



## PUBLIC SECTOR NEWSLETTER - VICTORIA

It has been a busy fortnight.

You will see from this edition the Royal Commission into the Management of Police Informants has provided a progress report which makes for interesting reading. It is also interesting to see the Independent Broad-Based Anti-Corruption Commission (IBAC) has reported an increasing use of innovative data analytics to identify corruption.

In the Courts a number of decisions have been handed down concerning administrative law, particularly the operation of the Medical Panel. Finally, the Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Act 2019 has finally passed into law receiving Royal Assent on 2 July 2019.

### IN THE MEDIA

#### Government agencies use data mining to root out corruption

Data analytics and data mining are helping Victorian government agencies prevent corruption, a report by the state's anti-corruption watchdog has found. It found an increasing use of innovative data analytics to identify anomalies in expenses, pinpoint suspect gift-giving patterns and even identify potential links with criminal figures. <https://www.governmentnews.com.au/govt-agencies-use-data-mining-to-root-out-corruption/>

#### Backing Our Police To Keep The Community Safe in Victoria

The new platforms are part of the Government's Community Safety Statements, and form part of a record \$3 billion investment in Victoria Police and community safety, which is delivering 3135 new police, stronger laws, better police facilities and resources. <https://www.premier.vic.gov.au/backing-our-police-to-keep-the-community-safe/>

#### IBAC: Victorian state government agencies exploring new ways to detect and prevent corruption

A review released by the state's anti-corruption commission, IBAC, has found Victorian state

government agencies are increasingly aware of corruption risks and exploring new ways to detect and prevent corrupt conduct, such as use of data analytics and the appointment of risk champions. <https://www.ibac.vic.gov.au/media-releases/article/victorian-state-government-agencies-exploring-new-ways-to-detect-and-prevent-corruption>

#### State Trustees failed some of Victoria's most vulnerable people: Ombudsman

Victorian Ombudsman Deborah Glass found State Trustees had failed some of the most vulnerable people in Victoria. The agency manages the finances of around 10,000 Victorians who are unable to look after their own affairs due to disability, illness or injury. <https://www.ombudsman.vic.gov.au/News/Media-Releases/State-Trustees-failed-some-of-Victoria%E2%80%99s-most-vuln> Read the full report here: [Investigation into State Trustees](#).

#### LCA: Commonwealth, states and territories must lift minimum age of criminal responsibility to 14 years, remove doli incapax

Every Australian jurisdiction should lift the minimum age of criminal responsibility to 14 years to improve justice outcomes for vulnerable children and remove the need for the fraught doli incapax presumption, according to the Law Council. <https://www.lawcouncil.asn.au/media/media-releases/commonwealth-states-and-territories-must-lift-minimum-age-of-criminal-responsibility-to-14-years-remove-doli-incapax>

### IN PRACTICE AND COURTS

#### Tabled Parliament Reports

#### [Royal Commission into the Management of Police Informants - Progress Report](#)

Tabled 01 July 2019 – The Commission will deliver its final report on 1 July 2020, including recommendations to ensure that any future use of human sources bound by obligations of confidentiality or privilege is robust and effective, and supports the continued integrity of Victoria's criminal justice system.

## Victoria Parliament Consultations

### [Inquiry into the Conduct of the 2018 Victorian State Election](#)

The Committee is inviting people to submit their views on how the election was conducted and suggestions on how things could be improved. Issues to be examined include enrolling, being a candidate and voting. Submissions close on 30 August 2019.

### [Inquiry into the Impact of Animal Rights Activism on Victorian Agriculture](#)

The Legislative Council's Economy and Infrastructure Committee has commenced a public inquiry into the impact of animal rights activism on Victorian agriculture. The Committee is inviting written submissions by 2 August 2019 and will then conduct public hearings.

