



PUBLIC SECTOR NEWSLETTER - VICTORIA

Welcome to Issue 56 of the Victorian Public Sector Newsletter. This edition includes proposed changes to the OHS Act to include workplace manslaughter as an offence, the OAIC media statement concerning proposed changes to the Privacy Act and much more.

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

IN THE MEDIA

What good local government integrity frameworks look like

A new research report released by IBAC, the state's anti-corruption commission, identifies a sample of councils that have built solid integrity frameworks to help protect them from corruption, providing a model for other councils to follow

<https://www.ibac.vic.gov.au/media-releases/article/what-good-local-government-integrity-frameworks-look-like>

The [full report and summary version](#) are available on IBAC's website

First meeting of workplace manslaughter taskforce in Victoria

The Government's new workplace manslaughter taskforce held its inaugural meeting recently – to discuss tough new laws to keep workers safe. A Legal Advisory Group comprising legal sector stakeholders will also provide advice on the proposed new offence

<https://www.premier.vic.gov.au/first-meeting-of-workplace-manslaughter-taskforce/>

Former Corrections Victoria officer sentenced following IBAC investigation

A former Corrections Victoria officer from Dhurringile Prison has been sentenced to six months imprisonment and a 12 month community correction order following an investigation by Victoria's anti-corruption commission, IBAC

<https://www.ibac.vic.gov.au/media-releases/article/former-corrections-victoria-officer-sentenced-following-ibac-investigation>

Victoria Police officer convicted of assault following IBAC investigation

A Victoria Police Senior Constable was today convicted of unlawful assault and sentenced to a 12-month good behaviour bond, following an investigation by Victoria's independent police oversight body, IBAC

<https://www.ibac.vic.gov.au/media-releases/article/victoria-police-officer-convicted-of-assault-following-ibac-investigation>

OAIC welcomes increased enforcement powers to keep Australians' personal information safe online

The proposed changes to the Privacy Act, along with new rules for digital platforms that trade in personal information, are an important step in meeting community expectations that personal information will be handled in a way that is transparent and accountable

<https://www.oaic.gov.au/media-and-speeches/statements/oaic-welcomes-increased-enforcement-powers-to-keep-australians-personal-information-safe-online>

Tougher penalties to keep Australians safe online

Attorney-General, Christian Porter and Minister for Communications and the Arts, Mitch Fifield, announced the new penalty regime under the Privacy Act and other measures to ensure Australians were protected online and that major social media companies took action to protect the personal information they collect about Australians, particularly children

<https://www.attorneygeneral.gov.au/Media/Pages/Tougher-penalties-to-keep-australians-safe-online-19.aspx>

IN PRACTICE AND COURTS

New Court Appointments

[New Appointment to Judicial Commission of Victoria](#)

[Appointment of New Deputy State Coroner](#)

[Victoria Legal Aid: Child Protection Duty Lawyer Guidelines to promote consistency and fairness](#)

As part of our commitment to improve our child protection legal services, we are introducing new Child Protection Duty Lawyer Guidelines to promote consistency, certainty and transparency for clients and practitioners across the state. The guidelines commenced on 25 March 2019

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

CASES

[LG v Melbourne Health \[2019\] VSC 183](#)

ADMINISTRATIVE LAW – Guardianship and administration – Appeal from orders of Victorian Civil and Administrative Tribunal appointing guardian and administrator in respect of first appellant – Whether Tribunal gave adequate reasons for orders – Whether Tribunal's reasons addressed a submission seriously advanced and worthy of consideration – Reasons not adequate – Victorian Civil and Administrative Act 1998 (Vic), ss 117, 148 – Guardianship and Administration Act 1986 (Vic), ss 4(2), 22, 46.

HUMAN RIGHTS – Whether Tribunal gave proper consideration to relevant human rights in making guardianship and administration orders – No proper consideration – Charter of Human Rights and Responsibilities Act 2006, s 38(1) – PJB v Melbourne Health [2011] VSC 327; (2011) 39 VR 373 (Patrick's case) applied.

COSTS – Whether self-represented litigant entitled to claim professional costs – Where litigant legally qualified and admitted to practice but not holding current practising certificate – Chorley exception applies only to a lawyer entitled to practise – Rule in Cachia v Hanes [1994] HCA 14; (1994) 179 CLR 403 applied – No order made for payment of professional costs.

[Westpac v Webb \[2019\] VSC 180](#)

APPEAL – Appeal from an Associate Judge dismissing an application to set aside judgment in default of defence and stay of execution of warrant – Promissory notes – Validity of Commonwealth and State Acts – Whether Supreme Court of Victoria is an unlawful Court – Whether Constitution Act 1975 (Vic) validly enacted – Royal Assent – Supreme Court (Civil Procedure) Rules 2015, r 77.06.

[Deputy of Commissioner of Taxation v Buzadic \[2019\] VSC 141](#)

PRACTICE AND PROCEDURE – Summary Judgment – ss 61, 63 and 64 Civil Procedure Act 2010 – Whether pleaded defences have no real prospects of success – Where plaintiff has failed to demonstrate pleaded

defences have no real prospects of success – Where not in the interests of justice to summarily dispose of the proceedings – Exercise of discretion pursuant to s64 Civil Procedure Act 2010 – Application dismissed.

