



PUBLIC SECTOR NEWSLETTER - VICTORIA

Welcome to Issue 74 of the Victorian Public Sector Newsletter. It has been a busy fortnight!

On the human rights front, Australia's status as an open democracy has been downgraded in a blunt assessment released this week by a global alliance of human rights organisations, and Amnesty International has published a report summarising key challenges affecting women human rights defenders globally. In other news, the financing company backing what is expected to be the largest class action in Australia's history - over faulty airbags - has been dealt a blow by a recent High Court ruling.

In the meantime, Parliament has been busy, with new laws passed to keep terrorists behind bars longer, as well as to help stamp out foreign bribery offences, and the Prime Minister has announced that a new taskforce is to be established to target foreign interference in Australian activities and interests.

Some interesting papers and reports have also been published, with the Australian Law Reform Commission releasing a discussion paper setting out proposed reforms arising from its inquiry into Australia's Corporate Criminal Responsibility Regime. Further, the Australian National Audit Office conducted an audit on the implementation of the My Health Record System, and a report of their findings was released on 25 November.

You will find all this and more in this newsletter – we hope you find it enjoyable and useful.

IN THE MEDIA

IBAC's Operation Sandon public hearings will continue in 2020

IBAC's public hearings into allegations of serious corrupt conduct concerning the transparency and integrity of planning and property development decision making, including donations to candidates in local and state government elections, will continue in early 2020. (06 December 2019) <https://www.ibac.vic.gov.au/media-releases/article/ibac's-operation-sandon-public-hearings-will-continue-in-2020>

Free and equal: An Australian conversation on human rights inquiry

The Law Council has prepared a submission to the Australian Human Rights Commission's (the AHRC's) Free and equal: An Australian conversation on human rights inquiry. In addition to a human rights act, the submission sets out a number of mechanisms to promote and uphold human rights in Australia. (05 December 2019) <https://www.lawcouncil.asn.au/media/news/free-and-equal-an-australian-conversation-on-human-rights-inquiry>

LCA: Parliament should reject flawed family court merger Bill

Legislation merging the specialist Family Court into a single generalist court will not alleviate the fundamental problems plaguing the family law system, including the risk of victims of family violence falling through the cracks. (05 December 2019) <https://www.lawcouncil.asn.au/media/media-releases/parliament-should-reject-flawed-family-court-merger-bill>

Court reforms to deliver better outcomes for families

Fixing the broken structure of the family court system and helping families achieve faster and lower cost resolutions are the key aims of legislation to be introduced into Federal Parliament. (05 December 2019) <https://www.attorneygeneral.gov.au/media/media-releases/court-reforms-deliver-better-outcomes-families-5-december-2019>

Overhaul of APS sees cuts to Govt Departments

In a major overhaul of the Australian Public Service, the prime minister has announced that federal government departments will be reduced from 18 to 14 and five secretaries sacked. From February 1, four new departments will be created and Services Australia will become an executive agency. (05 December 2019) <https://www.governmentnews.com.au/overhaul-of-aps-sees-cuts-to-govt-depts/>

Downgrading of Australia's open democracy status a stark reminder of the need to create an Australian Charter of Human Rights and Freedoms

Australia's status as an open democracy has been downgraded in a blunt assessment released this month by a global alliance of human rights organisations. (05 December 2019) <https://www.hrlc.org.au/news/2019/12/5/downgrading-of-australias-open-democracy-status-a-stark-reminder-of-the-need-to-create-an-australian-charter-of-human-rights-and-freedoms>

Rugby Australia and Israel Folau settle legal dispute with mutual apologies

Rugby Australia apologises to Israel Folau as part of a confidential settlement reached over his sacking, avoiding a protracted court hearing after the former Wallaby sued for wrongful dismissal. (04 December 2019) <https://www.abc.net.au/news/2019-12-04/rugby-australia-israel-folau-mediation-settlement/11765866>

Massive compensation case over faulty airbags suffers High Court setback

The financing company backing what is expected to be the largest class action in Australian history suffers a major blow, after the High Court ruled against a plan entitling it to 25 per cent of eventual payouts. (04 December 2019) <https://www.abc.net.au/news/2019-12-04/takata-westpac-class-action-backers-suffer-blow-in-high-court/11764412>

New Laws Will Keep Terrorists Behind Bars Longer

Terrorists and their supporters will find it significantly harder to get bail or parole under new laws passed by Federal Parliament. (04 December 2019) <https://www.attorneygeneral.gov.au/media/media-releases/new-laws-will-keep-terrorists-behind-bars-longer-4-december-2019>

