



## PUBLIC SECTOR NEWSLETTER - VICTORIA

This edition includes reference to the expanded terms of reference of the Royal Commission into Informants, the Ombudsman's review of complaint handling processes in local government and the Law Reform Commission's review of the State's committal system.

We also note some important decisions, including a Victorian Legal Services Commission's successful appeal in a case involving unsatisfactory professional conduct.

We hope you enjoy this edition of our Victorian Public Sector Newsletter.

### IN THE MEDIA

#### Overview of changes to sentencing law in 2018

The Sentencing Advisory Council has today released an overview of 12 legislative and judicial changes made to sentencing law in 2018. The aim of the overview is to help criminal justice stakeholders and the wider community navigate recent changes to the way sentencing law operates in Victoria

<https://www.sentencingcouncil.vic.gov.au/publications/changes-sentencing-law-victoria-overview-2018>

#### LIV urges parliament to support Spent Convictions Bill

The Law Institute of Victoria urges parliament to support the Spent Convictions Bill, introduced last week by Reason Party MP Fiona Patten. LIV president Stuart Webb said if the Bill was passed, it would remove the stigma of spent convictions

<https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/February-2019/Law-Institute-of-Victoria-welcomes-spent-convictio>

#### Statement on the Royal Commission into Informants

The Royal Commission has advised the Government of new details which have led to the Royal Commission's terms of reference being amended. The Commission has advised that information willingly disclosed to it by Victoria Police indicates that the informant at the centre of this matter was first registered in 1995

<https://www.premier.vic.gov.au/statement-on-the-royal-commission-into-informants/>

#### Enquiry into how local councils handle complaints from the public

All of Victoria's 79 local councils will be surveyed on how they handle complaints from the public as part of an enquiry undertaken by Victorian Ombudsman, Deborah Glass. Ms Glass said complaints about local government typically account for about a quarter of all complaints to my office each year

<https://www.ombudsman.vic.gov.au/News/Media-Releases/Enquiry-into-how-local-councils-handle-complaints>

### IN PRACTICE AND COURTS

#### Making the Open Courts Bench Book easier to read

The Judicial College has rewritten the [Open Courts Bench Book](#) to make it shorter, clearer and easier to read.

The updated bench book now has: clearer explanations of the relevant law; and fewer sub-topics, so each page has more information. These changes continue the College's program of making the bench books easier to read and navigate

#### 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](http://lawreform.vic.gov.au)

#### OVIC Professional standards in March 2019

Throughout 2018 and 2019, OVIC will be working to develop professional standards in accordance with Part 1B of the FOI Act. In March 2019, OVIC will release draft professional standards for feedback and comment.

**PUBLISHED - ARTICLES, PAPERS, REPORTS**[Changes to sentencing laws in Victoria: an overview of 2018](#)

Sentencing Advisory Council (Vic): 07 February 2019

This overview summarises 10 key legislative changes to sentencing law in Victoria from 2018, including the introduction of standard sentences, Category A and B serious youth offences and youth control orders. It also looks at two judicial decisions that will affect the way that sentencing law operates in the state

**CASES**[Nguyen v DPP & Attorney-General \[2019\] VSCA 20](#)

CONFISCATION – Unexplained wealth restraining orders and forfeiture orders

CONSTITUTIONAL LAW – Validity of statutory scheme that can lead to forfeiture of property without a guarantee of an inter partes hearing – Relevance of powers of court to direct notice be given to an affected party, to set aside ex parte orders, and to make any orders it considers just – International Finance Trust Co Ltd v New South Wales Crime Commission (2009) 240 CLR 319 distinguished – Kable v Director of Public Prosecutions (NSW) [1996] HCA 24; (1996) 189 CLR 51, Nicholas v The Queen [1998] HCA 9; (1998) 193 CLR 173, Leeth v Commonwealth (1992) 174 CLR 455, discussed – Charter of Human Rights and Responsibilities, ss 24(1), 32(1), – Leave to appeal granted – Appeal dismissed.

[Victorian Legal Services Commissioner v McDonald \[2019\] VSCA 18](#)

PROFESSIONAL PRACTICE – Legal practitioners – Unsatisfactory professional conduct – Letters between solicitors alleging one solicitor was ‘fundamentally dishonest’

ADMINISTRATIVE LAW – Appeal from decision of Victorian Civil and Administrative Tribunal – Question of law – Whether judge erred in finding that senior member made an error of law in considering questions of legitimate interest and reasonable basis separately – Whether judge’s finding on question of legitimate interest contrary to finding below and outside the scope of determination of a question of law – Osland v Secretary to the Department of Justice [No 2] [2010] HCA 24; (2010) 241 CLR 320 applied – Victorian Civil and Administrative Tribunal Act 1998 s 148.

