSCA 329](#)

ADMINISTRATIVE LAW - Judicial review - Magistrates' Court proceeding by solicitor to enforce agreement by client to pay \$10,000 in costs - Client self-represented - Magistrate took control of proceeding, redefined client's case without hearing any evidence from her and cross-examined solicitor - During hearing magistrate decided that agreement was unenforceable at common law and that Legal Profession Act 2004 was irrelevant - Self-executing order granting leave to amend within 30 days to plead quantum meruit - Time limit not met - Self-executing order took effect resulting in proceeding being struck out - Judge dismissed application for judicial review in exercise of discretion - Whether judge had discretion to do so - Whether suitable alternative remedy to judicial review available to solicitor.

ADMINISTRATIVE LAW - Judicial review - Whether error of law on face of Magistrates' Court record - Whether magistrate's reasons recorded in transcript form part of record - Administrative Law Act 1978 s 10 - Whether magistrate's conduct denied solicitor procedural fairness, gave rise to apprehended bias and resulted in trial not being according to law - Whether judge erred in not making findings on these grounds of review - Grounds established - Judge erred in dismissing application for judicial review - Appeal allowed.

LEGAL PRACTITIONERS - Proceeding to enforce costs agreement

[Delahunty v Victorian Legal Services Board \[2017\] VSCA 327](#)

STATUTES - Statutory Interpretation- Fidelity Fund paid claim caused by solicitor's alleged default - Board's power of subrogation against solicitor - Whether proof of dishonesty required - Unnecessary to prove dishonest - Payment out of Fidelity Fund triggers right out of subrogation - Legal Services Board v Werden [2011] VSC 74, Law Society of NSW v Bruce (1996) 50 NSWLR 77 - Legal Profession Act 2004.

[Colonial Range Pty Ltd v Victorian Building Authority \(Review and Regulation\) \[2017\] VCAT 1198](#)

Freedom of Information Act 1982 - meaning of phrase "document in the possession of" an agency - section 5(2) Freedom of Information Act 1982 - meaning of "connected with" - Public Records Act 1973 - obligation on officer in charge to keep records.

[Bodycorp Repairers Pty Ltd v Maisano \(Recusal application\) \(No 12\) \[2017\] VSC 676](#)

COURTS AND TRIBUNALS - Procedural fairness - Apprehended bias - Prejudgment - Whether previous findings in earlier similar application generate a reasonable apprehension of bias in subsequent application - Principles considered.

[Sill v City of Wodonga \[2017\] VSC 671](#)

APPEALS - Failure to register dog - fine with no conviction - Appeal on Question of Law - Extension of time required - Merits of Proposed Grounds of Appeal - Whether Supreme Court of Victoria a valid court - Validity of Acts of Parliament - Whether Governor validity appointed - Grounds without merit - Proceeding dismissed - Constitution Act 1975; Domestic Animals Act 1994s 10.

CONSTITUTIONAL LAW - Whether Supreme Court a valid court - Validity of Acts of Parliament - Validity of Appointment of Governor - Constitution Act 1975.

LEGISLATION

Victoria

Acts Assented to

No. 54: Justice Legislation Amendment (Body-worn Cameras and Other Matters Act 2017

Assent: 8/11/2017 SG (No. 376) 8/11/2017 p. 1
Commencement: NYP Not yet in operation: Ss 1-10

No. 57: [Serious Sex Offenders \(Detention and Supervision\) Amendment \(Governance\) Act 2017](#)

Assent: 8/11/2017 SG (No. 376) 8/11/2017 p. 1
Commencement: NYP Not yet in operation: Ss 1-54

Statutory Rules made

No. 113: National Domestic Violence Order Scheme Regulations 2017

Date of Making: 15/11/2017 Commencement:
25/11/2017: reg. 3 Not yet in operation:

Regs 1-8: on 25/11/2017: reg. 3 Sunset Date: 15/11/2027

No. 114: Supreme Court (Fees) Interim Regulations 2017

Date of Making: 15/11/2017 Commencement:
14/12/2017: reg. 3 Not yet in operation:

Regs 1-11: on 14/12/2017: reg. 3 Sunset Date:
01/10/2018: reg. 11

No. 115: County Court (Fees) Interim Regulations 2017

Date of Making: 15/11/2017 Commencement:
14/12/2017: reg. 3 Not yet in operation: Regs 1-7: on
14/12/2017: reg. 3 Sunset Date: 14/12/2018: reg. 7

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 library resource 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.