



PUBLIC SECTOR NEWSLETTER - VICTORIA

Welcome to Issue 72 of the Victorian Public Sector Newsletter.

In the media this fortnight we see the Prime Minister is planning to outlaw environmental boycott campaigns targeting businesses.

The fake breath test scandal of last year continues to ail the Victoria Police, with IBAC concerned that officers could still be conducting fake tests given the "meaningless and unachievable" targets being imposed upon them.

Meanwhile, an interesting conversation continues in the world of political advertising on social media platforms, with an article published by Johan Lidberg, Monash University concerning Twitter banning political advertising. Mr Lidberg also discusses Facebook and Google, and comments about these platforms being not just social media platforms but also publishers, which do not presently adhere to the legal and ethical frameworks connected with publishing.

Finally, in the County Court there have been a number of new judicial appointments - John Cain has been appointed a County Court Judge and the new State Coroner, while Anne Hassan SC and Kevin Doyle have been appointed judges.

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

IN THE MEDIA

Jury dismissed in trial over runaway petrol tanker trailer that killed three people at Staghorn Flat

The jury in a case against a mechanics company alleged to have serviced a fuel tanker involved in a crash that killed three people has been discharged, with the judge citing an "incurable irregularity." (08 November 2019) <https://www.abc.net.au/news/2019-11-08/staghorn-flat-crash-trial-jury-discharged/11687172>

Government to pay e-Invoices within five days

From 1 January 2020, Commonwealth Government agencies will start paying e-Invoices within five days or pay interest on any late payments. e-Invoicing will improve business cash flow through faster payment times and deliver significant benefits and efficiencies to suppliers and the Government by reducing transaction costs and handling errors. (07 November 2019) <https://www.financeminister.gov.au/media-release/2019/11/07/government-pay-e-invoices-within-five-days>

ACMA takes action against eleven telcos

The ACMA has taken action against eleven telcos for failing to comply with consumer protection rules. M2 Commander, a provider of internet, phone and energy services, was issued with a formal warning for transferring a consumer's service from another telco without their consent. (06 November 2019) <https://www.acma.gov.au/articles/2019-11/acma-takes-action-against-eleven-telcos>

Fairer treatment for tax compensation claims

The Government has released its response to the review of the treatment of small business tax cases under the scheme for Compensation for Detriment Caused by Defective Administration (CDDA). The Government has accepted all 12 recommendations either in full, in part or in principle (04 November 2019) <https://www.financeminister.gov.au/media-release/2019/11/04/fairer-treatment-tax-compensation-claims>

Uluru Statement should be respected

A voice for Indigenous Australians must be heard by parliament not just by the government if it is to have a meaningful impact on our laws and the administration of justice, says Law Council of Australia President, Arthur Moses SC. (01 November 2019) <https://www.lawcouncil.asn.au/media/uluru-statement-should-be-respected>

HRLC: Prime Minister's plan to outlaw environment boycott campaigns is deeply concerning

Protest rights in Australia should be strengthened, not weakened the Human Rights Law Centre said in response to the Prime Minister's announcement that he will look to outlaw environmental campaigns targeting businesses. (01 November 2019) <https://www.hrlc.org.au/news/2019/11/1/prime-ministers-plan-to-outlaw-environment-boycott-campaigns-is-deeply-concerning>

HRLC: Australian Government to face scrutiny on human rights track record at the UN

Australia's human rights record is set to face intense scrutiny in 2020 when the Australian Government appears before the Human Rights Council in Geneva for its major four yearly human rights review. (01 November 2019) <https://www.hrlc.org.au/news/2019/10/30/australian-government-to-face-scrutiny-on-human-rights-track-record-at-the-un>

OAIC drives international collaboration on privacy protection

As part of the OAIC's active engagement on global privacy issues OAIC presented two resolutions at the recent ICDPPC meeting in Albania. (31 October 2019) <https://www.oaic.gov.au/updates/news-and-media/oaic-drives-international-collaboration-on-privacy-protection/>