[Briggs v Aboriginal Heritage Council \[2019\] VSC 25](#)

ADMINISTRATIVE LAW – application for order for review – determination of approval of registered Aboriginal party for particular area – whether in breach of rules of natural justice – whether no evidence to support findings made – whether relevant considerations ignored – whether wrong question asked – whether error of law on face of the record committed – relevance of traditional knowledge and responsibility to whether applicant body was representing traditional owners of application area – ‘traditional owner’, ‘body representing’ – Aboriginal Heritage Act 2006 (Vic), ss 4(1), 7(1)(a) and (b), 151(3)(c) and (d), Administrative Law Act 1978 (Vic) ss 3 and 10.

[Marc & Adam Station Pier Pty Ltd v Schiavello Bros. Properties Pty Ltd & Anor \[2019\] VSC 20](#)

JUDICIAL REVIEW AND APPEALS – Application for leave to appeal from a decision of VCAT granting summary dismissal of claim that Second Respondent made misleading or deceptive representation as to the term of a head-lease to Applicant – Whether claim is frivolous, vexatious, misconceived or lacking in substance – No express representation or representation by silence made – No duty to correct any misapprehension on the part of the Applicant – No error of law established – Leave to appeal refused in respect of proposed grounds of appeal 1 to 4 – Leave to appeal granted in respect of grounds 5 and 6 – Appeal heard instantly and dismissed in respect of ground 5 and allowed in respect of ground 6

[St Clair and Holmes v Jamieson \[2019\] VSC 57](#)

CRIMES COMPENSATION – applications by adult siblings following murder of mother, step-father and brother – assessment of compensation for pain and suffering resulting from crimes – applicable principles – role of crimes compensation in vindicating dignity and affording reparation to victims of crime – connection between crimes compensation and other elements of criminal justice system that ensure human rights of victims of crime – whether offender’s financial circumstances should be taken into account – whether extension of time in which to make applications should be granted – applicable principles – ‘injury’, ‘pain and suffering’ – Sentencing Act 1991 (Vic) s 85B–H

[Durney v Unison Housing Ltd \[2019\] VSC 6](#)

JUDICIAL REVIEW – Whether private body amenable to judicial review – Not for profit company – Company limited by guarantee providing social and affordable housing – Registered housing association – Notice to vacate withdrawn – Decision to restrict tenant’s access to staff – R v Panel on Takeovers and Mergers; ex parte Datafin plc [1986] EWCA Civ 8; [1987] QB 815 – Application of Datafin principle – Residential Tenancies Act 1997 (Vic) s 263, s 330(1) – Housing Act 1983 (Vic) ss 97–100.

[Marke v Victoria Police \(Review and Regulation\) \[2019\] VCAT 207](#)

Freedom of Information Act 1982 (Vic), section 50(6) – Victorian Civil and Administrative Tribunal Act 1998 (Vic), section 75 – whether the Tribunal previously reviewed a decision of Victoria Police to refuse access to the same document or the same information – whether to exercise discretion to refuse to review recent decision to refuse access to same documents – whether that part of the application for review is an abuse of process.

**LEGISLATION****Victoria****Bills Progress**

[Spent Convictions Bill 2019](#) - Date of second reading speech: 6 February 2019

[Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Bill 2019](#) - Date of second reading speech: 6 February 2019

[Justice Legislation Amendment \(Police and Other Matters\) Bill 2019](#) - Date of second reading speech: 6 February 2019

[Parliamentary Committees Amendment Bill 2019](#) - Date of second reading speech: 6 February 2019

#### **Statutory Rules**

[No 4 Oaths and Affirmations \(Affidavits, Statutory Declarations and Certifications\) Amendment Regulations 2019](#)

[No 5 Oaths and Affirmations Transitional Regulations 2019](#)

[No 6 Unclaimed Money Regulations 2019 06/2019](#)

[No 7 County Court \(Chapter III Serious Offenders Amendment\) Rules 2019](#)

Victorian legislation can be accessed at [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)

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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](mailto: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.