



PUBLIC SECTOR NEWSLETTER - VICTORIA

Welcome to the last edition of our public sector newsletter for 2018.

The past fortnight was dominated by revelations in relation to 'Lawyer X' and the consequential announcement of a Royal Commission into the management of police informants.

However the past fortnight also saw announcements regarding corruption in the public sector, and the use of solitary confinement.

The past fortnight also saw the delivery of a judgment in relation to a charge of conspiracy to bribe a public official.

We take this opportunity to wish you and your loved ones a safe and happy holiday season and a successful and healthy 2019.

Please keep an eye out for the next edition of our public sector newsletter in late January.

IN THE MEDIA

Joint communiqué from Australia's anti-corruption Commissioners

As International Anti-Corruption Day has just passed (December 9), the Commissioners of independent, anti-corruption and law enforcement integrity agencies in Australia, collectively call on public sector leaders to do more to build strong cultures of integrity that resist corruption <https://www.ibac.vic.gov.au/media-releases/article/united-against-corruption---leadership-is-the-key-to-corruption-prevention>

Ombudsman to investigate the use of 'solitary confinement' and young people

Victorian Ombudsman Deborah Glass will investigate the use of 'solitary confinement' involving young people in Victoria, using the United Nations' Optional Protocol to the Convention against Torture (OPCAT) <https://www.ombudsman.vic.gov.au/News/Media-Releases/Ombudsman-to-investigate-the-use-of-solitary-confi>

Lawyer X's conduct unethical and clear breach of rules

The Law Council of Australia has expressed deep concern about disclosures legal counsel acted as police informer. Law Council of Australia President said the disclosures reveal a clear breach of legal professional Rules and reinforced the need for properly resourced oversight bodies to supervise the activities of law enforcement <https://www.lawcouncil.asn.au/media/media-releases/lawyer-xs-conduct-unethical-and-clear-breach-of-rules>

Statement by Victorian Bar regarding High Court and Victorian Court of Appeal Suppression Orders

The High Court and the Victorian Court of Appeal have lifted certain suppression orders in the matters of AB v CD and EF v CD. The Victorian Bar has been constrained in responding to this matter by the suppressed nature of the allegations and the proceedings, but will co-operate fully with the Royal Commission into Management of Informants and other relevant authorities in relation to this matter <https://www.vicbar.com.au/news-events/media-release-%E2%80%93-statement-victorian-bar-regarding-high-court-and-victorian-court-appeal>

IBAC supports Royal Commission into management of police informants

IBAC Commissioner, The Hon Robert Redlich QC has noted the Victorian Government's establishment of a Royal Commission into the management of police informants. "The Royal Commission will build upon the findings of IBAC's landmark 2015 inquiry, Operation Leven, which first exposed the conduct of Victoria Police in this highly sensitive and complex matter <https://www.ibac.vic.gov.au/media-releases/article/ibac-supports-royal-commission-into-management-of-police-informants>

Royal Commission into Victoria Police scandal welcome, but lawyers and experts call for immediate police accountability reforms

Lawyers and advocates from across Victoria have welcomed the Government's announcement of a Royal Commission into police misconduct, but say the Government should immediately establish an independent Police Corruption & Misconduct Division within IBAC

<https://www.hrlc.org.au/news/2018/12/3/royal-commission-into-victoria-police-scandal-welcome-but-lawyers-and-experts-call-for-immediate-police-accountability-reforms>

Royal Commission into Management of Informants

The Victorian Government has announced that it will establish a Royal Commission to independently inquire into Victoria Police's recruitment and management of its informants. The decision of the High Court released calls into question whether some convictions have occurred fairly and in accordance with law

<https://www.vic.gov.au/news/royal-commission-into-management-of-informants.html>

CASES

[Cornonero v Bright Moon Buddhist Society \[2018\] VSC 737](#)

ADMINISTRATIVE LAW – Judicial review – Relief in the nature of certiorari – Whether adjudication determination is vitiated by jurisdictional error – Supreme Court (General Civil Procedure) Rules 2015 (Vic), r 56.

BUILDING CONTRACTS – Review adjudications – Application for review by respondent – Requirement for respondent to pay adjudicated amount other than alleged excluded amounts to claimant – Where respondent transfers funds before making review application – Where funds clear after making review application – Requirement for respondent to pay alleged excluded amounts into designated trust account – Where respondent pays undisputed amounts to claimant instead of into trust – Building and Construction Industry Security of Payment Act 2002 (Vic) s 28B(5), s 28B(6).

STATUTORY INTERPRETATION – Legislative intention – Statutory precondition to review application – Where respondent took partial steps of compliance – Need for strict compliance – Meaning of 'paid' – Electronic funds transfer – Whether 'paid' requires clearance of funds in recipient's bank account

[CDPP v Boillot \[2018\] VSC 739](#)

CRIMINAL LAW – Conspiracy to offer to bribe foreign public official – Plea of guilty – Prior good character – Little need for specific deterrence – General deterrence – Very substantial delay – Offending not committed for personal gain – Parity considerations – Sentenced to 2 years and 6 months' imprisonment, to be released immediately on a recognisance release order – Criminal Code 1995 (Cth) ss 11.5(1) and 70.2(1).

[Sensis Pty Ltd v Jones \[2018\] VSC 754](#)

JUDICIAL REVIEW – Medical Panel – Whether injury significant contributing factor to injury – Whether mandatory matters taken into account – Whether statutory test applied – Whether reasons adequate – Accident Compensation Act 1985 ss 5, 5(1B), 82.

[Rae v Victorian Electoral Commission & Liberal Party of Australia, Victorian Division \(Review and Regulation\) \[2018\] VCAT 1904](#)

Electoral Act 2002 – s 79(3) – whether how-to-vote-card is likely to mislead or deceive an elector in casting the vote of the elector

[Muldoon v Registrar of Births, Deaths and Marriages \(Review and Regulation\) \[2018\] VCAT 1866](#)

Births Deaths and Marriages Registration Act 1996 (Vic), sections 26 and 28 – Federal Circuit Court of Australia order made changing three children's names – application made to the Registrar of Births, Deaths and Marriages relying on that order but seeking additional names for two of the children – whether the Registrar correctly refused to change names – interpretation of section 26 under the Charter of Human Rights and Responsibilities Act 2006 (Vic).

[XVT v Patient Review Panel \(Human Rights\) \[2018\] VCAT 1902](#)

Human Rights List - application for approval for posthumous use of gametes for treatment procedure- no written consent to posthumous use of gametes- whether written consent for posthumous use of embryo created from deceased's gametes sufficient to imply consent- whether implied consent sufficient- s46 Assisted Reproductive Treatment Act 2008

LEGISLATION

Victoria

Acts

[Justice Legislation Amendment \(Terrorism\) Act 2018](#)

Date of commencement: 30 November 2018 legislation Act Number: 32/2018

Sections 104-112, 118-126, 130, 132, 133, 135 of this Act came into operation on 30 November 2018 (SG497 23.10.2018)

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.