Statement on the Ombudsman's Report Tabled

The Victorian Government welcomes the Victorian Ombudsman's report, WorkSafe 2: Follow-up investigation into the management of complex workers compensation claims. The report reveals disturbing examples of injured workers who have been unfairly treated and unjustly denied their legal entitlements. (03 December 2019) <https://www.premier.vic.gov.au/statement-on-the-ombudsmans-report-tabled-today/>

VIC Workcover report highlights systemic failings in the system

The Victorian Ombudsman's report into Workcover has been released, which found that insurance agents are unfairly denying claims, highlights the need for urgent improvement to the scheme according to the Australian Lawyers Alliance (ALA). (03 December 2019) <https://www.lawyersalliance.com.au/news/vic-workcover-report-highlights-systemic-failings-in-the-system>

ACCC releases Customer loyalty schemes final report

The ACCC has released its final report on Customer loyalty schemes. It calls for legislative reforms to protect consumers, including in relation to data practices and privacy. (03 December 2019) <https://www.accc.gov.au/publications/customer-loyalty-schemes-final-report>

New Appointments to the Magistrates' Court

The Andrews Labor Government has announced the appointments of Mr Trieu Huynh and Ms Marita Altman to the Magistrates' Court of Victoria. Mr Huynh has worked on a range of complex cases including homicides, sex offences and Commonwealth matters. (03 December 2019) <https://www.premier.vic.gov.au/category/media-release/attorney-general/>

New taskforce to target foreign interference

A new multi-Agency taskforce is to be established to target foreign interference in Australian activities and interests (02 December 2019) <https://www.abc.net.au/news/2019-12-02/asio-to-lead-foreign-interference-taskforce/11756060>

ALRC: Report Launch – The Future of Law Reform

The Australian Law Reform Commission (ALRC) has released a report suggesting an ambitious agenda for law reform over the next five years. (02 December 2019) <https://www.alrc.gov.au/news/report-launch-the-future-of-law-reform/>

New PS engagement tools put to work

The Department said the new APS Framework for Engagement and Participation would include guidance on engagement principles and standards for the APS and ways to open dialogue for "deliberative engagement". (02 December 2019) <https://www.industry.gov.au/data-and-publications/aps-framework-for-engagement-and-participation>

Tis the season to be wary online

The Office of the Australian Information Commissioner (OAIC) has reminded shoppers and retailers to be careful about the information they share online this festive season. (02 December 2019) <https://www.oaic.gov.au/updates/news-and-media/tis-the-season-to-be-aware-of-what-you-share-online/>

LCA: Act now to bolster government accountability and rule of law

A raft of legislation before parliament this month risks seriously undermining the administration of justice and the rights of all Australians, the Law Council of Australia has warned. The Law Council is concerned about legislation to validate unlawful decisions that have been taken by the Australian Criminal Intelligence Commission and broaden the authorisation process for operations or investigations. (01 December 2019) <https://www.lawcouncil.asn.au/media/media-releases/act-now-to-bolster-government-accountability-and-rule-of-law>

Pilot program to save time and money for separating couples

A simpler and more cost-effective process to help separating couples divide their property assets will be trialled in four Federal Circuit Court Registries from January 2020. The Small Claims Property Pilot will run for two years in Brisbane, Parramatta, Adelaide and Melbourne to couples with property pools under \$500,000. (29 November 2019) <https://www.attorneygeneral.gov.au/media/media-releases/pilot-program-save-time-and-money-separating-couples-29-november-2019>

Oneflare pays \$75,600 infringement notice for spamming

Oneflare Pty Ltd has paid a \$75,600 infringement notice following an Australian Communication and Media Authority (ACMA) investigation into breaches of the Spam Act 2003. The ACMA has also accepted a court-enforceable undertaking from Oneflare to guarantee future compliance. (29 November 2019) <https://www.acma.gov.au/articles/2019-11/oneflare-pays-75600-infringement-notice-spamming>

New laws to help stamp out foreign bribery offences

The Morrison Government is strengthening Australia's foreign bribery laws to help crackdown on corporations and employees that improperly influence foreign officials. (28 November 2019) <https://www.attorneygeneral.gov.au/media/media-releases/new-laws-help-stamp-out-foreign-bribery-offences-28-november-2019>

Access to justice will be expanded by introduction of group costs orders, says LIV

Enabling the Supreme Court to make group costs orders in class actions will increase access to justice, according to the Law Institute of Victoria. (28 November 2019) <https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/November-2019/Access-to-justice-will-be-expanded-by-introduction>

Improving Access To Justice For Class Actions

The Andrews Labor Government is improving access to justice and making it easier to bring class actions for silicosis, wage theft and other forms of wrongdoing – under new legislation before the Parliament. The Justice Legislation Miscellaneous Amendments Bill 2019 will pave the way for class actions – including cases of silicosis and wage theft. (28 November 2019) <https://www.premier.vic.gov.au/category/media-release/attorney-general/>

