



## PUBLIC SECTOR NEWSLETTER - VICTORIA

Welcome to Issue 70 of the Victorian Public Sector Newsletter.

Centrelink's Automatic Debt Raising and Recovery System, known as "robodebt", remains in the spotlight, with the Senate Community Affairs Committee Inquiry raising concerns that it is flawed and causing serious harm in the community.

The Australian Human Rights Commission has expressed serious concerns about the proposed trial to drug test welfare recipients, in a submission to a parliamentary inquiry.

Meanwhile, the Commonwealth Government has amended the Australian Human Rights Commission Regulations 1989 to allow employers to exercise reasonable discretion against prospective employees if their criminal record is relevant to the position being applied for.

In Supreme Court news, His Honour Justice Sifris presided over the first Court-run e-Trial in the Commercial Court, whilst the civil Court of Appeal has extended the appeal period in most cases to 42 days and introduced electronic filing through Redcrest.

We hope you enjoy this edition of our public sector newsletter.

### IN THE MEDIA

#### Health privacy gets its own guide

The Office of the Australian Information Commissioner (OAIC) has released a new guide to health privacy to help keep patients' personal information safe. The guide brings together a wide range of OAIC advice for all health service providers covered by the Privacy Act 1988. (10 October 2019) <https://www.oaic.gov.au/assets/privacy/guidance-and-advice/guide-to-health-privacy/guide-to-health-privacy.pdf>

#### Report reveals the big risks of Australian data breaches

The most recent Australian Notifiable Data Breaches Report, from April 01 to June 30, has identified contact details as the most at risk from a data breach, with malicious or criminal attacks accounting for the majority of breaches. (10 October 2019) <https://www.insurancebusinessmag.com/au/news/cyber/report-reveals-the-big-risks-of-australian-data-breaches-180177.aspx>

#### Former Castlemaine Committee of Management member sentenced following IBAC investigation

A former member of the Wesley Hill Public Hall Committee of Management in Castlemaine was recently found guilty of obtaining property by deception and sentenced to a 24 month community correction order following an investigation by Victoria's anti-corruption commission, IBAC. (10 October 2019) <https://www.ibac.vic.gov.au/media-releases/article/former-castlemaine-committee-of-management-member-sentenced-following-ibac-investigation>

#### Airbnb to hand over host data in ATO examination

Airbnb has warned its hosts the Australian Taxation Office will seize the personal financial data of hundreds of thousands of sharing-economy accommodation providers as part of a crackdown on tax avoidance in the "largely unregulated" industry. (10 October 2019) <https://www.hotelmanagement.com.au/2019/10/11/airbnb-to-hand-over-host-data-in-ato-examination/>

#### 'Robodebt' practices are flawed and causing harm, ALA tells senate committee

Centrelink's Automatic Debt Raising and Recovery System, known as 'robodebt', is flawed and is causing serious harm in the community, the Australian Lawyers Alliance (ALA) told the Senate Community Affairs Committee inquiry into the Centrelink Compliance Program today. (09 October 2019) <https://www.lawyersalliance.com.au/news/category/media-releases>

### Religious Discrimination Bill encroaches too heavily on other human rights

The Law Council's submission on the Bill recognises there are opportunities to consolidate and strengthen federal protections against discrimination on the basis of religion. But it notes under the proposed laws religious expression may, in a range of cases, trump the right not to be discriminated against on the grounds of race, sex, sexual orientation, disability, or age – as well as the right to health care. (09 October 2019) <https://www.lawcouncil.asn.au/media/media-releases/religious-discrimination-bill-encroaches-too-heavily-on-other-human-rights>

### Religious Freedom Bills – Ai Group releases submission

Ai Group has today released its submission to the Australian Government's consultation process on the Exposure Drafts of the three Religious Freedom Bills. While expressing support for the right to freedom of religion, Ai Group has proposed a series of amendments to make the Bills workable for Australian businesses. (08 October 2019) <https://www.aigroup.com.au/policy-and-research/mediacentre/releases/religious-freedom-bills-8oct/>

### High Court to rule on class actions challenge

A High Court decision expected this year on class actions funding could make it more difficult for cases to be brought if the ruling overturns use of existing arrangements. (07 October 2019) <https://www.insurancenews.com.au/local/high-court-to-rule-on-class-actions-challenge>

### Response to Hong Kong protests must be reasonable and proportionate

The Law Council of Australia has strongly supported comments today by Australia's Minister for Foreign Affairs, Senator the Hon Marise Payne, which raise concern over the use of live ammunition by authorities during weekend protests in Hong Kong. The use of live ammunition on unarmed citizens may require investigation by the United Nations if this behaviour is repeated, or any internal inquiry by Hong Kong police is not transparent and fair. (07 October 2019) <https://www.lawcouncil.asn.au/media/media-releases/response-to-hong-kong-protests-must-be-reasonable-and-proportionate>

