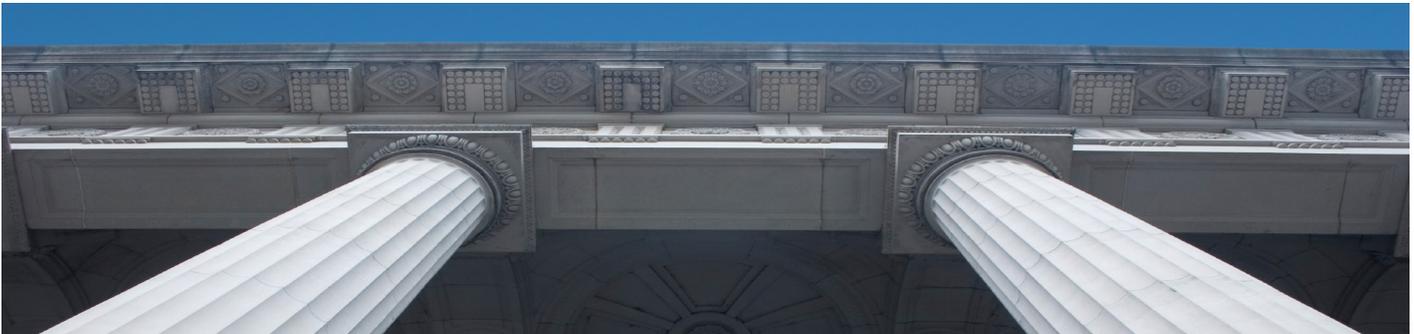


22 APRIL 2020

ISSUE 80



## PUBLIC SECTOR NEWSLETTER - VICTORIA

Welcome to Issue 80 of the Victorian Public Sector Newsletter.

We would again like to use the forum of this newsletter to thank those in the Government and the public service whose efforts appear to be having a real impact on reducing the spread of COVID-19 and keeping Victorians safe.

In this issue, there is a focus on considering the privacy and human rights impacts when putting in place measures responding to COVID-19. To that end, the Office of the Australian Information Commissioner have provided some guidelines to assist with handling personal information during the virus response. More generally, the Australian Government has put out a guide to regulatory impact analysis to assist with policy making.

In the Courts, the Victorian Bar has put out a helpful guide to the Victorian and Commonwealth Court and Tribunal Protocols in response to COVID-19.

In other significant news, the High Court handed down its judgment in *Pell v The Queen* [2020] HCA 12.

We hope you enjoy this edition of our Public Sector Newsletter.

### COVID-19 USEFUL LINKS

[Department of Health & Human Services Website](#)

[FAQs - 'Stay at home' and 'Restricted activities directions'](#)

[Information and advice for the business and industry \(non-healthcare\) sector](#)

[COVID-19 Plan for the Victorian Aged Care Sector](#)

[Information and advice for early learning centres, schools, TAFE and training providers](#)

### IN THE MEDIA

#### Coronavirus update for Victoria - 21 April 2020

The total number of coronavirus (COVID-19) cases in Victoria is 1,336 – an increase of seven from yesterday. This increase included one person diagnosed in mandatory quarantine in city hotels, who has recently arrived from overseas. <https://www.dhhs.vic.gov.au/coronavirus-update-victoria-21-april-2020>

#### Victoria's coronavirus (COVID-19) modelling confirms staying at home saves lives

The modelling, done by Victoria's epidemiological experts at the Department of Health and Human Services and in collaboration with Monash University and the Doherty Institute, shows how our actions are protecting the health system and saving lives. <https://www.dhhs.vic.gov.au/victorias-coronavirus-covid-19-modelling-confirms-staying-home-saves-lives>

#### Home workers warned on privacy rules

The OAIC has published new COVID-19 guidance to manage the privacy impacts of remote working arrangements for Australian Public Service (APS) staff. In a statement, the OAIC said the Privacy Act did not prevent APS employees from working remotely as a response to COVID-19, however the Australian Privacy Principles (APPs) would still apply. (12 April 2020) <https://www.oaic.gov.au/privacy/guidance-and-advice/assessing-privacy-risks-in-changed-working-environments-privacy-impact-assessments/>