Telstra given formal warning over excess usage notifications

The ACMA has issued Telstra with a formal warning for failing to send data usage email notifications to more than 150,000 mobile broadband customers, leading to people having to pay unexpected excess usage charges (27 November 2019). <https://www.acma.gov.au/articles/2019-11/telstra-given-formal-warning-over-excess-usage-notifications>

ACMA recommends immediate action to combat scams

The ACMA has released its Combating Scams report which recommends new enforceable obligations on telcos and the immediate commencement of trials for a number of scam reduction initiatives. (27 November 2019) <https://www.acma.gov.au/articles/2019-11/acma-recommends-immediate-action-combat-scams>

Ombudsman welcomes formal apology to Puffing Billy victims

An apology from the Victorian government addresses one of the nine recommendations from new report. It provides a long-overdue public acknowledgement of the failures by the state to protect innocent young victims. (27 November 2019) <https://www.ombudsman.vic.gov.au/News/Media-Releases/Ombudsman-welcomes-formal-apology-to-Puffing-Billy>

School guide to target explicit image abuse

The eSafety Commissioner, in collaboration with the Australian Federal Police-led Australian Centre to Counter Child Exploitation (ACCCE) and the ThinkUKnow program, has developed a guide to help schools manage incidents involving explicit materials. (25 November 2019) <https://www.esafety.gov.au/sites/default/files/2019-11/eSafety%20A%20guide%20to%20explicit%20images%20in%20school.pdf>

Victoria Police officer sentenced following IBAC investigation

A former Victoria Police Sergeant was been sentenced to six months' imprisonment after he was found guilty of perjury in the Melbourne Magistrates' Court, following an investigation by Victoria's independent police oversight body, IBAC. (25 November 2019) <https://www.ibac.vic.gov.au/media-releases/article/victoria-police-officer-sentenced-following-ibac-investigation>

IN PRACTICE AND COURTS**[ALRC Discussion Paper on corporate criminal responsibility](#)**

The Discussion Paper makes 23 proposals for reform and asks 11 questions on particular areas of reform. A number of aspects of corporate criminal liability are discussed, including: the division between criminal offences and civil penalty provisions; the method for attributing liability to corporations; individual liability for corporate offences; sentencing; and, specific issues such as illegal phoenix activity. The ALRC is seeking submissions on the Discussion Paper until 31 January 2020.

[Federal Court of Australia—new Defamation Practice Note](#)

The Federal Court of Australia has issued a new Defamation Practice Note (DEF-1), taking effect from 12 November 2019. Feedback should be provided by email addressed to Rupert Burns, the National Co-ordinating Registrar for the Defamation Sub area at practice.notes@fedcourt.gov.au. Feedback should include a short summary of the key issues to be brought to the Court's attention and relevant contact details.

[AAT Bulletin](#)

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions, including immigration and citizenship. Issue No. 48/2019, 2 December 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.

[LSC: New Australian Legal Register will Safeguard Consumers](#)

The Legal Services Council (LSC) announces the launch of a new Register that consumers can use to easily check the details of legal practitioners in NSW and Victoria. The Australian Legal Profession Register is now available via the Legal Services Council website. (06 December 2019)

[LSC: Public Submissions invited: Review of MIS Consultation Paper UGR 91A-91D](#)

The LSC is inviting submissions on the Draft Consultation Paper for the Review of Managed Investment Schemes Uniform General Rules 91A-91D. This information is now available on the LSC website. Submissions are open until Friday 31 January 2020 (06 December 2019).

[Supreme Court Practice Notes - Court of Appeal](#)

SC CA 4 Second and subsequent appeals - This Practice Note sets out the practice to be followed in the Court of Appeal in dealing with second or subsequent applications for leave to appeal against conviction. (December 2019)

[Sentencing Advisory Council: Rethinking Sentencing for Young Adult Offenders in Victoria – Report Released](#)

The report notes that there are currently only limited specialist sentencing options for young adults (18-25), and canvasses options to provide a more tailored criminal justice response for this age group. Rethinking Sentencing For Young Adult Offenders and a 2-page summary factsheet are available for download from our website. (06 December 2019)

[Victorian Ombudsman: "Immoral and unethical": WorkCover](#)

Victoria's WorkCover scheme is failing to deliver just outcomes for long term injured workers, with Victorian Ombudsman Deborah Glass stating WorkSafe agents – five commercial bodies who manage WorkCover claims on behalf of WorkSafe – are continuing to make unreasonable decisions, in some cases for financial incentives. (03 December 2019)

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Rethinking sentencing for young adult offenders](#)

This report assesses the available sentencing options for offenders aged 18 to 25 in Victoria. The report

reviews the literature on young adult offenders and their offending trajectories. It also analyses sentencing outcomes for young adult offenders in Victoria and explores approaches to sentencing this age group in other jurisdictions.