### Drug testing of welfare recipients should not proceed

The Australian Human Rights Commission has expressed serious concerns about the proposed trial to drug test welfare recipients, in a submission to a parliamentary inquiry. The Social Services Legislation Amendment (Drug Testing Trial) Bill 2019 (Cth) could lead to suspended, reduced or cancelled social security payments for a failure to comply. (04 October 2019) <https://www.humanrights.gov.au/about/news/drug-testing-welfare-recipients-should-not-proceed>

### Joint Statement Announcing United States and Australian Negotiation of a CLOUD Act Agreement by U.S. Attorney General William Barr and Minister for Home Affairs Peter Dutton

The United States and Australia have entered into formal negotiations for a bilateral agreement under the U.S. Clarifying Lawful Overseas Use of Data Act (the CLOUD Act), as the first step towards significantly boosting law enforcement cooperation between the two allies, with strong protections for rule of law, privacy and civil liberties (07 October 2019) <https://minister.homeaffairs.gov.au/peterdutton/Pages/australian-negotiation-cloud-act.aspx> For more information on the CLOUD Act, go to: <https://www.justice.gov/dag/page/file/1153466/download>

### Greater certainty for employers when hiring staff with criminal records

The Government has amended the Australian Human Rights Commission Regulations 1989 to allow employers to exercise reasonable discretion against prospective employees if their criminal record is relevant to the position being applied for. But it remains unlawful for employers to discriminate if the conviction is irrelevant to the role. (03 October 2019) <https://www.attorneygeneral.gov.au/Media/Pages/greater-certainty-for-employers-when-hiring-staff-with-criminal-records-3-october-2019.aspx>

### Australia has new whistleblowing laws. Now for the governance

To deliver on its purpose, an effective whistleblowing regime needs not only legislation and regulation, but also processes and governance frameworks within organisations says Professor AJ Brown, the leader of the Centre for Governance & Public Policy at Griffith University. (03 October 2019) <https://www.intheblack.com/articles/2019/10/03/australias-new-whistleblowing-laws-now-governance>

### HRLC: Attorney-General's announcement provides cold comfort on press freedom

Journalists and whistleblowers will continue to face prosecution and jail time for revealing government misconduct and abuse, despite the Attorney-General's announcement, warned the Human Rights Law Centre. (01 October 2019) <https://www.hrlc.org.au/news/2019/10/1/attorney-generals-announcement-provides-cold-comfort-on-press-freedom>

### Call to free more PS information

Government Agencies in Australia and New Zealand have been urged to do more to make information available for their citizens. In a joint statement, the Commissioners and Ombudsmen called on all Government Agencies to take a proactive approach towards releasing information (30 September 2019) <https://www.oaic.gov.au/updates/news-and-media/right-to-know-essential-to-democracy-in-a-digital-world/>

### **LCA: Press freedom should not be by consent of Attorney-General**

The CDPP will now be required to obtain the agreement of the Federal Attorney-General for a prosecution of a journalist charged under section 131.1 (theft) and 132.1 (receiving stolen property) of the Criminal Code and section 73A of the Defence Act 1903 (unlawfully giving or obtaining information as to defences) (30 September 2019) <https://www.lawcouncil.asn.au/media/media-releases/press-freedom-should-not-be-by-consent-of-attorney-general>

### **AHRC: Commission stares debt in the face**

Human Rights Commissioner, Edward Santow said that under Article Nine any “withdrawal, reduction or suspension” of social security benefits has to be “based on grounds that are reasonable, subject to due process, and provided for in national law.” (30 September 2019) [https://www.humanrights.gov.au/our-work/legal/submissions?field\\_sub\\_committees\\_value=All&field\\_subject\\_target\\_id=All&field\\_submission\\_to\\_target\\_id=777&sort\\_by=field\\_cm\\_n\\_date\\_value&sort\\_order=DESC](https://www.humanrights.gov.au/our-work/legal/submissions?field_sub_committees_value=All&field_subject_target_id=All&field_submission_to_target_id=777&sort_by=field_cm_n_date_value&sort_order=DESC)

### **Special report on corruption risks associated with procurement in local government**

Allegations of corruption associated with procurement have been a recurring feature of complaints received and investigations conducted by the IBAC, as well as other Victorian and interstate integrity agencies (30 September 2019) <https://www.ibac.vic.gov.au/publications-and-resources/article/special-report-on-corruption-risks-associated-with-procurement-in-local-government>

## **IN PRACTICE AND COURTS**

### **OAIC: New guide released to help health sector improve privacy practice**

A comprehensive Guide to health privacy has been released by the Office of the Australian Information Commissioner (OAIC) to help keep patients’ personal information safe. The guide brings together a wide range of OAIC advice for [all health service providers](#) covered by the Privacy Act 1988 (08 October 2019)

### **ACMA: The form of records kept by broadcasters**

Consultation closes: 08 November 2019  
We’ve decided to update the instrument that sets out the form of the records broadcasters need to keep. (10 October 2019)

### **Inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press**

The inquiry was referred by the Attorney-General, The Hon Christian Porter MP who noted that the Government will consider proposals from media organisations and interested bodies which aim to ensure the right balance is struck between a free press and keeping Australians safe. For further information about

the inquiry see the full terms of reference. As agreed by the Attorney-General, the reporting date for this inquiry has been extended to 28 November 2019.