#### State Of Emergency for Coronavirus Extended To Save Lives

Police have strong powers to enforce these directions and can issue on the spot fines, including up to \$1,652 for individuals and up to \$9,913 for businesses. Under the State of Emergency people who don't comply could also be taken to court and receive a fine of up to \$20,000. (12 April 2020) <https://www.premier.vic.gov.au/state-of-emergency-for-coronavirus-extended-to-save-lives/>

## Over 200 organisations outline human rights concerns at outset of COVID crisis

More than 200 not-for-profit and community organisations have backed a major report calling on the Australian Government to strengthen its commitment to human rights in its laws, policies and practices. (09 April 2020) <https://www.hrlc.org.au/news/2020/4/9/upr-human-rights-concerns-covid-crisis>

## LCA: Comments on the High Court judgment Pell v The Queen, from the Law Council of Australia President, Ms Pauline Wright

The High Court is the ultimate decision-maker within our judicial system in Australia and its job is to impartially scrutinise decisions made in lower courts to determine whether the law has been properly applied. In criminal trials, the prosecution bears the burden of proof and must prove every element of their case beyond a reasonable doubt. (08 April 2020) <https://www.lawcouncil.asn.au/media/media-releases/comments-on-the-high-court-judgment-pell-v-the-queen>

## Read the judgement from George Pell's successful High Court of Australia appeal

Cardinal George Pell has won his appeal against his child sexual abuse convictions. The High Court granted special leave to appeal against a decision of the Court of Appeal of the Supreme Court of Victoria and unanimously allowed the appeal. (07 April 2020) <https://www.abc.net.au/news/2020-04-07/george-pell-high-court-of-australia-full-judgment-summary/12128468>

## Parliamentary scrutiny of Federal Government's COVID-19 response vital for democracy

The Human Rights Law Centre welcomed the Senate's vote to establish a cross-party Senate Select Committee to provide democratic oversight and scrutiny of the Morrison Government's response to the COVID-19 public health emergency. (08 April 2020) <https://www.hrlc.org.au/news/2020/4/8/covid-senate-select-committee>

## Greater transparency needed around Federal Government's new COVID 19 phone app

Human rights and privacy experts have called on Federal Health Minister Greg Hunt to explain privacy and surveillance issues arising from the Federal Government's recently launched Coronavirus Australia app. (08 April 2020) <https://www.hrlc.org.au/news/2020/4/8/greater-transparency-needed-around-federal-governments-new-covid-19-phone-app>

## New PS privacy guide for pandemic

Updated privacy guidelines for Departments and Agencies during the COVID-19 health crisis have been released by the Office of the Australian Information Commissioner (OAIC). (06 April 2020) <https://www.oaic.gov.au/assets/privacy/guidance-and-advice/coronavirus-covid-19-understanding-your-privacy-obligations-to-your-staff.pdf>

## AIHW finds child protection on the rise

Around 170,000 young Australians received child protection services in 2018-19, according to a new report from the Australian Institute of Health and Welfare (AIHW). (02 April 2020) <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2018-19/contents/table-of-contents>

## Restrictions on the Sale of Firearms and Ammunition in Victoria

The sale of firearms and ammunition for sporting or recreational purposes will be temporarily banned, following deliberations by the National Cabinet. The new measures are designed to protect licensed firearm owners and dealers as well as the broader community. (31 March 2020) <https://www.premier.vic.gov.au/tag/police-and-emergency-services/>

## Special team to boost tracking and enforcement in bid to halt coronavirus

In an Australian first, the Palaszczuk Government will establish a dedicated team to boost tracking in the government's fight against coronavirus. The new enforcement unit has one purpose, and that's to protect public health - it will have strong powers and won't hesitate to use them. (31 March 2020) <http://statements.qld.gov.au/Statement/2020/3/31/special-team-to-boost-tracking-and-enforcement-in-bid-to-halt-coronavirus>

