



## PUBLIC SECTOR NEWSLETTER - VICTORIA

Welcome to Issue 76 of the Victorian Public Sector Newsletter.

In this issue, data security is in focus with IBAC warning that government agencies need to be more aware of corruption risks associated with unauthorised access to information, particularly with organised crime groups targeting the public sector.

In the Courts, the High Court made a landmark decision ruling the Australian Parliament cannot use the “aliens” power to make laws for Aboriginal Australians, seen as a natural extension of the High Court’s 1992 Mabo (No 2) decision.

Finally, the Supreme Court of Victoria has begun a specialised Institutional Liability List from 10 February 2020 to handle civil claims related to institutional abuse.

We hope you enjoy this edition of the Newsletter.

### IN THE MEDIA

#### HCLC: Privacy invasion laws must be scaled back

Laws that require telecommunication companies to keep records of every single Australian’s phone calls, text messages and movements for at least two years must be amended to prevent the indiscriminate invasion of people’s privacy, a Parliamentary Committee heard. (14 February 2020) <https://www.hrlc.org.au/news/2020/2/14/privacy-invasion-laws-must-be-scaled-back>

#### Big data increasing corruption risks

Organised crime groups are targeting data bases held by government agencies, a report warns. Reliance on technology in the public sector and the ubiquity of personal devices and smart phones in the workplace are increasing the risk of corruption, Victoria’s corruption watchdog says. (13 February 2020) <https://www.governmentnews.com.au/big-data-increasing-corruption-risks/>

#### IBAC warns of information misuse risks in Victorian public sector

Victorian public sector agencies need to be more aware of corruption risks associated with the unauthorised release or access to information, according to a research report released by the state’s anti-corruption agency, IBAC. (12 February 2020) <https://www.ibac.vic.gov.au/media-releases/article/ibac-warns-of-information-misuse-risks-in-victorian-public-sector>

#### Six New Judicial Appointments for Victoria

The Andrews Labor Government has announced the appointments of Leveasque Peterson as a Coroner and Julian Hetyey as an associate judge of the Supreme Court, in addition to the appointments of Hayley Bate, Justin Foster, Michael Richards and Elizabeth Langdon as Magistrates. (11 February 2020) <https://www.premier.vic.gov.au/six-new-judicial-appointments-for-victoria/>

#### LCA: High Court decision natural outcome of Mabo

The Law Council of Australia has welcomed a landmark High Court decision confirming that the Australian Parliament cannot use the “aliens” power to make laws for Aboriginal Australians. Law Council President said the decision of the High Court in *Love v Commonwealth of Australia*; *Thoms v Commonwealth of Australia* flows from the Mabo (No. 2) decision in 1992. (11 February 2020) <https://www.lawcouncil.asn.au/media/media-releases/high-court-decision-natural-outcome-of-mabo>

#### We must do better on children’s rights

Australia’s first Children’s Commissioner, Megan Mitchell has launched her final report – one of the most comprehensive assessments of children’s rights ever produced in Australia. The report makes clear that the mental health of Australian children is not being cared for sufficiently and that Governments must do more to ensure children’s wellbeing. (10 February 2020) <https://www.humanrights.gov.au/about/news/we-must-do-better-childrens-rights>

**LCA: Religious Freedom Bills - Second Exposure Drafts**

The Law Council provided a submission to the Attorney-General's Department on the second exposure drafts of the Religious Freedom Bills (ie Religious Discrimination Bill 2019 (the Bill); Religious Discrimination (Consequential Amendments) Bill 2019; Human Rights Legislation Amendment (Freedom of Religion) Bill 2019). (06 February 2020) <https://www.lawcouncil.asn.au/media/news/religious-freedom-bills-second-exposure-drafts>

**New Legislation to Increase Manslaughter Sentences in Victoria**

The Crimes Amendment (Manslaughter and Related Offences) Bill 2020 will increase the penalty from 20 years to 25 years' imprisonment, including for the related offences of child homicide and workplace manslaughter. (04 February 2020) <https://www.premier.vic.gov.au/new-legislation-to-increase-manslaughter-sentences/>

**IN PRACTICE AND COURTS****[Australian Bushfires Disaster Emergency Declaration – Understanding your privacy obligations](#)**

The Attorney-General has made the Privacy (Australian Bushfires Disaster) Emergency Declaration (No. 1) 2020 (the emergency declaration) under Part VIA of the Privacy Act 1988 (Cth) (Privacy Act). The emergency declaration was made in response to bushfires in Australia resulting in death, injury and property damage occurring from August 2019 into 2020. The emergency declaration expires on 20 January 2021.

**[AHRC: Human Rights and Technology Discussion Paper - Rights and Freedoms](#)**

The Commission has launched the Human Rights and Technology Discussion Paper, which makes wide-ranging proposals for safeguarding human rights and encouraging accessible, equal and accountable use of new technology in Australia. The deadline for submissions is 10 March 2020.

**Supreme Court Practice Notes****[Notice to the Profession - Institutional Liability List](#)**

Common Law Division - The purpose of this Notice is to provide updated guidance to practitioners and litigants when commencing certain proceedings in respect of damages for personal injury arising out of the alleged abuse. (February 2020)

**PUBLISHED - ARTICLES, PAPERS, REPORTS****[Time served prison sentences in Victoria](#)**

A 'time served prison sentence' is a sentence of imprisonment imposed on an offender where the length of imprisonment is equal to the amount of time that the offender has spent on remand in custody. This report analyses the proportion of prison sentences that were time served prison sentences in Victoria over the seven financial years to 30 June 2018.

**CASES****[Melbourne Water Corporation & Yarra Valley Water Corporation v Caligiuri \[2020\] VSCA 16](#)**

JUDICIAL REVIEW – Procedural fairness – Compulsory acquisition of land by water corporations for purpose of providing water infrastructure – Land not reserved for a public purpose – Certification that reservation 'unnecessary, undesirable or contrary to the public interest' – Applicants had interest in acquired land under contract of sale with registered proprietor – Applicants not given an opportunity to be heard – Applicants sought orders invalidating steps taken by water authorities to acquire land compulsorily – Judge declared Notice of Acquisition ('NOA') to be invalid – Whether publication of NOA conditioned by obligation to accord procedural fairness – Publication of NOA not so conditioned – Land Acquisition and Compensation Act 1986 (Vic) ss 4, 5, 6, 7, 8, 12, 18, 19, 20, 22, 30, 31, 51; Planning and Environment Act 1987 (Vic) ss 19, 20, 21, 22, 23, 24; Water Act 1989 (Vic) s 130; Annetts v McCann (1990) 170 CLR 596, Kioa v West [1985] HCA 81; (1985) 159 CLR 550, SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs [2006] HCA 63; (2006) 228 CLR 152, applied.

CIVIL PROCEDURE – Application to make orders allowing appeal by consent – Court has duty to be satisfied of appellable error – Appeal allowed – Telstra Corporation Limited v Minister for Broadband, Communications and Digital Economy (2008) 166 FCR 64, applied.

CIVIL PROCEDURE – Whether registered proprietor of land a necessary party to the proceeding – Registered proprietor entitled to apply for compensation – Declaration that NOA invalid affected right to claim compensation – Only became aware of proceeding after the trial had concluded – Rights affected by the proceeding from the outset – News Limited v Australian Rugby Football League Limited [1996] FCA 870; (1996) 64 FCR 410, applied.

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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
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- (b) Emailing [legalhelpdesk@tglaw.com.au](mailto:legalhelpdesk@tglaw.com.au)

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