[The future of law reform: a suggested program of work 2020-25](#)

This report seeks to identify the most pressing areas for law reform in Australia that would be suitable for an inquiry by the Australian Law Reform Commission (ALRC). If accepted, the topics set out in this report could form a set program of work for the ALRC over the next five years. This is the first time the ALRC has undertaken this process.

[Challenging power, fighting discrimination](#)

This publication summarises the key challenges affecting women human rights defenders (WHRDs), and includes input collected through interviews with WHRDs in all continents. They all insist that more action is urgently needed from state and non-state actors, so that they can continue their critical human rights work, free from violence, discrimination, harassment and other violations.

[Delivering government priorities: corporate plan 2019–2023](#)

This document sets out how the Department of the Prime Minister and Cabinet intends to deliver on their responsibilities, and addresses their operating environment, their people and capability, their risk management and oversight and their key activities and performance measures.

[Follow up of regulating gambling and liquor](#)

The objective of this follow up audit was to assess whether the Victorian Commission for Gambling and Liquor Regulation (VCGLR) has taken the action it said it would in response to the 13 recommendations the Victorian Auditor-General made to it in 2017.

[Sexual harassment in the Victorian Public Service](#)

This audit examines whether the Victorian public service provides workplaces that are free from sexual harassment. The Victorian Auditor-General looked at whether all eight departments effectively prevent, report and respond to sexual harassment.

[APSC: State of the Service Report 2018–19](#)

The State of the Service Report 2018–19 was tabled in both Houses of Parliament on Tuesday 26 November 2019. The report is informed by data from the annual APS agency survey and APS employee census, as well as the APS Employment Database.

[Implementation of the My Health Record System](#)

The audit objective was to assess the effectiveness of the implementation of the My Health Record system under the opt-out model Implementation of the My Health Record System

CASES[BMW Australia Ltd v Brewster; Westpac Banking Corporation v Lenthall \[2019\] HCA 45](#)

Appeal allowed. Practice and procedure – Representative action – Orders – Where s 33ZF of Federal Court of Australia Act 1976 (Cth) and s 183 of Civil Procedure Act 2005 (NSW) provide that in representative proceeding court may make any order court thinks appropriate or necessary to ensure justice is done in proceeding – Where representative proceedings commenced in Federal Court of Australia and Supreme Court of New South Wales – Where proceedings funded by litigation funders – Where litigation funders entered into litigation funding agreements with small number of group members – Where representative parties in each proceeding applied for common fund order – Whether s 33ZF of Federal Court of Australia Act and s 183 of Civil Procedure Act empower Federal Court of Australia and Supreme Court of New South Wales to make common fund order.

Words and phrases – “access to justice”, “appropriate or necessary to ensure that justice is done in the proceeding”, “award of damages”, “book building”, “common fund”, “common fund order”, “distribution of moneys recovered”, “equitable sharing of costs”, “fair and reasonable to all group members”, “free riding”, “funding commission”, “funding equalisation order”, “interests of justice”, “litigation funding”, “representative proceeding”, “risk”, “unfunded group members”.

Civil Procedure Act 2005 (NSW), Pt 10, ss 157, 162, 165, 166, 172, 173, 175, 177, 178, 179, 183, 184.

Federal Court of Australia Act 1976 (Cth), Pt IVA, ss 33C, 33J, 33M, 33N, 33U, 33V, 33X, 33Z, 33ZA, 33ZB, 33ZF, 33ZJ.; Judiciary Act 1903 (Cth), s 79.

[Bosanac v Commissioner of Taxation \[2019\] HCA 41](#)

Income tax (Cth) – Appeal against objection decision – Where Commissioner of Taxation (“Commissioner”) issued amended assessments of taxable income following commencement of audit –

Administrative law – Judicial review – Jurisdictional error – Where primary judge determined appeal against Objection Decision under Pt IVC of Act – Where Full Court of Federal Court of Australia determined appeal against decision of primary judge – Where taxpayer sought writs of certiorari in respect of decisions of primary judge and Full Court – Whether primary judge and Full Court each misconstrued jurisdiction – Whether primary judge and Full Court committed jurisdictional error – Whether taxpayer’s application for judicial review, after expiration of time in which to seek special leave to appeal, sufficient basis to dismiss application.