### **ANAO Performance audit in-progress: Defence’s management of its public communications and media activities**

Due to table: December, 2019: The objective of this audit is to assess the effectiveness and appropriateness of the Department of Defence’s (Defence’s) management of its public communications and media activities.

### **SC Practice Notes: Mortgage Recovery List in the Commercial Court**

From 30 September 2019, a new Mortgage Recovery List will be established in the Commercial Court. The Mortgage Recovery List will be managed by Judicial Registrar Matthews.

### **First e-Trial in the Commercial Court**

Justice Sifris presided over the first Court-run e-Trial in the Commercial Court. (04 October 2019)

### **Court of Appeal reminder: changes on 30 September 2019**

The civil appeal period will increase to 42 days for most appeals, and electronic filing through RedCrest will be introduced. Updated Court rules, Court of Appeal Practice Notes and Registrar’s Notes will also commence. Practitioners are encouraged to familiarise themselves: [Supreme Court \(Court of Appeal E-Filing and Other Amendments\) Rules 2019](#)  
updated Court of Appeal Practice Notes [SC CA 1](#), [SC CA 2](#) and [SC CA 3](#)  
updated general Practice Note [SC Gen 19](#)  
updated Court of Appeal [Notice to Profession regarding applications for extension of time under rule 64.08](#)

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

### **Special report on corruption risks associated with procurement in local government**

Independent Broad-based Anti-Corruption Commission (IBAC): 30 September 2019.  
This report presents specific findings from two IBAC investigations into allegations of corrupt conduct involving procurement in the Victorian local government sector and discusses general conclusions that may be drawn from these and a number of other investigations.

## **CASES**

### **Paul Farrell and Department of Home Affairs (No 6) (Freedom of information) [2019] AICmr 66**

Freedom of Information — Whether documents contain deliberative matter prepared for a deliberative purpose — Whether disclosure of personal information unreasonable — Whether contrary to the public interest to release conditionally exempt documents — (CTH) Freedom of Information Act 1982 ss 11A(5), 47C and 47F

**LEGISLATION**[Paul Farrell and Department of Home Affairs \(No 5\) \(Freedom of information\) \[2019\] AICmr 65](#)

Freedom of Information – Whether disclosure would disclose commercially valuable information – Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency – Whether disclosure of personal information unreasonable – Whether contrary to public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A, 47, 47E(d) and 47F.

[Taylor v Department of Health \[2019\] FCA 1588](#)

HUMAN RIGHTS – application for interlocutory injunctive relief in relation to claims of disability discrimination and adverse actions arising from the Department of Health’s treatment of an application for registration in the Australian General Practice Training Program – objection to competency on the basis the Court does not have jurisdiction – claims brought under the Disability Discrimination Act 1992 (Cth) and Fair Work Act 2009 (Cth) – no employment or prospective employment relationship – no termination of the disability discrimination complaint by the President of the Australian Human Rights Commission – whether jurisdiction under s 39B(1A)(c) of the Judiciary Act 1903 (Cth) – objection to competency upheld.

[Deputy Commissioner of Taxation v Buzadzic \[2019\] VSCA 221](#)

CONSTITUTIONAL LAW – Judicial power of Commonwealth – Jurisdiction vested in State courts – Deputy Commissioner of Taxation commenced recovery proceedings against respondents for liability under income tax assessment – Income Tax Assessment Act 1936 (Cth) s 175 provides validity of assessment not affected by non-compliance with Act – Taxation Administration Act 1953 (Cth) s 350-10(1) item (2) of sch 1 provides production of notice of assessment conclusive evidence that assessment properly made and amounts and particulars of assessment correct – Taxation Administration Act 1953 (Cth) ss 14ZZM and 14ZZR preclude court in recovery proceeding from having regard to fact that review or appeal of assessment under pt IVC pending in Administrative Appeals Tribunal or Federal Court – Whether interference with integrity of Supreme Court and rule of law – Whether judicial power of Commonwealth impermissibly conferred on Commissioner – Kable v Director of Public Prosecutions (NSW) [1996] HCA 24; (1996) 189 CLR 51, Attorney-General (NT) v Emmerson [2014] HCA 13; (2014) 253 CLR 393 applied; Brandy v Human Rights and Equal Opportunity Commission [1995] HCA 10; (1995) 183 CLR 245 distinguished.

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### 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.

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.

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