LCA: Mandatory sentencing risks unintended consequences

Mandatory minimum sentencing could force judges to "rubber stamp" lengthy prison terms regardless of the facts of a case, says Law Council of Australia President, Arthur Moses SC. (30 October 2019) <https://www.lawcouncil.asn.au/media/media-releases/mandatory-sentencing-risks-unintended-consequences>

AHRC: Commission welcomes redraft of Identity Matching Bill

The bi-partisan Parliamentary Joint Committee on Intelligence and Security (PJICIS) has recommended the Identity-matching Services Bill 2019 be withdrawn and re-drafted. The Commission's submissions urged that the Bill include stronger democratic oversight. The Bill gave too much discretionary power to the executive branch of government and created potential opportunities for identity theft. (30 October 2019) <https://www.humanrights.gov.au/about/news/commission-welcomes-redraft-identity-matching-bill>

The risk of falsification remains' warns watchdog after police's fake breath test scandal

After Victorian police were found to have falsified hundreds of thousands of breath tests last year, the state's anti-corruption body warns there's a risk officers could still be conducting fake tests because of "meaningless and unachievable" targets. (30 October 2019) <https://www.abc.net.au/news/2019-10-30/police-could-still-be-faking-breath-tests-watchdog-warns/11653650>

Redraft of aged care law needed to improve care

The Aged Care Act 1997 needs to be rewritten to improve safety and quality in aged care says the Australian Lawyers Alliance (ALA) ahead of the release of the preliminary report of the Royal Commission into Aged Care Quality and Safety. (30 October 2019) <https://www.lawyersalliance.com.au/news/redraft-of-aged-care-law-needed-to-improve-care>

Bruce Gordon breached media control and diversity rules

The ACMA has found that Mr Bruce Gordon, the owner of WIN Corporation Pty Ltd, breached media control and diversity rules in relation to his interests in the Prime Media Group Limited (Prime). (29 October 2019) <https://www.acma.gov.au/articles/2019-10/bruce-gordon-breached-media-control-and-diversity-rules>

HRLC: Andrews must act to ensure Victorians have a police force they can trust

Shocking stories of police brutality show the need for immediate action by the Andrews Government to provide Victoria's police corruption watchdog (IBAC) the power and tools it needs to independently investigate serious police misconduct, so that police are not investigating their own. (28 October 2019) <https://www.hrlc.org.au/news/2019/10/25/andrews-must-act-to-ensure-victorians-have-a-police-force-they-can-trust>

Productive year for Victoria's anti-corruption agency

Victoria's independent anti-corruption agency, IBAC, had a successful and productive year in 2018/19, with key achievements including a significant increase in corruption investigations finalised. (29 October 2019) <https://www.ibac.vic.gov.au/media-releases/article/productive-year-for-victoria-s-anti-corruption-agency>

IBAC charges former Victoria Police superintendent with misconduct in public office

Victoria's independent police oversight body, the Independent Broad-based Anti-corruption Commission (IBAC), has charged a former Victoria Police superintendent with one count of misconduct in public office. (28 October 2019) <https://www.ibac.vic.gov.au/media-releases/article/ibac-charges-former-victoria-police-superintendent-with-misconduct-in-public-office>

ABC joins fight to combat fake news

The Australian Broadcasting Corporation (ABC) has joined with its public broadcasting counterparts in the United States and Canada to call for an international boost for media literacy to counter the impact of 'fake news'. (28 October 2019) <https://about.abc.net.au/press-releases/abc-announces-us-partnership-to-fight-fake-news-in-media-literacy-week/>

Disability strongest in AHRC complaints

The Australian Human Rights Commission (AHRC) has found complaints relating to discrimination on the grounds of disability topped its annual list of complaints in 2018-19, accounting for almost 44 per cent of the total. (28 October 2019) <https://www.humanrights.gov.au/about/news/disability-discrimination-top-commission-complaints-data>