Words and phrases – “amended assessment”, “disallowance of objection”, “excessive assessment”, “falsa demonstratio non nocet”, “grounds of objection”,

“jurisdictional error”, “misconceive jurisdiction”, “non-jurisdictional error”, “objection decision”, “objection to assessment”, “refusal of relief”, “taxable income”, “taxation decision”, “taxation objection”, “taxpayer’s burden of proof”, “wide survey and exact scrutiny”.

Taxation Administration Act 1953 (Cth), Pt IVC.

Income Tax Assessment Act 1936 (Cth), ss 166, 167.

[Hytera Communications Corporation Limited v Motorola Solutions, Inc. \[2019\] FCAFC 210](#)

PRACTICE AND PROCEDURE – application for leave to appeal from interlocutory order – application granted

PRACTICE AND PROCEDURE – appeal from decision to dismiss application for leave to file third further amended defence – where primary judge erred in finding that proposed amendments lacked coherence – where amendments are relevant to the determination of the respondent’s claim for additional damages arising from alleged flagrant infringements pursuant to the Patents Act 1990 (Cth) and Copyright Act 1968 (Cth) – appeal allowed

[Clark v Minister for the Environment \(No 2\) \[2019\] FCA 2028](#)

ADMINISTRATIVE LAW – proceedings for judicial review of a refusal by the Minister for the Environment to make declarations under ss 10 and 12 of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth) in respect of an area and in respect of objects – whether, where the Court sets aside the decision of the Minister, the Court has power to issue an injunction to restrain a third party from taking any actions that would have the effect of causing injury to or desecration of the area or objects until the Minister makes a further decision according to law

ABORIGINAL HERITAGE – proceedings for judicial review of a refusal by the Minister for the Environment to make declarations under ss 10 and 12 of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth) in respect of an area and in respect of objects – whether, where the Court sets aside the decision of the Minister, the Court has power to issue an injunction to restrain a third party from taking any actions that would have the effect of causing injury to or desecration of the area or objects until the Minister makes a further decision according to law. Administrative Decisions (Judicial Review) Act 1977 (Cth) s 16

[Clark v Minister for the Environment \[2019\] FCA 2027](#)

ABORIGINAL HERITAGE – application under Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth) to Commonwealth Minister for declarations seeking the preservation or protection of a specified area from injury or desecration and for the preservation or protection of specified objects from injury or desecration – refusal of applications – application under Administrative Decisions (Judicial Review) Act 1977 (Cth)

for judicial review of the Commonwealth Minister's decision – whether error of law – whether no evidence or other material to justify the making of the decision – whether the making of the decision was an improper exercise of the power – whether decision *Wednesbury* unreasonable – whether failure to consult with the appropriate Minister of the State of Victoria – whether breach of the rules of natural justice

ADMINISTRATIVE LAW – aboriginal heritage – applications under Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth) to Commonwealth Minister for declarations seeking the preservation or protection of a specified area from injury or desecration and for the preservation or protection of specified objects from injury or desecration – refusal of applications – application under Administrative Decisions (Judicial Review) Act 1977 (Cth) for judicial review of the Commonwealth Minister's decision – whether error of law – whether no evidence or other material to justify the making of the decision – whether the making of the decision was an improper exercise of the power – whether decision *Wednesbury* unreasonable – whether failure to consult with the appropriate Minister of the State of Victoria – whether breach of the rules of natural justice. The applicants' application dated 17 June 2018 be referred to the respondent for further consideration according to law. Administrative Decisions (Judicial Review) Act 1977 (Cth) s 5, Aboriginal Heritage Act 2006 (Vic)

[Kitchen v Director of Professional Services Review under s 83 of the Health Insurance Act 1973 \(Cth\) \(No 2\) \[2019\] FCA 2022](#)

PRACTICE AND PROCEDURE – urgent application for interim orders staying disqualification of medical practitioner pursuant to s 15 (1) Administrative Decisions (Judicial Review) Act 1977 (Cth) – principles relevant to stay under ADJR Act – whether serious question to be tried – where balance of convenience lay

Administrative Decisions (Judicial Review) Act 1977 (Cth) – s 15(1);

Health Insurance Act 1973 (Cth) – ss 82, 83, 93, 101, 104, 105

[McDonald v Colbran \[2019\] FCA 1937](#)

ADMINISTRATIVE LAW – application for judicial review of a decision of a Registrar to refuse to accept documents for filing pursuant to r 2.26 of the Federal Court Rules 2011 (Cth) – documents rejected as constituting an abuse of process – no reviewable error

