



PUBLIC SECTOR NEWSLETTER - VICTORIA

It has been another busy fortnight for the legislature, with laws announced or enacted in relation to workplace manslaughter, civil claims made in relation to child abuse and the protection of emergency services workers.

The government has also appointed a new Supreme Court Justice.

Meanwhile, the profession has criticised the government's mandatory sentencing laws.

The past fortnight has also seen the Supreme Court hand down judgments in relation to the adequacy of the reasons given by a number of different administrative bodies including Medical Panels and the Victorian Civil Administrative Tribunal.

We hope you enjoy this fortnight's edition of our Public Sector Newsletter.

IN THE MEDIA

Workplace manslaughter laws to protect Victorians

Employers whose negligence leads to the death of an employee will face up to 20 years in jail under tough new laws to be introduced by a re-elected Government. Under the proposed new law, employers will face fines of almost \$16 million and individuals responsible for negligently causing death will be held to account and face up to 20 years in jail.

<https://www.premier.vic.gov.au/workplace-manslaughter-laws-to-protect-victorians/>

New laws pass Parliament for child abuse victims to sue

The Government has passed new laws quashing a legal loophole preventing child abuse survivors from suing some organisations for their abuse. The *Legal Identity of Defendants (Organisational Child Abuse) Bill 2018* will prevent unincorporated organisations from relying upon a legal technicality - known as the 'Ellis defence' - to avoid civil law suits.

<https://www.premier.vic.gov.au/new-laws-pass-parliament-for-child-abuse-victims-to-sue/>

Victorian Bar opposes mandatory sentencing

The Victorian Bar does not believe that reducing judicial discretion represents a principled response to community concerns about attacks on emergency services workers. The Victorian Bar calls on all sides of politics to respect the independence of the State's hard working judicial officers, who are best placed to resolve the many competing and subtle factors at play in any given case.

<https://www.vicbar.com.au/news-events/victorian-bar-media-release-victorian-bar-opposes-mandatory-sentencing>

Lawyers alarmed as Victoria moves to tighten sentencing laws

Violent criminals will no longer be able to argue they were drunk or affected by drugs to avoid jail time under new Victorian laws, as tighter mandatory sentencing rules prompt lawyers to demand an urgent meeting with the Premier.

<http://www.abc.net.au/news/2018-05-22/law-and-order-overhaul-announced-by-andrews-government/9786034>

New Judge appointed to Supreme Court

The Government has announced the appointment of leading commercial barrister Kevin Lyons QC as judge of the Supreme Court.

<https://www.premier.vic.gov.au/new-judge-appointed-to-supreme-court/>

Protecting our emergency workers: joint statement

The Government has given The Police Association Victoria and the Ambulance Employees Australia Victoria assurances that anyone who attacks and injures an emergency worker will receive a custodial sentence.

<https://www.premier.vic.gov.au/protecting-our-emergency-workers-joint-statement/>

CASES[Karabinis v Bendrups & Ors \[2018\] VSCA 124](#)

ADMINISTRATIVE LAW - Appeal - Judicial review
- Medical panels - Reasons - Adequacy of reasons - Whether reasons disclosed panel's path of reasoning
- No error in judge's conclusion that reasons adequate.
ADMINISTRATIVE LAW - Appeal - Judicial Review - Jurisdictional error - Whether medical panel erred in recording worker's history - Whether medical panel mistook worker's history - Judge's finding that not satisfied that panel made factual error - No error in judge's conclusion that jurisdictional error not made out.
ACCIDENT COMPENSATION - Appeal - Medical panel
- Evidence - Medical panel's notes tendered to prove history given by worker to panel - Conflicting evidence from worker - Judge not accepting worker's evidence - No error in judge's conclusions - Appeal dismissed.

[Southgate Management Pty Ltd v Nitschke \[2018\] VSC 236](#)

CRIMINAL LAW - Regulatory offences - Judicial review
- Offences of handling and selling unsafe food - Alleged failure to provide adequate particulars of charges - Application for relief in the nature of certiorari - Whether magistrate erred in finding that charges gave reasonable information as to the nature of each offence - Food Act 1984 ss 11, 16 - Criminal Procedure Act 2009 sch 1, cls 1-3 - Johnson v Miller [1937] HCA 77; (1937) Kypri [2011] VSCA 257; (2011) 33 VR 157 discussed.