Commissioner to home in on FoI

The Office of the Australian Information Commissioner (OAIC) has launched an investigation into the Department of Home Affairs' compliance with the Freedom of Information (FoI) laws when processing requests for non-personal information (28 October 2019) <https://www.oaic.gov.au/updates/news-and-media/investigation-into-foi-processing-by-the-department-of-home-affairs>

ACCC challenges Google over location data

Australia's competition watchdog is going after Google over allegations the tech giant made false or misleading claims about what personal location data it was collecting. The lawsuit follows the ACCC's exhaustive investigation into digital platforms in Australia that made 23 recommendations, including changes to Google's phones, the Privacy Act, and the introduction of a privacy code for tech companies in Australia. (28 November 2019) <https://www.news.com.au/national/accc-challenges-google-over-location-data/news-story/641936c636ae70492766e543dd7ea77d>

Record year in fight against wage theft

The Ombudsman's annual report revealed that Fair Work Inspectors recovered more than \$40 million for 18,000 under-paid employees — the highest total recoveries figure in the regulator's history. (28 October 2019) <https://www.fairwork.gov.au/about-us/news-and-media-releases/2019-media-releases/october-2019/20192110-annual-report-2018-19-media-release>

IN PRACTICE AND COURTS

[AHRC: Submission date extended for the National Conversation - have your say](#)

The Australian Human Rights Commission has extended the date to hear from anyone on the key human rights priorities for Australia into the future. Submissions for the Free and Equal: An Australian conversation on human rights project will be kept open until 29 November 2019. (08 November 2019)

[Federal Court of Australia - National Defamation Practice Note](#)

The practice note for the conduct of defamation proceedings in the Federal Court has now been finalised, following consultation with the profession. The Practice Note will take effect from 12 November 2019, and to the extent practicable, will apply to all defamation

proceedings, whether commenced before or after 12 November 2019.

Legal and Constitutional Affairs References Committee – November 2019

[Impact of changes to service delivery models on the administration and running of Government programs](#)

[Nationhood, national identity and democracy](#)

[Native Title Legislation Amendment Bill 2019](#)

[Customs Amendment \(Product Specific Rule Modernisation\) Bill 2019 \[Provisions\]](#)

[Crimes Legislation Amendment \(Sexual Crimes Against Children and Community Protection Measures\) Bill 2019 \[Provisions\]](#)

[OAIC: Consultation opens on draft privacy rules](#)

The OAIC is seeking feedback over its draft Privacy Safeguard Guidelines. The planned rules apply to the Consumer Data Right (CDR) regime, which aims to provide Australians with greater choice and control over how their data will be used and disclosed. The CDR scheme will be rolled out in February, starting with the banking sector. Closing date for submissions is November 20.

[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.

[New Sentencing Statistics Released for the Magistrates' Court](#)

The Sentencing Advisory Council's public 'SACStat' database of sentencing statistics provides information on the number of cases and charges sentenced, the types of sentences imposed, sentence lengths, and an age and gender profile of offenders. SACStat also provides sentencing data for over 200 offences sentenced in the higher courts (County and Supreme Courts) for the five years to 30 June 2018 (November 2019).

[New user guide](#)

The Sentencing Advisory Council has published a two-page guide with handy hints to help users get across SACStat's counting rules.

[OVIC: updated Victorian Protective Data Security Standards](#)

Updates to the Standards have resulted in the simpler Victorian Protective Data Security Standards v2.0, approved in October 2019 by the Special Minister of State, and were published in the [Government Gazette](#). Agencies that have protective data security obligations under Part 4 of the [Privacy and Data Protection Act 2014](#) (Vic) are now required to adhere to these updated Standards, and submit a PDSP to OVIC by the end of August 2020.