HIGH COURT AND FEDERAL COURT – equitable jurisdiction of Federal Court of Australia to set aside a perfected judgment other than in the exercise of appellate jurisdiction – application of principles stated *Clone Pty Ltd v Players Pty Ltd (in liq)* (2018) 264 CLR 165 – whether documents lodged for filing capable of attracting the principles – consideration of the clarity

of proposed pleadings and the sufficiency of evidence relied upon to establish an allegation of actual fraud affecting an earlier judgment – materiality of alleged fraud to the outcome of the earlier proceeding

PRACTICE AND PROCEDURE – prior order imposing a requirement for leave to be granted for a document to be accepted for filing – whether documents lodged for filing fell within the scope of the order – leave required – leave refused. Administrative Decisions (Judicial Review) Act 1977 (Cth)

[Kazakhstan Potash Corporation Limited and Australian Securities and Investments Commission \(Freedom of information\) \[2019\] AATA 5035](#)

FREEDOM OF INFORMATION – whether document is conditionally exempt under s 47G(1)(a) of the Freedom of Information Act 1982 – whether disclosure would unreasonably affect lawful business, commercial or financial affairs – disclosure not unreasonable – public interest not considered – document not conditionally exempt – decision affirmed

Freedom of Information Act 1982 s 47G(1)(a);
Corporations Act 2001 Part 6D

[Baker and Australian Securities and Investments Commission \(Freedom of information\) \[2019\] AATA 4898](#)

FREEDOM OF INFORMATION – request for access to documents – legal professional privilege – conditional exceptions claimed – public interest – decision affirmed. Freedom of Information Act 1982 (Cth)

The Respondent had received a number of complaints from investors in the scheme and commenced an investigation.

[Rozenblit v Vainer \[2019\] VSCA 283](#)

REMEDIES – Appeal – Damages – Transfer of shares induced by misleading and deceptive conduct and unconscionable conduct – Restitution – Company subsequently wound up – Measure of damages – Quantum – Valuation evidence to determine value of shares at date of transfer – Methods of valuation – Discounted cash flow – Net asset value – Future maintainable earnings – Trial judge found shares worthless – Applicant awarded nominal damages – Whether trial judge correct to reject applicant's valuation evidence – Whether trial judge erred in adopting respondent's expert valuer's opinion – Whether bottom end of range of respondent's valuation should have been adopted – Appeal allowed in part – Applicant entitled to damages representing proportionate market value of shares at relevant date.

[Michos v Eastbrooke Medical Centre Pty Ltd \[2019\] VSCA 282](#)

PRACTICE AND PROCEDURE – Costs – Application by respondent for security for costs – Impecunious applicant – Low prospects of applicant's appeal

succeeding – Applicant ordered to provide security for costs in the amount of \$20,000 – Supreme Court (General Civil Procedure) Rules 2015 r 64.38(4) – Bodycorp Repairers v Oakley Thompson & Co Pty Ltd (No 3) [2016] VSCA 185, applied; Delta Electricity v Blue Mountains Conservation Society Inc (2010) 176 LGERA 424, distinguished.

[Mailton Holdings Pty Ltd v Jussy \[2019\] VSCA 281](#)

ADMINISTRATIVE LAW – Judicial review – Medical panel – Workplace injury – Medical panel found that worker's physical injury had resolved, but that worker suffered from ongoing psychiatric injury – Whether panel failed to take into account relevant considerations – Whether panel's decision illogical or irrational – Whether panel's reasons adequate – Judicial review proceeding dismissed – No error by primary judge – Application for leave to appeal refused – Workplace Injury Rehabilitation and Compensation Act 2013, ss 274, 302 and 313.

[Milfoil Pty Ltd v Commonwealth Bank of Australia \(No 2\) \[2019\] VSC 734](#)

COSTS – Whether successful defendant entitled to all or part of its costs of the proceeding – Whether defendant's conduct at trial challenging credit of plaintiff's witnesses should result in reduction of any costs awarded – No reduction justified

COSTS – Indemnity costs – Whether plaintiff unreasonably failed to accept offer of compromise made under r 26.08(4) of the Supreme Court (General Civil Procedure) Rules 2015 – Factors to be taken into account – Indemnity costs ordered

COSTS – Whether counsels' fees in excess of scale should be allowed – Whether 'special grounds' arising out of nature or difficulty of proceeding – No special grounds established – Supreme Court (General Civil Procedure) Rules 2015 r 63.34

[Ascot Vale Self Storage Pty Ltd \(in Liq\) v Nom de Plume Pty Ltd \[2019\] VSC 794](#)

ABUSE OF PROCESS – Principles to be applied – Relevance of Civil Procedure Act 2010 (Vic) principles – Reasonableness of degree of control by litigation funder considered.

LIQUIDATORS – Policy of encouraging creditors to fund litigation by liquidator discussed – Whether liquidator required to obtain court approval for litigation funding agreement under s 477(2B) of the Corporations Act 2001 (Cth).