[Elwick 9 v Freeman \[2018\] VSC 234](#)

ADMINISTRATIVE LAW - Application for leave to appeal
- Whether reasons were written or oral - Whether reasons were inadequate - Whether order of the Tribunal failed to make a final determination - Victorian Civil and Administrative Tribunal Act 1998 ss 117, 148 - Owners Corporation Act 2006 ss 1, 4, 162, 165
STATUTORY INTERPRETATION - Inconsistency between planning permit and owners corporation rules - Whether a planning permit confers a right for the purposes of the Owners Corporation Act 2006 s 140 - Whether a planning permit confers a right under an Act - Owners Corporation Act 2006 s 140 - Planning and Environment Act 1987 ss 3, 4, 47-68, 87-91, 114-130

[Cowen v Monash University \(Review and Regulation\) \[2018\] VCAT 694](#)

Freedom of Information Act 1982 (Vic) ss 30, 33 and 50(4) - whether emails between Monash University personnel following complaint relating to email from the applicant to municipal councillors concerning same-sex marriage are exempt from release - public interest override.

LEGISLATION

Victoria

Bills Introduced and Second Read in the first House - 25 May 2018

Crimes Amendment (Unlicensed Drivers) Bill 2018
Local Government Bill

Proclamations[No. 3 Bail Amendment \(Stage Two\) Act 2018](#)

Assent: 27/02/2018 SG (No. 70) 27/2/2018 p.1
Commencement: Ss 1-2, 26-30 on 05/04/2018: SG (no. 136) 27/03/2018 p. 1 Ss 3-25 on 01/07/2018: SG (No. 218) 15/5/2018 p.1

[No. 26 Bail Amendment \(Stage One\) Act 2017](#)

Assent: 27/06/2017 SG (No. 219) 27/6/2017 p. 1
Commencement: Ss 1-10, 12-14(9), 14(11)-22, 24-29 on 21/05/2018: SG (No. 218) 15/5/2018 p. 1 Not yet in operation: Ss 1-10, 12-14(9), 14(11)-22, 24-29: on 21/05/2018: SG (No. 218)

15/5/2018 p. 1 Ss 11, 14(10)

[No. 65 Crimes Legislation Amendment \(Protection of Emergency Workers and Others\) Act 2017](#)

Assent: 19/12/2017 SG (No. 442) 19/12/2017 p. 1
Commencement: Ss 1-20, 24(1), 25 on 05/04/2018: SG (No. 136) 27/3/2018 p. 1 Ss 21, 22 on 21/05/2018: SG (No. 218) 15/5/2018 p. 1 Not yet in operation: Ss 23, 24(2)

Statutory Rules made[No. 52 Bail Amendment Regulations 2018](#)

Date of Making: 15/05/2018 Commencement: Regs 1-19 on 21/05/2018: reg. 3(1) Pt 3 (regs 20-26) on 01/07/2018: reg. 3(2) Not yet in operation: Regs 1-19: on 21/05/2018: reg. 3(1) Pt 3 (regs 20-26): on 01/07/2018: reg. 3(2)

[No. 53 Children, Youth and Families Amendment \(Bail\) Regulations 2018](#)

Date of Making: 15/05/2018 Commencement: Regs 1-5 on 21/05/2018: reg. 3(1) Regs 6, 7 on 01/07/2018: reg. 3(2) Not yet in operation: Regs 1-5: on 21/05/2018: reg. 3(1) Regs 6, 7: on 01/07/2018: reg. 3(2)

[No. 56: Supreme Court \(Chapter V Insolvency and Further Powers of Judicial Registrars Amendment\) Rules 2018](#)

Date of Making: 17/05/2018 Commencement: 01/06/2018: rule 3 Not yet in operation: Rules 1-39: on 01/06/2018: rule 3 Sunset Date: 17/05/2028

[No. 57: Supreme Court \(Miscellaneous Civil Proceedings\) Rules 2018](#)

Date of Making: 17/05/2018 Commencement:
23/07/2018: rule 1.03 Not yet in operation: Rules
1.01-23.07: on 23/07/2018: rule 1.03 Sunset Date:
17/05/2028

[No. 58 Supreme Court \(E-Filing and Other Amendments\) Rules 2018](#)

Date of Making: 17/05/2018 Commencement:
02/07/2018: rule 3 Not yet in operation: Rules 1-41: on
02/07/2018: rule 3 Sunset Date: 17/05/2028

Proclamations

[No. 61 Voluntary Assisted Dying Act 2017](#)

Commencement: Ss 1-3, 5, 92-102 on 01/07/2018:
SG (No. 190) 24/4/2018 p. 1 Not yet in operation: Ss
4, 6-91, 103-143 Ss 1-3, 5, 92-102: on 01/07/2018: SG
(No. 190) 24/4/2018 p. 1

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

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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.