



PUBLIC SECTOR NEWSLETTER - VICTORIA

Whilst commentators have noted increased restrictions on what the public can and cannot know about court cases, the Government has introduced new laws in relation to coroners' court appeals, allocated funding for the redress scheme for survivors of institutional abuse and appointed Rebecca Dabbs to the Equal Opportunity Board this past fortnight.

The past fortnight also saw IBAC identify deficiencies in the way Victoria Police investigates complaints against senior officers of Victoria Police.

The past fortnight also saw the delivery of interesting judgments on the appeal of freedom of information requests and medical panel determinations.

We hope you enjoy this edition of our Public Sector newsletter.

IN THE MEDIA

Open justice or the suppression state?

Victoria has an "Open Courts Act", which was introduced in 2013 to improve transparency of the legal processes. Despite it, research suggests that restrictions on what the public can and can't know about ongoing cases are getting worse.

<https://www.theage.com.au/national/victoria/open-justice-or-the-suppression-state-20180624-p4znd4.html>

'Deficiencies' in the way Victoria Police handles serious complaints against officers: IBAC

Victoria Police's internal investigations team is criticised by the state corruption watchdog over its handling of allegations against its own officers, including claims of drug use and criminal association.

<http://www.abc.net.au/news/2018-06-22/ibac-deficiencies-in-the-way-victoria-police-handles-complaints/9897568>

New laws clarify coroners court appeals

The Government is making it easier for families to have coronial findings reviewed with new laws introduced into Parliament to ensure the Coroners Court has the power to set aside findings in and reopen historical cases.

<https://www.premier.vic.gov.au/new-laws-clarify-coroners-court-appeals/>

Funding Victoria's Participation in National Redress

The Government will allocate \$600 million over the next ten years towards redress, ensuring that thousands of survivors of institutional child sexual abuse in government institutions can access financial payments.

<https://www.premier.vic.gov.au/funding-victorias-participation-in-national-redress/>

Delivering safer court facilities in Hamilton

The Government is providing safer court facilities at the Hamilton Court House with a refurbishment completed ahead of schedule.

<https://www.premier.vic.gov.au/delivering-safer-court-facilities-in-hamilton/>

New appointment to Equal Opportunity Board

The Government has announced the appointment of Rebecca Dabbs to the Board of the Victorian Equal Opportunity and Human Rights Commission.

<https://www.premier.vic.gov.au/new-appointment-to-equal-opportunity-board/>

CASES

High Court allows appeal from VSC concerning stay of proceedings: *Rozenbilt v Vainer* [2018] HCA 23

On 13 June 2018, the High Court of Australia unanimously allowed an appeal from the Supreme Court of Victoria's Court of Appeal (VSCA). The decision overturned a summary dismissal of a defamation proceeding brought by Michael Trkulja (the "Appellant") against Google LLC (the "Respondent"). The Court, with Chief Justice Kiefel, Justices Bell, Keane, Nettle and Gordon residing, held that the proceeding has a real prospect of success, contrary to the judgment of the VSCA

[United Firefighters Union of Australia - Victoria Branch v Metropolitan Fire and Emergency Services Board \(Review and Regulation\) \[2018\] VCAT 631](#)

Freedom of Information Act 1982 – ss 30(1), 33(1), 36(1)(b), 50(4) – whether correspondence between agency and a media consultant are exempt from release – whether public interest requires disclosure of exempt documents

[United Firefighters Union of Australia - Victoria Branch v Country Fire Authority \(Review and Regulation\) p2018\] VCAT 630](#)

Freedom of Information Act 1982 – ss 30(1), 32, 33(1), 50(4) – whether correspondence from agency and to media consultant is exempt from release – whether public interest requires disclosure of exempt documents

[Gilmore v Victoria Police FOI Division \(Review and Regulation\) \[2018\] VCAT 899](#)

Review and Regulation List – Freedom of information – request for access to Professional Standards Command investigation file – whether documents disclose information that relates to an investigation conducted under the Independent Broad-based Anti-corruption Commission Act 2011 – whether Freedom of Information Act 1982 applies to documents – whether VCAT has jurisdiction – Victoria Police Act 2013 ss 167, 170; Independent Broad-based Anti-corruption Commission Act 2011 ss 73, 194.

[Rossi Homes Pty Ltd v Dun and Bradstreet \(Australia\) Pty Ltd \[2018\] VSC 314](#)

PRACTICE AND PROCEDURE – Representation of company in Supreme Court proceedings – Judicial review of VCAT order striking out and dismissing company's claim – Decision of Associate Justice refusing company leave to be represented by a director – Appeal – No error – Supreme Court (General Civil Procedure) Rules 2015 rr 1.17, 2.04.

HUMAN RIGHTS – Legal representation required for company – No human right of company infringed – Australian Human Rights Commission Act 1986 (Cth); Charter of Human Rights and Responsibilities Act 2006 ss 3(1), 6(1)

[Sale Elderly Citizens Village Inc v Environment Protection Authority Victoria \[2018\] VSC 266](#)

ENVIRONMENTAL LAW – Pollution of groundwater – Clean up notice – Whether responsibility for pollution lies with occupier of the land – Whether occupier must have caused pollution - Environment Protection Act 1970 ss 1A – 1L, 4, 39, 62A, 62C

STATUTORY INTERPRETATION - 'occupier' – 'premises' – 'upon or from which pollution has occurred or been permitted to occur' – Whether premises includes subsurface of the land – Whether groundwater is part of the premises – Whether premises occupied – Environment Protection Act 1970 s 62A – Interpretation of Legislation Act 1984 ss 35, 38

JUDICIAL REVIEW – Statutory authority – Discretionary

decision – Whether decision a reasonable exercise of discretion

WORDS AND PHRASES – 'land' – 'groundwater' – 'waters' – 'premises' – 'occupier' – 'upon'

[Adams v Wadesley \[2018\] VSC 304](#)

ADMINISTRATIVE LAW – Judicial Review – Medical Panel – Jurisdictional Error – Failure to assess impairment pursuant to Wrongs Act 1958 pt VBA – Failure to assess aggravation of pre-existing injury as a potentially compensable injury – Failure of statutory duty – Decision quashed – Chua v Lowthian [2009] VSC 582 – Wrongs Act 1958 pt VBA, ss 28LL, 28LWE, 28LZG.

ADMINISTRATIVE LAW – Judicial Review – Interpretation of AMA Guides – Applicable Principles – Classes of Hernia-related Impairment – Grammatical Construction – Contextual Approach – Relevant United States authority – Requirement of a palpable defect – Heinz Co Australia Ltd v Kotzman [2009] VSC 311 – Wrongs Act 1958 ss 28LB, 28LH.

LEGISLATION

Victoria

[Toll Fine Enforcement Bill 2018](#)

Date of second reading speech: 20 June 2018

[National Redress Scheme for Institutional Child Sexual Abuse \(Commonwealth Powers\) Act 2018](#)

Date of assent: 13 June 2018 Act Number: 21/2018

[Justice Legislation Miscellaneous Amendment Bill 2018](#)

Assembly – second reading moved - The Bill will ensure that the Coroners Court can set aside findings made under the previous Coroners Acts of 1958 and 1985, or re-open investigations if there are new facts and circumstances that make it appropriate to do so.

Statutory Rules made

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

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

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 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.