



PUBLIC SECTOR NEWSLETTER - VICTORIA

The election was the main focus of the past fortnight, with barristers and solicitors criticising an opposition policy to judge judges on their sentencing records and some Supreme Court decisions in relation to electioneering.

The Supreme Court also considered the review of some Medical Panel Determinations.

We hope you enjoy our penultimate edition of our Public Sector Newsletter for 2018.

IN THE MEDIA

Victorian Bar rejects “judging the judges” proposal

The opposition announced a policy that, if implemented, would lead to the publication of statistics about the average sentence delivered per judicial officer for different offences, the number of sitting days per judicial officer, the delay per judgment per judicial officer, and other statistics supposedly aimed at measuring productivity and adherence to community standards in relation to sentencing

<https://www.vicbar.com.au/news-events/brief-issue-892#more>

Lawyers warn against plan for public to ‘scrutinise’ judges

Justice could be reduced to a “measurement of metrics” under an Opposition plan to publish sentencing records of judges and magistrates online, Victorian lawyers warn, but the Coalition says the public should be able to better scrutinise sentences

<https://www.abc.net.au/news/2018-11-19/vic-judge-records-published-online-under-coalition-plan/10509408>

CASES

[Liberal Party of Australia \(Victorian Branch\) v Rae \[2018\] VSC 731](#)

ELECTIONS – Endorsement of candidate by political party – Candidate disendorsed after close of nominations – Registration of how-to-vote cards refused by Victorian Civil and Administrative Tribunal on basis that cards likely to mislead or deceive an elector in casting the elector’s vote – Whether conclusion open to Tribunal – Construction of Electoral Act 2002 (Vic), s 79(3).

[Rae v Victorian Electoral Commission \[2018\] VSC 730](#)

ELECTIONS – Endorsement of candidate by political party – Candidate disendorsed after close of nominations – Whether Victorian Electoral Commission authorised to reprint ballot papers to reflect disendorsement – Commission obliged by Electoral Act 2002 (Vic) to print on ballot paper name and logo of political party that endorsed candidate at time of nomination – Electoral Act 2002 (Vic), ss 69, 71, 74, 84.

[Lalor Bowling Club v Mazzeio \[2018\] VSC 727](#)

JUDICIAL REVIEW – Medical Panel – Determination of worker’s psychiatric impairment – Opinion that no impairment form an unrelated injury or cause – Whether Panel failed to consider relevant considerations – Whether Panel made fundamental mistake of fact – Whether Panel provided adequate reasons – No jurisdictional error – Accident Compensation Act 1985 ss 91(7)(c), 98C(1), (3), 104B(1), (9).

[Tardio v Harness Racing Victoria \[2018\] VSC 722](#)

ADMINISTRATIVE LAW – Appeal from Victorian Civil and Administrative Tribunal on questions of law – Tribunal made order dismissing proceeding for failure to comply with procedural steps – Where no reference in order or reasons to statutory basis for order – Where Tribunal registry later advises that order was based on s 78 of Victorian Civil and Administrative Tribunal Act 1998 – Where no finding that applicant’s conduct unnecessarily disadvantaged the respondent – Where no finding that the applicant did not have a reasonable excuse for failing to comply with procedural steps – Failure to take into account mandatory considerations – Error found – Victorian Civil and Administrative Tribunal Act 1998 ss 78, 97, 98(1)(a), 148.

[State of Victoria v Jerak \[2018\] VSC 680](#)

JUDICIAL REVIEW – Workers compensation – Medical panel – 55% whole person impairment assessed by the panel – 38% loss of visual field to the left eye assessed by the panel – Left visual field previously assessed as normal – Failure to afford procedural fairness – Failure to resolve widely varying test results as between panel, independent medical examiner and treating specialist – Failure to act in accordance with the Guides – Panel decision quashed – Remitted to differently constituted panel – Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) – American Medical Association Guides to the Evaluation of Permanent Impairment (Fourth Edition).

LEGISLATION

Victoria

Acts

[Electoral Legislation Amendment Act 2018](#)

Act Number: 30/2018 Date of commencement: 35 November 2018 - Sections 46, 47(1), 48-67 of this Act came in by forced commencement on 25 November 2028 s 2(3)

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.