## Victoria University employee sentenced to prison following IBAC investigation

A Victoria University employee has been sentenced to prison following an investigation by IBAC into the misappropriation of over half a million dollars of university funds. (30 March 2020) <https://www.ibac.vic.gov.au/media-releases/article/victoria-university-employee-sentenced-to-prison-following-ibac-investigation>

## IN PRACTICE AND COURTS

### [OAIC: COVID-19 response from Australian privacy regulators](#)

As entities move fast to find solutions to public health and economic problems, Privacy Commissioners and Ombudsmen reiterate the value of conducting short-form Privacy Impact Assessments to help ensure personal information is handled in a way that is necessary, reasonable and proportionate. (27 March 2020).

### [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.

### [The Victorian Bar's Consolidated Guide to Victorian and Commonwealth Court Protocols in Response to COVID-19](#)

President of the Victorian Bar, has launched the Victorian Bar's Consolidated Guide to Victorian and Commonwealth Court Protocols in Response to COVID-19. (08 April 2020)

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

##### [Australia's children](#)

This report brings together a range of data on children's wellbeing and their experiences at home, school and in the community.

##### [Recommendations on privacy and data protection in the fight against COVID-19](#)

In this paper, the authors provide privacy and data protection recommendations for governments to fight against COVID-19 in a rights-respecting manner.

##### [Australian government guide to Regulatory Impact Analysis](#)

This guide has been prepared for every member of the Australian Public Service involved in policy making. It provides the context for regulation and encourages policy makers to think about potential impacts early in the policy process.

#### **CASES**

##### [Pell v The Queen \[2020\] HCA 12](#)

Special leave to appeal granted.

Appeal treated as instituted and heard *instanter* and allowed. Criminal law – Sexual offences against children – Appeal against conviction by jury on ground that verdict unreasonable or cannot be supported having regard to whole of evidence – Where prosecution case wholly dependent upon acceptance of truthfulness and reliability of complainant's account – Where jury assessed complainant's evidence as credible and reliable – Where witnesses gave unchallenged

evidence of specific recollections, practices and routines inconsistent with acceptance of complainant's account ("unchallenged inconsistent evidence") – Where Court of Appeal required to take into account forensic disadvantage experienced by applicant – Whether prosecution negated reasonable possibility that applicant did not commit offences – Whether Court of Appeal required applicant to establish offending impossible to raise reasonable doubt – Whether unchallenged inconsistent evidence required jury, acting rationally, to have entertained doubt as to applicant's guilt.

Criminal practice – Appeal – Video evidence – Where evidence of complainant and other witnesses recorded – Where Court of Appeal viewed recorded witness testimony – Whether proper discharge of appellate court's function necessitated review of recorded witness testimony.

Words and phrases – "beyond reasonable doubt", "compounding improbabilities", "credibility and reliability", "function of the appellate court", "function of the jury", "impossibility", "improbability of events", "invariable practice", "jury's advantage in seeing and hearing the witnesses", "negated the reasonable possibility", "opportunity witnesses", "realistic opportunity for the offending to have occurred", "religious ritual", "routines and practices", "significant forensic disadvantage", "significant possibility that an innocent person has been convicted", "solid obstacles to conviction", "standard and burden of proof", "unchallenged evidence", "uncorroborated", "video-recordings of the witnesses at trial".

Crimes Act 1958 (Vic), ss 45(1), 47(1).

Criminal Procedure Act 2009 (Vic), ss 276(1)(a), 378, 379(b)(i).

Judiciary Act 1903 (Cth), s 37.

Jury Directions Act 2015 (Vic), ss 4A, 39.

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## HELP DESK SERVICES

Thomson Geer is delighted to offer access to the Victorian Government to its Legal Help Desk on our usual terms of engagement and as set out below.

### Scope

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

- advice regarding discrete and non-complex legal queries – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate or, short written advice (max. 1 page);
- the opportunity to ‘brainstorm’ or discuss topical and complex legal issues with industry specialists – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate; and
- a dedicated library resource to assist Victorian Government departments and agencies research relevant case law, statutes, regulations and articles.

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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