



PUBLIC SECTOR NEWSLETTER - VICTORIA

The ombudsman is investigating State Trustee's treatment of vulnerable people, a memorandum of understanding has been agreed between Victoria Police and the Australian Health Practitioner Regulation agency that will see the public better protected and the Department of Justice has released its report in relation to the recommendations of the Royal Commission into institutional abuse.

The government has also appointed five new Justices of the Supreme Court and the Court of Appeal.

The Supreme Court has also delivered an interesting judgment in response to the review of a medical panel determination in relation to the significance of spinal fusion for the purposes of assessments of permanent impairment pursuant to part VBA of the Wrongs Act 1958.

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

IN THE MEDIA

Ombudsman investigating State Trustees' treatment of vulnerable people

Ombudsman Deborah Glass has been investigating whether State Trustees is acting in the best interests of its vulnerable clients. Ms Glass said the investigation would examine State Trustees' role as the administrator for people who are unable to manage their financial and legal affairs due to disability, illness or injury.

<https://www.ombudsman.vic.gov.au/News/Media-Alerts/investigation-into-state-trustees>

True partnership recognised through AHPRA and Victoria Police MOU

The AHPRA and Victoria Police have announced a MOU to enable greater cooperation which will see the public better protected. The MOU provides a mechanism for the release of information by AHPRA when it identifies information relating to criminal offences, including physical harm, sexual offending, production of exploitative material and/or drug offences.

<http://www.ahpra.gov.au/News/2018-07-12-true-partnership-recognised-through-MOU.aspx>

Response to child abuse Royal Commission recommendations

The Government has released its response to the final report from the Royal Commission into Institutional Responses to child sexual abuse. Attorney-General Martin Pakula said the Labor Government has accepted in full or in principle 293 of the recommendations that apply to Victoria, and will further consider another 24 recommendations.

<https://www.premier.vic.gov.au/response-to-child-abuse-royal-commission-recommendations/>

Five new judges for Supreme Court and Court of Appeal

The Government has announced the appointment of five new judges to the Supreme Court and Court of Appeal.

<https://www.premier.vic.gov.au/five-new-judges-for-supreme-court-and-court-of-appeal/>

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Victorian government response to the Royal Commission into institutional child sexual abuse](#)

Department of Justice and Regulation (Vic); Government of Victoria: 11 July 2018

The Victorian government acknowledges findings of historical abuse within state government institutions and the ongoing psychological and physical harm suffered by many survivors.

CASES

[Hart v Melbourne Underwater World Pty Ltd \[2018\] VSC 394](#)

ADMINISTRATIVE LAW – Judicial review – Threshold for recovery of damages for non-economic loss under Part VBA of the Wrongs Act 1958 – Application to quash determination of Medical Panel – Alleged failure to deal with part of a claim made by a party – No such error in fact – Alleged error in Medical Panel's interpretation and application of the AMA Guides and Part VBA of the Wrongs Act 1958 – Injury to plaintiff's spine alleged to have been caused by fault of first defendant – Surgery, including fusions, undertaken to treat that injury – Whether Medical Panel wrong to

consider itself precluded from giving an impairment rating to the fusions – Not an error – Proceeding dismissed – Wrongs Act 1958, Part VBA, ss 28LB (definitions of 'medical question' and 'threshold level'), 28LH(1), 28LL(1), 28LT, 28LW(2)(b), 28LWE, 28LZG(5), 28LZG(6), 28LZH – Mountain Pine Furniture Pty Ltd v Taylor [2007] VSCA 146; (2007) 16 VR 659 considered and applied.

[Glenister v Wayne Horne Earthmoving Pty Ltd \[2018\] VSC 390](#)

JUDICIAL REVIEW – Plaintiff did not exercise statutory right of appeal from Magistrate's dismissal of charges alleging breach of Occupational Health and Safety Act 2004 – Application for judicial review – No satisfactory explanation for failure to exercise right of appeal – Relief in the nature of certiorari refused on discretionary grounds – Criminal Procedure Act 2009 s 272 – Occupational Health and Safety Act 2004 ss 2, 4, 21, 23 – Occupation Health and Safety Regulations 2007 regs 1.1.1, 1.1.7, 5.1.3, 5.1.5, 5.1.9, 5.1.11 – Supreme Court (General Civil Procedure) Rules 2015 O 56.

[Wilson v Waigani Pty Ltd & Ors VSC 302](#)

PRACTICE AND PROCEDURE – ADMINISTRATIVE LAW – Application for recusal by the trial judge on the basis of the judge's management of the trial – Webb v The Queen [1994] HCA 30; (1994) 181 CLR 41 – Ebner v Official Trustee in Bankruptcy [2000] HCA 63; (2000) 205 CLR 337 – Concrete Pty Ltd v Parramatta Design and Developments Pty Ltd [2006] HCA 55; (2006) 229 CLR 577 – AJH Lawyers Pty Ltd v Careri & ors [2011] VSCA 425; (2011) 34 VR 236.

LEGISLATION

Victoria

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. 96: Surveillance Devices Amendment \(Body-worn Cameras\) Regulations 2018](#)

Date of Making: 10/07/2018 Commencement: 11/07/2018: reg. 3 Not yet in operation: N/A
Sunset Date: 10/07/2028

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.