[IBAC: Unmasking corruption in public institutions](#)

29 October 2019 - Unmasking corruption in public institutions: a joint communiqué from Australia's anti-corruption Commissioners

[IBAC Annual Report 2018/19](#)

Tabled to Parliament on 29 October 2019, the IBAC's annual report outlines the agency's performance for 2018/19, which included completing 45 investigations and preliminary inquiries, a 221 per cent increase on the previous year. As a result of these investigations, 16 people were charged with offences under various State and Commonwealth statutes.

Court Appointments

[Appointment Of New State Coroner](#)

The Government has announced the appointment of John Cain as a County Court Judge and new State Coroner.

[New Appointments To The County Court](#)

The Government has announced the appointment of Ms Anne Hassan SC and Mr Kevin Doyle as judges of the County Court.

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Twitter is banning political ads – but the real battle for democracy is with Facebook and Google](#)

Banning political advertising only deals with a symptom of the democratic flu the platforms are causing. The root cause of the flu is the fact social media platforms are no longer only platforms – they are publishers. Until they acknowledge this and agree to adhere to the legal and ethical frameworks connected with publishing, our democracies will not recover.

[Implementation of the Digital Continuity 2020 policy](#)

The objective of this audit was to examine the extent to which Australian Government entities have implemented the Digital Continuity 2020 policy, and how effectively the National Archives of Australia is monitoring, assisting, and encouraging entities to meet the specified targets of the policy.

[Royal Commission into Aged Care Quality and Safety interim report](#)

Royal Commission into Aged Care Quality and Safety: 31 October 2019

The Royal Commission's Interim Report lays the foundations for the fundamental reform and redesign of Australia's aged care system. It is clear that a fundamental overhaul of the design, objectives, regulation and funding of aged care in Australia is required – not merely patching up.

[Joining the dots: 2018 census of the Australian health justice landscape](#)

Health justice partnerships are collaborations that embed legal help into healthcare settings, joining the dots between the legal and social problems that make or keep people unwell.

[What children and young people in juvenile justice centres have to say](#)

This report details the findings from ACYP consultations with children and young people in Juvenile Justice Centres between 2015 and 2019. ACYP consulted with young people in detention to inform the development of New South Wales' first Strategic Plan for Children and Young People.

[Addressing and preventing sexist advertising: an analysis of local and global promising practice](#)

This research paper explores the efficacy of interventions that aim to address sexism or promote progressive gender representations in advertising, highlighting examples of local and global promising practice.

CASES

[Vella v Commissioner of Police \(NSW\) \[2019\] HCA 38](#)

Constitutional law (Cth) – Judicial power – Constitution – Ch III – State Parliament – Institutional integrity of State courts – Where s 5(1) of Crimes (Serious Crime Prevention Orders) Act 2016 (NSW) provides that State court may make order if satisfied that specified person has been convicted of serious criminal offence or involved in serious crime related activity and satisfied that reasonable grounds to believe that making of order would protect public by preventing, restricting or disrupting involvement by that person in serious crime related activities – Where s 6(1) of Act provides that order against that specified person may contain such prohibitions, restrictions, requirements and other provisions as court considers appropriate for purpose of protecting public by preventing, restricting or disrupting involvement by that person in serious crime related activities – Where proceedings under Act are civil proceedings – Whether making order exercise of judicial power – Whether powers conferred by Act incompatible with State court's role as repository of federal judicial power – Whether powers conferred by Act substantially impair institutional integrity of State court.

