



PUBLIC SECTOR NEWSLETTER - VICTORIA

The past fortnight has seen the State's coroner stand aside following a complaint against her to the Judicial Commission of Victoria, IBAC released an updated report identifying corruption risks in public sector employment and recruitment and the Legislative Assembly refer a new complaint to Ombudsman Deborah Glass.

Meanwhile the Government is overhauling Victoria's suppression laws and introducing new regulations in relation to the Labour Hire industry.

Finally, the Supreme Court considered, amongst other things, the right of a group member to opt out.

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

IN THE MEDIA

Victoria's chief coroner stands aside over complaint

Victoria's chief coroner, Sara Hinchey, is standing aside from her duties after a complaint is made against her to the Judicial Commission of Victoria.

<http://www.abc.net.au/news/2018-08-17/victoria-chief-coroner-complaint-judicial-commission/10132354>

IBAC report identifies corruption risks in public sector employment and recruitment

A new research report by IBAC identifies a range of corruption risks associated with employment and recruitment practises across the Victorian public sector.

<http://www.ibac.vic.gov.au/media-releases/article/ibac-report-identifies-corruption-risks-in-public-sector-employment-and-recruitment>

Ombudsman confirms Victorian Parliament has referred new investigation to her

Victorian Ombudsman Deborah Glass has received a letter from the Legislative Assembly of the Victorian Parliament referring a matter for investigation and report under section 16 of the Ombudsman Act 1973.

<https://www.ombudsman.vic.gov.au/News/Media-Alerts/Ombudsman-confirms-Parliament-referred-new-inv>

Suppression order overhaul underway

The Government is overhauling Victorian suppression order laws to make it clear that suppression and closed court orders are exceptions to the principle of open justice and should only be made when necessary. The *Open Courts and Other Acts Amendment Bill 2018* will be introduced into Parliament today.

<https://www.premier.vic.gov.au/suppression-order-overhaul-underway/>

New regulations to oversee labour hire industry

The Government has released draft regulations to support the new Labour Hire Scheme that will protect the wages and conditions of some of Victoria's most vulnerable workers.

<https://www.premier.vic.gov.au/new-regulations-to-oversee-labour-hire-industry/>

IN PRACTICE AND COURTS

Victoria

New Court Appointments

[Five new Magistrates](#) have been appointed.

[Four new Judges](#) have been appointed to the County Court.

PUBLISHED - ARTICLES, PAPERS, REPORTS

Corruption and misconduct risks associated with employment practices in the Victorian public sector

Independent Broad-based Anti-Corruption Commission (IBAC).

This report highlights the corruption vulnerabilities associated with employment practices across the Victorian public sector and alerts public sector agencies to opportunities to strengthen their systems and practices to mitigate those vulnerabilities.

<http://apo.org.au/node/186566>

CASES[Coliban Heights Pty Ltd v Citisolar Vic Pty Ltd \[2018\] VSCA 191](#)

CONTRACTS – Australian Consumer Law – Contract for supply of services

JUDICIAL REVIEW – Appeal on question of law – Question of law founds jurisdiction of Court to hear appeal – No question of law articulated in originating process – Notice of appeal requires setting out of questions of law – Victorian Civil and Administrative Tribunal Act 1998, s 148; Supreme Court (Miscellaneous Civil Proceedings) Rules 2008, r 4.06(1)(b)(v).

[Murray & Anor v Great Southern Managers Aust Ltd & Ors \(an Application by Garry James Parker\) \[2018\] VSC 416](#)

COURTS AND JUDICIAL SYSTEM – Group proceedings – Right of group member to opt out – Court powers concerning group membership

[Bendigo and Adelaide Bank Ltd & Anor v Haque \[2018\] VSC 406](#)

CONSTITUTIONAL LAW – GROUP PROCEEDINGS – Validity of orders approving settlement of group proceedings – Where settlement binds group members in respect of issues not the subject of the group proceedings – Whether orders approving settlement determined hypotheticals or otherwise breached rules of natural justice – Re Judiciary & Navigation Acts [1921] HCA 20;

PRACTICE AND PROCEDURE – DEEDS AND OTHER INSTRUMENTS – Enforcement of deed of settlement – whether summary procedure appropriate

COURTS AND JUDICIAL SYSTEM – GROUP PROCEEDINGS – Consequences of being a group member

[Ugrinovski v Naumovski \[2018\] VSC 437](#)

JURISDICTION – Whether proceeding still on foot – Whether proceeding brought to an end by July 2015 Orders – Effect of Settlement Implementation Deed – Court's jurisdiction to hear and determine Summons – Whether Court clearly satisfied that justice can be done.

EXPERT DETERMINATION – Expert determination final and binding in the absence of manifest error – Whether manifest error – Commercial contracts – Objective approach to contractual interpretation – Ordinary commercial meaning – Reasonable business person – Language used by the parties – Context – Commercial purpose or object to be secured – Australian Broadcasting Commission v Australian Performing Rights Association [1973] HCA 36; (1973) 129 CLR 99 considered and applied – Mt Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd [2015] HCA 37; (2015) 256 CLR 104 considered and applied.

[McDonald Murholme Pty Ltd v Victorian Radio Network Pty Ltd \[2018\] VSC 434](#)

JUDICIAL REVIEW AND APPEALS – Appeal from the Magistrates' Court on a question of law under s 109 of the Magistrates' Court Act 1989 (Vic) – Booking agreement for provision of broadcast radio advertising services – Construction of agreement – Whether and when payment required – Whether payment obligation dependent upon non-broadcast in circumstances where payment not made in advance

[OMU and RGJ v Patient Review Panel and Secretary to the Department of Health and Human Services \(Human Rights\) \[2018\] VCAT 1235](#)

Human Rights List – application for review of decision of Patient Review Panel – IVF treatment – presumption against treatment – offence of violence – whether barrier to treatment – potential identifiable and established risk factors – protective factors – whether a real risk of harm in all the circumstances – Assisted Reproductive Treatment Act 2008 (Vic) ss 5, 14 and 15.

LEGISLATION**Victoria****Bills introduced and second read in the first House**[Gambling Regulation Amendment \(Wagering and Betting\) Bill 2018](#)

Replaces the current 'place of supply' wagering and betting tax with a 'point of consumption' tax, where the tax liability will be determined on the location of the consumer rather than the operator.

[Open Courts and Other Acts Amendment Bill 2018](#)

Changes the law relating to the prohibition and restriction of the publication of information in court and tribunal proceedings, and makes other amendments following the [Open Courts Act Review](#).

Acts Assented to[No. 32 Justice Legislation Amendment \(Terrorism\) Act 2018](#)

Assent: 7/08/2018 SG (No. 374) 7/08/2018 p. 1
Commencement: Ss 1, 2, 100-103, 114-117, 131 on 08/08/2018: s. 2(1) Not yet in operation: Ss 3-99, 113, 127-129, 134: on 01/10/2018: s. 2(2) Ss 104-112, 118-126, 130, 132, 133, 135

[No. 33 Justice Legislation Amendment \(Family Violence Protection and Other Matters\) Act 2018](#)

Assent: 14/08/2018 SG (No. 380) 14/8/2018 p. 1
Commencement: Ss 1, 2, 30, 107 on 15/08/2018: s. 2(1)

Not yet in operation: Ss 3-29, 31-106, 108-117

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

KEY CONTACTS

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Your contacts responsible for navigating our firm, connecting you with appropriate expertise and achieving maximum efficiency and your Newsletter editors.

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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.