### [Indexed Notice 2019-2020](#)

With new Indexation Rule r 111A of the Uniform General Rules commencing from 1 July 2019 in Uniform Law States, the Legal Services Council has released the [Indexed Amounts Notice](#) advising the indexed amounts that will apply to \$10,000 (\$10,685), \$100,000 (\$106,835) and \$25,000 (\$26,710) referred to in the Uniform Law from 1 July 2019 to 30 June 2020. More information is available from the Legal Services Council [website](#).

### [VLRC- Contempt of Court - Release of Consultation Paper](#)

The Commission's consultation paper on contempt of court was published online on the Commission's website together with a summary document.

## **PUBLISHED - ARTICLES, PAPERS, REPORTS**

### [State government integrity frameworks review](#)

IBAC: released 27 June 2019

The review found that reporting from colleagues and supervisors/managers were the most common ways suspected corrupt conduct had been identified in the participating agencies.

### [Annual Plan 2019-20](#)

VAGO: Tabled: 27 June 2019

The annual plan is a key accountability mechanism that gives Parliament, the public sector and the Victorian community the opportunity to assess our goals and understand our audit priorities.

## **CASES**

### [Chairperson of the Royal Commission into the Management of Police Informants v Chief Commissioner of Victoria Police \[2019\] VSCA 154](#)

CRIMINAL LAW – Suppression orders – Application by chairperson of the Royal Commission into Management of Police Informants to vacate or vary suppression orders – Whether continuation of orders necessary – Whether without order risk to safety unacceptable – Revocation of suppression orders would increase

risk – Suppression orders varied to permit disclosure to and by the Royal Commission in accordance with Inquiries Act 2014 and the Witness Protection Act 1991 – AB v CD [2019] VSCA 28, AB v CD; EF v CD [2019] HCA 6 applied – Open Courts Act 2013 (Vic) ss 15, 18 – Witness Protection Act 1991 (Vic) ss 10(5), 10(7), 10A – Inquiries Act 2014 (Vic) ss 12, 17, 18, 21, 24, 26, 34.

CRIMINAL LAW – Witness protection – Authorisation of disclosure – Applicable legislation should be applied – Authorisation as sought unwarranted – Witness Protection Act 1991 (Vic) ss 10(5), 10(7), 10A – Inquiries Act 2014 (Vic) ss 18, 34. PRACTICE AND PROCEDURE – Declaration sought – No relevant controversy – Application dismissed.

### [Johnston v DHHS \[2019\] VSC 431](#)

JUDICIAL REVIEW – Accident compensation – Medical Panel Review – Opinion on medical questions – Whether Panel exceeded its jurisdiction – Whether Panel failed to ask and answer the right question – Whether Panel failed to take into account relevant considerations – Whether Panel misunderstood the evidence before it – Workplace Injury Rehabilitation and Compensation Act 2013 ss 3, 284, 302, and 304.

### [Carson v Turner & Ors \[2019\] VSC 427](#)

JUDICIAL REVIEW – Decision of the Building Appeals Board – Building order overturned – Remitter to Municipal Building Surveyor – Prior decision of the Magistrates' Court – Whether an attempt to re-litigate – Whether an abuse of process – Powers of the Building Appeals Board – Whether error of law by Building Appeals Board – Whether jurisdictional error by Building Appeals Board – Proper remedy – Jurisdiction of Supreme Court to control abuse of process – Remitter

### [Kheir v Robertson & Ors \[2019\] VSC 422](#)

ADMINISTRATIVE LAW – Application for judicial review of a decision of the delegate of the Secretary to the Department of Justice and Regulation refusing an application for emergency management days – Whether plaintiff denied procedural fairness – Whether decision of delegate tainted by apprehended bias – Whether delegate gave inadequate reasons – Whether delegate failed to take relevant considerations into account – Whether delegate took irrelevant considerations into account – Whether decision unlawfully delayed – Whether rights under Charter breached – Application dismissed – Charter of Human Rights and Responsibilities Act 2006 ss 21, 22, 39 – Corrections Act 1986 ss 6, 8, 58E – Supreme Court (General Civil Procedure) Rules 2015 Order 56.