[Australian Copyright Council: Roadshow Films Pty Limited v Telstra Corporation Limited \[2019\] FCA 1328](#)

Roadshow Films, applying with other companies with copyright interests in cinematograph films, sought an injunction under section 115A of the Copyright Act 1968 (Cth) against websites located outside Australia accused of infringing, or facilitating the infringement of, copyright. In determining whether to grant the injunction, the Court can take a number of matters into account as specified in section 115A(5). The websites were found to infringe copyright flagrantly, they had directories of motion pictures and television programs and they displayed a disregard for copyright generally. (28 October 2019)

[Matthews v Markos \[2019\] FCA 1827](#)

HUMAN RIGHTS – application for leave to commence proceedings under s 46PO(3A)(a) of the Australian Human Rights Commission Act 1986 (Cth) – where Australian Human Rights Commission terminated the complaint primarily on the basis that it was filed more than 12 months after the alleged discrimination took place – whether application arguable and not fanciful – delay not such as to render it inappropriate to grant leave – leave granted nunc pro tunc.

[Mendonca v Tax Practitioners Board \[2019\] FCA 1757](#)

ADMINISTRATIVE LAW – challenge to a decision of the Tax Practitioners Board pursuant to the Administrative Decisions (Judicial Review) Act 1977 (Cth) and s 39B of the Judiciary Act 1903 (Cth) – Board exercised discretion not to investigate conduct that may breach the Tax Agent Services Act 2009 (Cth) – whether jurisdictional error – whether Board understood nature or scope of the discretion – decision set aside.

[Mullen v Aged Care Quality and Safety Commissioner \[2019\] FCA 1726](#)

ADMINISTRATIVE LAW - freedom of information - where applications made for access to information under Freedom of Information Act 1982 (Cth) - secrecy provisions under Part 6.2 of Aged Care Act 1997 (Cth) - exempt documents - whether information protected information - whether information protected on basis it related to affairs of an approved provider - whether potential for disclosure upon application under Aged Care Act and in discretion of Secretary of Department of Social Services relevant to protected status of information - statutory construction.

Administrative Appeals Tribunal Act 1975 (Cth) s 44

Aged Care Act 1997 (Cth) ss 2, 3-1, 3-2, 3-3, 3-4, 86-1, 86-2, 86-3, 86-9, Parts 6.2, 6.3, Schedule 1

Freedom of Information Act 1982 (Cth) ss 3, 40, 11, 11A, 16, 38, 47E, 47F, 54L, 55G, 55K, 57A, 60, 93A, Parts III, IV, VII, Schedule 3

[McLean v Racing Victoria Ltd \[2019\] VSC 690](#)

SEARCH AND SEIZURE – Warrant issued under Crimes Act 1958 (Vic), s 465 to police to search premises of licensed racehorse trainer

POLICE – Common law powers and duties of police in relation to confidential information obtained during criminal investigation.

PRIVACY – Whether inconsistency between Crimes Act 1958 (Vic), s 465 and Privacy and Data Protection Act 2014 (Vic), Information Privacy Principle 2.1 – No inconsistency – Meaning of 'unlawful activity' in IPP 2.1(e) – Whether disclosure authorised by IPP 2.1(e) – Disclosure lawful – Privacy and Data Protection Act 2014 (Vic), ss 6, 15, 20, IPP 2.1 – Charter of Human Rights and Responsibilities Act 2006 (Vic), ss 13(a), 32.

[Celestina v Secretary of the Department of Environment, Land, Water and Planning \[2019\] VSC 717](#)

JUDICIAL REVIEW – Stay application – Translocation of Eastern Barred Bandicoots to French Island – Research Permit – Challenge by French Island resident – Whether Permit within power – Whether procedural fairness observed – Arguable case – Balance of convenience against stay – Wildlife Act 1975 s 28A; National Parks Act 1975 s 20. <http://classic.austlii.edu.au/au/cases/vic/VSC/2019/717.html>

[XKV v Mental Health Tribunal \(Human Rights\) \[2019\] VCAT 1674](#)

Application under section 201 Mental Health Act 2014 for review of decision by Mental Health Tribunal under section 52 Mental Health Act 2014 that person be subject to a Treatment Order.

Consideration of rights to privacy, to liberty and freedom from medical treatment without consent under Charter of Human Rights and Responsibilities Act 2006.

