



PUBLIC SECTOR NEWSLETTER - VICTORIA

The machinery of government rolls on notwithstanding the caretaker conventions with the past fortnight seeing the announcement of a major review of the committal systems, the release of a report on offender paid compensation and the announcement of a review of Contempt of Court Laws.

The past fortnight also saw a statement from the Chief Justice on judicial bullying and the Victorian Bar coming to the defence of the Federal Court.

There have also been some interesting decisions concerning judicial review of VCAT decisions on the grounds of procedural fairness and in relation to the exercise of costs dissention as well as pre-issue discovery.

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

IN THE MEDIA

Major review of Victoria's Committal System

The Government will review Victoria's committal system to help reduce victims' trauma, ensure rights to a fair trial and improve the efficiency of the criminal justice system

<https://www.premier.vic.gov.au/major-review-of-victorias-committal-system/>

Victorian Bar rejects simplistic criticism of Federal Court Judges

The Victorian Bar believes that criticisms of Federal Court judges published in the Australian Financial Review is misconceived. Analysis undertaken for the newspaper purported to rank the productivity of judges by reference to the average number of days between the completion of a case and the delivery of judgment.

<https://www.vicbar.com.au/news-events/victorian-bar-media-release-victorian-bar-rejects-simplistic-criticism-federal-court>

Report released on offender-paid compensation in Victoria

The Sentencing Advisory Council has released a report examining whether restitution and compensation orders should become sentencing orders, and other ways to improve offender-paid compensation in Victoria. The report follows a request for advice from the Attorney-General, arising from a recommendation of the Victorian Law Reform Commission

<https://www.vicbar.com.au/news-events/brief-issue-888#item-14>

Statement from the Chief of Justice of Victoria

Robust and vigorous legal debate is common in the courtroom, but judges across all jurisdictions must always be mindful to treat people with respect and dignity. Bullying, discrimination and harassment will not be tolerated in our courts

<https://www.supremecourt.vic.gov.au/news/media-release-statement-from-the-chief-justice-of-victoria>

IBAC statement on the welfare of people involved in anti-corruption investigations

Commissioner for Victoria's anti-corruption commission has said that supporting the welfare of police and other people who attend IBAC to be examined as part of its investigations is a responsibility IBAC takes very seriously. IBAC enables witnesses to seek and receive medical, counselling or other support, and over almost six years' of operation, has taken action to strengthen these processes.

<https://www.ibac.vic.gov.au/media-releases/article/ibac-statement-on-the-welfare-of-people-involved-in-anti-corruption-investigations>

Saddest case: 18-month imprisonment of a Victorian woman found unfit to stand trial

Tabling her Investigation into the imprisonment of a woman found unfit to stand trial in the Victorian Parliament, Ms Glass found the woman's treatment breached Victoria's human rights laws and international standards on the rights of people with disabilities. <https://www.ombudsman.vic.gov.au/News/Media-Releases/imprisonment-of-woman-found-unfit-to-stand-trial>

See the report [here](#).

IN PRACTICE AND COURTS**Victorian Law Reform Commission review: the state's committal system**

Under the terms of reference, the Commission will consider best practices for supporting victims. The Commission will consult widely in undertaking its review, including with courts, government stakeholders, the legal profession and victims' groups. The review will report back to government in March 2020. A copy of the full terms of reference is available at lawreform.vic.gov.au

OVIC: Caretaker period and FOI

The caretaker period commences on Tuesday, 30 October 2018 and continues until either it becomes clear the government has been returned, or the time when a new government is commissioned. During this time the Guidelines on the Caretaker Conventions may apply to Freedom of Information (FOI) applications. The Guidelines can be found [here](#)

Victorian Law Reform Commission review: Contempt of Court Laws

The Commission will make recommendations about existing suppression orders made before the introduction of the Open Courts Act. The review is expected to be completed by the end of 2019. A copy of the full terms of reference is available at www.lawreform.vic.gov.au

