



## PUBLIC SECTOR NEWSLETTER - VICTORIA

This fortnight, we note a series of decisions of Victorian courts in the areas of taxation, freedom of information and the operation of legislation transferring State functions. At the Commonwealth level, we also note the appointment of a new Disability Discrimination Commissioner.

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

### IN THE MEDIA

**The Family Court of Australia and Federal Circuit Court of Australia takes a vital step towards reform and engages the Honourable Dr Chriss Jessup QC to oversee development of unified family law processes**  
The legal profession and the community have called for changes to the family law system. In response, the Courts are taking a major step to improve family law in Australia. This includes establishing, for the first time, a common set of rules, forms and case management in the Family Court of Australia and Federal Circuit Court of Australia.  
<https://www.vicbar.com.au/news-events/brief-issue-908#item-20>

**Royal Commission commencement welcomed**  
The Australian Human Rights Commission welcomes the commencement of the Royal Commission into Violence, Abuse, Neglect and Exploitation of people with disability. The Commission also welcomes the appointment of Disability Discrimination Commissioner.  
<https://www.humanrights.gov.au/news/stories/royal-commission-commencement-welcomed>

### IN PRACTICE AND COURTS

**[Sentencing Advisory Council: Council releases Sentencing Snapshots for seven offences](#)**

The Council has released new Sentencing Snapshots detailing sentencing trends in the five years to 30 June 2018 for seven offences sentenced in the Victorian higher courts (the Supreme and County Courts)

**[Supreme Court Practice Note: Applications for extension of time under rule 64.08 of the Supreme Court \(General Civil Procedure\) Rules 2016](#)**

The Notice advises practitioners that, for a trial period, applications to the Court of Appeal for extensions of 14 days or less under rule 64.08 of the Supreme Court (General Civil Procedure) Rules

### CASES

**[Australian Investment & Development Pty Ltd v Commissioner of State Revenue \[2019\] VSCA 69](#)**

PRACTICE AND PROCEDURE – Application for leave to appeal from a refusal of leave to appeal from order of Victorian Civil and Administrative Tribunal – Judge below bound to refuse leave on basis of Court of Appeal authority – Proposed ground of appeal that the Court of Appeal authority ‘plainly wrong’ and should not be followed – Application for leave to appeal granted – Appeal dismissed.

PRECEDENT – Court of Appeal – Departure from previous Court of Appeal decision – Whether Court of Appeal convinced previous decision was plainly wrong – Commissioner of State Revenue v EHL Burgess Properties Pty Ltd (2015) 209 LGERA 314 considered.

TAXATION – Land Tax – Definition of ‘greater Melbourne’ in s 64 Land Tax Act 2005 – Definition of ‘metropolitan area’ in s 201 Melbourne Metropolitan Board of Works Act 1958 as in force immediately before repeal – Cities and Shires described in Third Schedule of Melbourne Metropolitan Board of Works Act 1958 having ceased to exist.

STATUTORY INTERPRETATION – Principles – Context – Ascertaining legislative intention – Relevance of legislative history – Circumstances in which courts can read words into statute – Construction of taxation legislation – Interpretation of exemptions in tax legislation

[Lawlor v City of Stonnington \(Review and Regulation\) \[2019\] VCAT 471](#)

Freedom of Information Act 1982 s 50(4) – whether the public interest override should be invoked to require the release of two documents relating to the proposed construction of a community sporting complex.

The decision of the respondent is affirmed.

[Marke v Department of Justice and Regulation \(Review and Regulation\) \[2019\] VCAT 479](#)

Application pursuant to s 50(1)(b) of the Freedom of Information Act 1982 (Vic) (FOI Act), for review of a decision made by an FOI Officer of the Department of Justice and Regulation; Access refused pursuant to exemptions claimed under ss 30(1), 31(1)(a), 33(1) and/or 35(1)(b) of the FOI Act; Applicant applied to be appointed Honorary Bail Justice, statutory functions of Bail Justice Office; confidentiality and integrity of the appointment process; documents exempt as claimed; public interest does not require release; Application dismissed.

[The Director, Transport Safety v Metro Trains Melbourne Pty Ltd \[2019\] VSC 215](#)

JUDICIAL REVIEW – Effect of scheme transferring metropolitan passenger operations to national control – Appointment and authority to prosecute under the Rail Safety Act 2006 (Vic) – Effect of repeal of the relevant provisions – Effect of ss 14(2) and 17(1) of the Interpretation of Legislation Act 1984 (Vic) – Preservation of repealed statutory provisions by necessary implication – Doctrine of implied saving – Application for an order in the nature of certiorari – Rail Safety Act 2006 ss 20(1), 21(1) – Transport (Compliance and Miscellaneous) Act 1983 (Vic) ss 228T, 229A(1), 229B – Transport (Safety Schemes Compliance and Enforcement) Act 2014 ss 1, 3, 105(1)(b), 145, 146 – Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Act 2013 (Vic) ss 22, 23, 103

## LEGISLATION

Victoria

### Statutory Rules

No 24 [Magistrates' Court \(Judicial Registrars\) Amendment Rules 2019](#) These Rules come into operation on 29 March 2019

No 25 [Freedom of Information Regulations 2019](#) These Regulations come into operation on 5 April 2019

No 26 [Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Regulations 2019](#) These Regulations come into operation on 3 April 2019

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

## KEY CONTACTS

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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.