[Department of Education and Training v Australian Education Union \(Review and Regulation\) \[2019\] VCAT 1667](#)

Freedom of Information Act 1982 ss 30(1), 34(1)(b), 34(4)(a)(ii), 35(1)(b), 50(4) – Access sought to report of inquiry into Goulburn Ovens Institute of TAFE – Whether document exempt as internal working documents or documents of a business, commercial or financial undertaking exposing the agency or undertaking unreasonably to disadvantage – Whether document exempt due to material obtained in confidence – Review of decision by Acting Public Access Deputy Commissioner.

LEGISLATION

[Crimes Legislation Amendment \(Police Powers at Airports\) Act 2019](#)

30/10/2019 - Act No. 89 of 2019 as made

Bills

[Crimes Legislation Amendment \(Police Powers at Airports\) Bill 2019](#)

Assent Act no: 89 Year: 2019 28 October 2019
Amends the: Crimes Act 1914 to: broaden existing identity check provisions and create offences and powers in relation to identity check, move-on and ancillary directions by constables and protective services officers at Australia's major airports; and Australian Federal Police Act 1979 to provide that the offence of contravening an identity check or move-on direction is a protective service offence for the purposes of the Act.

Regulations

[Taxation Administration Amendment \(Updating the List of Exchange of Information Countries\) Regulations 2019](#)

01/11/2019 - This instrument amends the Taxation Administration Regulations 2017 to add eight countries to the list of foreign countries and foreign territories specified to be 'information exchange countries' for the purposes of subsection 12-385(4) of Schedule 1 to the Taxation Administration Act 1953.

[AusCheck Legislation Amendment \(Major National Events\) Regulations 2019](#)

01/11/2019 - These regulations amend the AusCheck Regulations 2017 to provide for the establishment and operation of the AusCheck scheme for major national events purposes, and amend the Crimes Regulations 2019 to provide additional exclusions from the spent convictions scheme.

[Crimes Amendment \(National Disability Insurance Scheme—Worker Screening\) Regulations 2019](#)

31/10/2019 - These regulations prescribe a person or body in New South Wales, South Australia, Tasmania and the Australian Capital Territory to be authorised to receive, use and disclose spent, pardoned and quashed convictions Crimes Amendment (National Disability Insurance Scheme—Worker Screening) Regulations 2019.

Acts

[Police Legislation Amendment \(Road Safety Camera Commissioner and Other Matters\) Act 2019](#)

Act Number: 39/2019 Date of assent 6 November 2019

Bills

[Commercial Passenger Vehicle Industry Amendment Bill 2019](#)

Reinstates the offence of touting within Victoria and introduces a new offence of advertising for the provision of a commercial passenger service on social media.

[Transport Legislation Amendment Bill 2019](#)

Makes a range of changes to transport legislation, including measures to address offensive advertising on vehicles, use of vehicle immobilisation devices and organisational changes to the Department of Transport.

[Workplace Safety Legislation Amendment \(Workplace Manslaughter and Other Matters\) Bill 2019](#)

Introduces new criminal offences of workplace manslaughter to capture negligent conduct which causes the death of an employee or member of the public.

Passed Parliament (now onto the Governor for royal assent)

[Children's Services Amendment Bill 2019](#)

Statutory Rules

No 105 [Subordinate Legislation \(Legislative Instruments\) Amendment Regulations 2019](#)

29 October 2019 - Part 4—Schedule 3 amendments – including Drugs, Poisons and Controlled Substances Act 1981; Gambling Regulation Act 20031030. Public Administration Act 20041135; Public Health and Wellbeing Act 20081136.

No 106 [County Court \(Chapter I Circuit Fees, Expenses and Allowances Amendment\) Rules 2019](#)

These Rules come into operation on 1 January 2020.

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We are pleased to be able to work collaboratively with the Victorian Government to offer the following services (at no charge):

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- 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.

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- (b) Emailing legalhelpdesk@tglaw.com.au

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