PRACTICE AND PROCEDURE – Appeal from Associate Judge – Whether appellants established errors in approach – Orders set aside.

[Re Rouse \[2019\] VSC 792](#)

PRACTICE AND PROCEDURE – Whether the plaintiff in the first proceeding has standing to bring the application – Meaning of the word 'spouse' – Byrnes v Kendle

[2011] HCA 26; (2011) 243 CLR 253.

TRUSTS AND TRUSTEES – Whether real property and company share form part of estate or held in trusts – Property Law Act 1958 (Vic) s 53 – Where absence of documentary evidence surrounding the purported transactions.

[Meade v Nillumbik Australia Pty Ltd & Anor \(Ruling\) \[2019\] VSC 786](#)

OCCUPATIONAL HEALTH AND SAFETY – Regulations – Interpretation – Regulations imposing duties on employers in respect of any task involving a fall hazard or a risk of a fall – 'Fall' defined to mean 'a person's involuntary fall of more than 2 metres' – Held that regulations do not apply where the task involves no possibility that the whole of the body of the employee will fall more than two metres, measured vertically – Held that regulations inapplicable in this case – Occupational Health and Safety Act 2004 - Occupational Health and Safety Regulations 2007, Part 3.3.

[Fidge v Municipal Electoral Tribunal & Anor \(No 2\) \[2019\] VSC 767](#)

ADMINISTRATIVE LAW – Public interest litigation – Costs of two unsuccessful applications for leave to appeal from VCAT decisions – Attorney-General joined as respondent in VCAT proceedings – Attorney-General seeking costs – First proceeding concerned VCAT decision refusing application to refer Charter questions to Supreme Court – Each party bear own costs of first proceeding – Second proceeding concerned VCAT decision refusing application to refer questions to Supreme Court about validity of local government election countback provisions – Unsuccessful applicant ordered to pay the Attorney-General's costs of second proceeding – Victorian Civil and Administrative Tribunal Act 1998 s 96; Charter of Human Rights and Responsibilities Act 2006 s 33.

[AB v XYZ Pty Ltd \[2019\] VSC 788](#)

WORKERS' COMPENSATION – Appeal and cross-appeal from orders of Magistrates' Court in claim for compensation under Accident Compensation Act 1985 (Vic) – Appellant claimed to have suffered post-traumatic stress disorder and depression caused by sexual assaults and associated harassment and abuse – Magistrate not satisfied that alleged sexual assaults occurred – Magistrate nevertheless found that appellant was suffering from 'significant stress' and unable to work from April 2008 to March 2010 – Whether Magistrate decided claim on a basis not litigated – No evidence to support finding that appellant had suffered a mental injury due to work stressors not related to the alleged sexual assaults – Accident Compensation Act 1985 (Vic), s 82.

APPEAL – Whether Magistrate's decision affected by apprehended bias – Whether comments of Magistrate during appellant's evidence produced ineradicable apprehension of prejudgment – Need to avoid assessing,

credibility based on stereotypical assumptions about victims of sexual assault – Approach to assessing credibility where delay in reporting sexual assault – Magistrate’s comments in context did not give rise to reasonable apprehension of bias – Whether Magistrate failed to have regard to material considerations – Magistrate’s oral reasons did not mention expert evidence about delayed reporting of sexual assault – Lengthy delay in delivering judgment – No presumption that Magistrate considered relevant evidence not mentioned in reasons – Magistrate disregarded relevant evidence.

[Chopra v Department of Education and Training \(Review and Regulation\) \[2019\] VCAT 1860](#)

Freedom of Information Act 1982 – ss 28, 33(1), 34(a) (ii), 34(1)(b), 50(4), 61 – whether to set aside, vary or affirm decision regarding request for all documents related to or showing the legal expenses incurred by the Department in relation to its dealings with the applicant. The decision of the respondent under review in this proceeding is affirmed. Costs reserved. Liberty to apply.

[Victorian Legal Services Commissioner v Grahame \(No 2\) \(Review and Regulation\) \[2019\] VCAT 1878](#)

Review and Regulation List – Freedom of Information Act 1982 (Vic), s 25A(5) – Whether apparent from nature of request that all documents are exempt – Whether apparent from nature of request that no obligation to provide an edited copy – Whether apparent from request or from consultation that the person making it would not seek access to an edited copy

The decision of the Acting Public Access Deputy Commissioner made on 23 August 2018 is set aside.

LEGISLATION

Regulation

[Remuneration Tribunal \(Members of Parliament\) Determination No. 2 2019](#)

02/12/2019 - This instrument deals with the remuneration of members of Parliament, the rates of travel allowance payable to such members, and the allowances and expenses to be paid to former members.