### [Singleton v Victorian Building Authority \[2019\] VSC 416](#)

JUDICIAL REVIEW – Mandamus – Defective domestic building work certified by building surveyor – Allegations against builder and building surveyor referred by authority to Building Practitioners Board – Powers of authority as to disciplinary action against building surveyors – Whether court will

grant mandamus against authority – Where power is discretionary – Where relevant building surveyor has been dealt with by the relevant authorities – Where disciplinary actions are pending appeal in VCAT – No proper basis to grant mandamus requiring authority to take further disciplinary action – Building Legislation Amendment (Consumer Protection) Act 2016 (Vic) pt 3 div 2 – Building Act 1993 (Vic) ss 76, 171(d), 179, 182, 183(1), 205M, 205N, 241(7).

#### [Mailton Holdings Pty Ltd v Jussy \[2019\] VSC 421](#)

ADMINISTRATIVE LAW – Judicial review – Opinion of a Medical Panel – Panel found that worker's physical injuries had resolved, but that worker had somatic symptom disorder, a psychiatric injury – Whether Panel gave genuine consideration to worker's credit – Whether Panel's opinion grossly illogical or irrational – Whether Panel's reasons adequate – No error established – Proceeding dismissed – Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) ss 274, 302, 313.

#### [Bazouni v State of Victoria & Ors \[2019\] VSC 407](#)

ADMINISTRATIVE LAW – Judicial review – Medical panel – Whether panel misconstrued s 28LL(3) of the Wrongs Act 1958 – Whether decision of panel legally unreasonable – Whether plaintiff denied procedural fairness – Certiorari granted – Mandamus granted – Supreme Court (General Civil Procedure) Rules 2015 Order 56 – Wrongs Act 1958 ss 28LE, 28LF, 28LI, 28LL, 28LZG.

#### [Poulpack Pty Ltd v Noumouski \[2019\] VSC 395](#)

ADMINISTRATIVE LAW – Application by an employer seeking to quash the determination of a medical panel in relation to a worker's injury under the Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) – Where parties agreed that the medical panel's opinion was affected by error on the face of the record, such that the relief of certiorari should be granted on the basis of inconsistencies between the opinion and the reasons – Whether the decision of the medical panel should be quashed in its entirety or only partially – Severance of answers to medical questions available – Calleja Nominees Pty Ltd & Anor v Dr Chris Grant & Ors [2008] VSC 597, referred to answers to questions concerning capacity bound up with inconsistent answers regarding injuries – Nothing in the medical panel's findings indicate that the re-determination of medical questions should be remitted to a differently constituted panel – Vegco Pty Ltd v Gibbons [2008] VSC 363 applied – Morrison v Melbourne Pathology Pty Ltd [2018] VSC 477.

#### [Mulder v Victorian Workcover Authority - WorkSafe Victoria \(FOI\) \(Review and Regulation\) \[2019\] VCAT 970](#)

Review and Regulation List – Freedom of Information – request for access to applicant's WorkCover file – one document in dispute – email in applicant's file with a third party's name in the subject line – email partially released with third party's name redacted – third

party a WorkCover claimant with an unrelated claim – disclosure of third party's name an unreasonable disclosure of personal affairs information – Freedom of Information Act 1982 (Vic) s 33(1). The decision of the respondent is affirmed.

## LEGISLATION

### Acts Assented

Date of assent: 2 July 2019

No 20 [Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment \(Reform\) Act 2019](#)

Date of assent: 25 June 2019

No 19 [Disability \(National Disability Insurance Scheme Transition\) Amendment Act 2019](#)

### Acts

[Justice Legislation Amendment \(Police and Other Matters\) Act 2019](#)

Date of commencement: 1 July 2019

Sections 31-37, 52-79, 89 of this Act came into operation on 01 July 2019 (SG215 4.6.2019)

Act Number: 3/2019

Victorian legislation can be accessed here [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.