TAXATION – Income Tax – Income Tax Assessment Act 1936 (Cth) – Taxation Administration Act 1953 (Cth) – Recovery of income tax liability, administrative penalties and interest charges – Where defendants allege the Commissioner's assessment is subject to jurisdictional error – Where review proceedings pursuant to Part IVC Taxation Administration Act 1953 (Cth) are pending – Where defendants allege provisions of the Income Tax Assessment Act 1936 (Cth) and Taxation Administration Act 1953 (Cth) are unconstitutional.

CONSTITUTIONAL LAW – Chapter III Constitution – Kable v Director of Public Prosecutions [1996] HCA 24; (1996) 189 CLR 51 – Exercise of federal judicial power by a State court – Where grant of summary judgment would impermissibly confer judicial power on a federal official – Where legislative provision may render unexaminable by the courts an administrative decision by a federal official imposing a tax – Where Parliament may purport to direct the courts as to the manner and outcome of the exercise of their jurisdiction – Chu Kheng Lim v Minister of Immigration (1992) 176 CLR 1 – Where conclusive evidence provision may impermissibly interfere with the exercise of federal judicial power

[Donevski v Hunter \[2019\] VSC 163](#)

JUDICIAL REVIEW – Medical Panel – Determination that plaintiff's degree of impairment did not satisfy 'threshold level' for a significant injury under Part VBA, Wrongs Act 1958 (Vic) – Whether Panel failed to consider current medical reports – Whether Panel failed to have regard to relevant information – Whether Panel's determination inconsistent with opinion of a previous Medical Panel – Whether Panel had regard to irrelevant medical reports – Whether Panel's determination procedurally unfair – Whether Panel's determination unreasonable – No jurisdictional error in Panel's determination

[Toscano v Cushen \[2019\] VSC 158](#)

ADMINISTRATIVE LAW – Appeal on a question of law from the Magistrates' Court – Appeal by person convicted of speeding offence – Where Magistrate determined case on basis of preliminary brief after defendant failed to appear – Road safety – Road safety camera – Whether speed measuring device prescribed by Road Safety (General) Regulations 2009 (Vic) – Road Safety Act 1986 (Vic) ss 83, 83A, 84(1), 84(4A) – Road Safety Road Rules 2009 (Vic) rr 20, 152, 326, 329 – Road Safety (General) Regulations 2009 (Vic) reg 30.

[Isen v Newbury \[2019\] VSC 157](#)

ADMINISTRATIVE LAW – Appeal on a question of law from the Magistrates’ Court – Appeal by person convicted of speeding offence – Road Safety – Mobile road safety cameras – Whether speed measuring device prescribed by Road Safety (General) Regulations 2009 (Vic) – Whether certificate properly issued in compliance with s 84(1) of the Road Safety Act 1986 (Vic) – Whether certificates showed that the appellant was responsible for the offending vehicle – Road Safety Act 1986 (Vic) ss 3, 5, 84(1), 84BB, 84BC – Road Safety Road Rules 2017 (Vic) r 20 – Road Safety (Vehicles) Regulations 2009 (Vic) reg 38 – Road Safety (General) Regulations 2009 (Vic) regs 6(1), 30(o).

[Neoen Australia Pty Ltd v Minister for Planning \[2019\] VSC 162](#)

ADMINISTRATIVE LAW – whether the Minister is a ‘Tribunal’ within s 2 of the Administrative Law Act 1978 – whether deferral of a decision constitutes a decision – whether deferral of a decision is ultra vires – whether deferral of a decision is unreasonable – Planning and Environment Act 1987 – Administrative Law Act 1978 – Grollo Australia Pty Ltd v Minister for Planning and Urban Growth and Development [1993] VicRp 45; 1993 1 VR 627 – Croft v Minister for Energy and Resources [2001] VSCA 112

LEGISLATION**Victoria****Statutory Rules**

No 16 [Fines Reform Amendment Regulations 2019](#) 19 March 2019. These Regulations came into operation on 31 March 2019

No 18 [Victorian Civil and Administrative Tribunal Amendment Rules 2019](#) These regulations came into operation on 22 March 2019

No 19 [Supreme Court \(Chapters II and III in Miscellaneous Amendments Rules 2019](#) These regulations came into operation on 25 March 2019

No 21 [Supreme Court \(E-filing in Criminal Proceedings and Other Matters Amendment\) Rules 2019](#) These regulations came into operation on 25 March 2019

Acts[Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019](#)

Act Number: 5/2019 – Date of assent: 19 March 2019. Date of commencement: 20 March 2019 – Parts 1-5 (sections 1-45), sections 46, 47, Parts 7, 8 (sections 63-79), sections 83-85 of this Act came in by forced commencement on 20 March 2019 s.2(1)

Victorian legislation can be accessed [here](#).

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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.