[Telecommunications \(Interception and Access\) Amendment \(Form of Warrants No. 2\) Regulations 2019](#)

02/12/2019 - These regulations amend the Telecommunications (Interception and Access) Regulations 2017 to clarify the matters to which an eligible Judge or nominated Administrative Affairs Tribunal member must have regard under paragraphs 46(2)(fa) and (g) and paragraphs 46A(2)(fa) and (g) of the Telecommunications (Interception and Access) Act 1979 when deciding whether to issue a warrant.

Bills

[Productivity Commission Amendment \(Addressing Inequality\) Bill 2017](#)

Senate - 2nd reading debate 02/12/2019 - Amends the Productivity Commission Act 1998 to: expand the functions of the Productivity Commission to include the undertaking of research on inequality and its effects on the Australian economy and community; require the commission to have regard in the exercise of its functions to the need to mitigate the negative effects of inequality; and provide for reporting requirements.

[Commonwealth Electoral Amendment \(Lowering the Donation Disclosure Threshold\) Bill 2019](#)

HR 02/12/2019 - The Bill amends the Commonwealth Electoral Act 1918 (“the Act”) to lower the political donation disclosure threshold from \$13,800 to \$1,000, and to remove ongoing indexation of that disclosure threshold.

[Crimes Legislation Amendment \(Combatting Corporate Crime\) Bill 2019](#)

Senate - 2nd reading 02/12/2019 - Amends: the Criminal Code Act 1995 to: amend the offence of bribery of a foreign public official to extend the definition of foreign public official to include a candidate for office, remove the requirement that the foreign official must be influenced in the exercise of the official’s duties, replace the requirement that a benefit and business advantage must be ‘not legitimately due’ with the concept of ‘improperly influencing’ a foreign public official, and extend the offence to cover bribery to obtain a personal advantage; and create a new offence of failure of a body corporate to prevent foreign bribery by an associate; the Director of Public Prosecutions Act 1983 to implement a Commonwealth Deferred Prosecution Agreement scheme which will enable the Commonwealth Director of Public Prosecutions to invite a person that has engaged in serious corporate crime to negotiate an agreement to comply with a range of specified conditions; and five Acts to make consequential amendments.

[Public Governance, Performance and Accountability Amendment \(Waiver of Debt and Act of Grace Payments\) Bill 2019](#)

HR 02/12/2019 - The Public Governance, Performance and Accountability Amendment (Waiver of Debt and Act of Grace Payments) Bill 2019 is being introduced to increase transparency in government operations.

[Australian Crime Commission Amendment \(Special Operations and Special Investigations\) Bill 2019](#)

Finally passed both Houses 05/12/2019 - The Australian Crime Commission Amendment (Special Operations and Special Investigations) Bill 2019 (the Bill) amends the Australian Crime Commission Act 2002 (the ACC Act) to confirm the validity of current and former special ACC operations and special ACC investigations determinations.

[Commonwealth Electoral Amendment \(Transparency Measures—Lowering the Disclosure Threshold\) Bill 2019](#)

HR 28/11/2019 - This Bill seeks to amend the Commonwealth Electoral Act 1918 by lowering the disclosure threshold for political donations from \$13,800 (subject to indexation) to a fixed \$1,000.

[Commonwealth Electoral Amendment \(Transparency Measures—Real Time Disclosure\) Bill 2019](#)

HR 28/11/2019 - This Bill will require political parties and their associated entities, candidates, and senate groups to disclose donations or gifts received valued at or above the disclosure threshold within seven days of receipt, using a real time disclosure regime for political donations and gifts.

[Interactive Gambling Amendment \(National Self-exclusion Register\) Bill 2019](#)

27/11/2019 - The Register will allow individuals to exclude themselves from being provided interactive wagering services by all licensed interactive wagering service providers in Australia, and limit the amount of direct marketing to the individual.

KEY CONTACTS

PANEL RELATIONSHIP CONTACTS

Your contacts responsible for navigating our firm, connecting you with appropriate expertise and achieving maximum efficiency and your Newsletter editors.



[Cameron Roberts](#)

Partner
+61 3 9641 8696
+61 438 510 885
croberts@tglaw.com.au



[Loretta Reynolds](#)

Partner, Markets
+61 3 8080 3705
+61 403 069 819
lreynolds@tglaw.com.au



[Louise Gehrig](#)

Partner
+61 3 9641 8908
lgehrig@tglaw.com.au

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.

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.

This Alert is produced by Thomson Geer. It is intended to provide general information in summary form on legal topics, current at the time of publication. The contents do not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in particular matters. Liability limited by a scheme approved under Professional Standards Legislation.