CASES**[Shah v Vega & Anor \[2018\] VSC 562](#)**

JUDICIAL REVIEW AND APPEALS – Application pursuant to Order 56 of the Supreme Court (General Civil Procedure) Rules 2015 for judicial review of a VCAT decision in respect to a tenancy dispute – Landlord applied to VCAT for compensation for alleged damage to premises by tenant – Procedural fairness – Whether landlord was denied a fair hearing – Landlord not provided with an interpreter at VCAT hearing – Non-English speaking background – Landlord self-represented and made extensive submissions at VCAT and in this Court – *Yahome Pty Ltd v Delic* [2013] VSC 52, referred to – Landlord's difficulties with English were not so severe or so obvious as to warrant an adjournment to secure an interpreter – Landlord not materially disadvantaged by the absence of an interpreter – Whether Member failed to have regard to relevant evidence – No basis for judicial review insofar as landlord's claim concerns Member's factual findings – Whether landlord given proper opportunity to present

her evidence – Whether Member erred in calculation of depreciation – Member not bound to follow ATO guidelines – No error of law arises from any ground of review – Proceeding constituted an attempt to relitigate the Member's factual findings – Application dismissed

[Mercuri v TCM Building Group Pty Ltd \[2018\] VSC 604](#)

ADMINISTRATIVE LAW – Application for leave to appeal from VCAT decision with respect to interest and costs – Domestic building dispute – Builder issued VCAT proceeding to recover monies said to be owed by owner – Owner counterclaimed for cost of rectification of defects and for credits said to be owed – Consideration of principles relevant to the exercise of a discretion with respect to costs – *Pong Property Development Pty Ltd v Strangio* [2005] VSC 217; (2015) 23 VAR 128, referred to – Whether the Senior Member erred in law by ordering the owner to pay the builder's costs – Whether the Senior Member had regard to an irrelevant consideration – Whether the Senior Member failed to have regard to the relative strengths of the parties' claims when considering whether to make an order for costs – *Frugtniet v Law Institute of Victoria* [2012] VSCA 178, applied – Whether Tribunal erred in law by ordering owner to pay builder's costs on indemnity basis – *Hazeldene's Chicken Farm Pty Ltd v Victorian WorkCover Authority (No 2)* [2005] VSCA 298; (2005) 13 VR 435, referred to – *Duggan v MGS Products Pty Ltd* [2002] VCAT 1764, referred to – *Metricon Homes Pty Ltd v Sawyer* [2013] VSC 518, referred to – Whether the Senior Member erred in law by awarding damages in the nature of interest under s 53 of the Domestic Building Contracts Act 1995 (Vic) – *Johnson Tiles Pty Ltd v Esso Australia Pty Ltd (No 3)* [2003] VSC 244, referred to – Whether the Senior Member's conduct gave rise to a reasonable apprehension of bias – *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63; (2000) 205 CLR 337, referred to – VCAT Act s 109, 112 and 119 – Supreme Court (General Civil Procedure) Rules 2015 – Leave to appeal granted in part – Appeal dismissed

[Naik v Monash University \[2018\] VSC 605](#)

ADMINISTRATIVE LAW – Judicial review – Assessment decision of University – Application for extension of time to commence proceedings for judicial review – Whether 'special circumstances' – Whether Court can review questions of academic judgment – Whether alleged failure to follow relevant policy is jurisdictional error – No arguable case – Public interest in finality of decisions – Extension of time refused – Supreme Court (General Civil Procedure) Rules 2015, r 56.02 (1) and (3)

[Victorian Taxi Families Inc & Anor v Taxi Services Commission \[2018\] VSC 594](#)

PRACTICE AND PROCEDURE – Preliminary discovery – Whether reasonable grounds to believe that applicants may have right to obtain relief against respondent – Whether sufficient information to enable applicants to decide whether to commence proceeding – Supreme Court (General Civil Procedure) Rules 2015 r 32.05.

EVIDENCE – Parliamentary privilege – Statements

made to Parliamentary Committees and reports of such Committees – Whether statements and reports may be tendered in evidence – Whether statements can be used to prove the truth of the facts contained in the statements – Bill of Rights 1689 (UK) art 9; Constitution Act 1975 (Vic) s 19; Parliamentary Privileges Act 1987

LEGISLATION

Victoria

Statutory Rules - 24 October 2018

No 183 Terrorism (Community Protection) Regulations 2018

No 184 Public Interest Monitor Amendment Regulations 2018

No 185 Children, Youth and Families (Children's Court Family Division) Amendment (Witness Summons) Rules 2018

No 186 Children's Court Criminal Procedure (Committal Amendments) Rules 2018

No 187 Victorian Civil and Administrative Tribunal (Miscellaneous Amendments) Rules 2018

These Rules come into operation on 1 November 2018, to amend functions of principal registrar

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.