



## PUBLIC SECTOR NEWSLETTER - VICTORIA

Welcome to Issue 82 of the Victorian Public Sector Newsletter.

The easing of COVID-19 restrictions has loomed large this week, with both State and Federal Governments setting out roadmaps for cautiously easing the rules to return to normal.

In welcome news, to assist with the rise in demand for front line legal services the Australian Government has announced an additional \$63.3 million to assist with increased caseloads in domestic violence, tenancy disputes and credit and debt related problems.

Privacy in the COVID-19 pandemic continues to remain an area of concern with the Office of the Australian Information Commissioner concerned that Government Agencies and other organisations are struggling with their obligations under the Privacy Act 1988 while combatting the spread of COVID-19.

In the Courts, the Supreme Court has considered defamation in the context of an interest search engine provider publishing search results and a hyperlink to a web page. In an interlocutory hearing, the Supreme Court also considered whether there was a prima facie case that prison authorities breached their duty of care to protect the health of those in prison during the COVID-19 pandemic.

Despite an easing in restrictions, we must all continue to play our part by following the rules to protect our health system and each other, so we hope this fortnight's edition of our Public Sector Newsletter will help you stay in touch.

### IN THE MEDIA

#### Gradual Easing of Restrictions

Following the biggest coronavirus testing blitz in the nation, the Victorian Government has announced it will gradually ease restrictions. <https://www.dhhs.vic.gov.au/gradual-easing-restrictions-covid-19>

#### Premier announces gradual return to classrooms

Victorian government school students will begin a phased return to classrooms before the end of May. <https://www.premier.vic.gov.au/getting-our-kids-back-into-the-classroom/>

#### Consumer Data Right Compliance and Enforcement Policy released

The Policy outlines the approach that the ACCC and the OAIC have adopted to encourage compliance with, and address breaches of, the Consumer Data Right regulatory framework. (08 May 2020) <https://www.accc.gov.au/media-release/consumer-data-right-compliance-and-enforcement-policy-released>

#### LCA: Funding boost will help front line legal services

The \$20 million earmarked for domestic violence, \$29.8 million towards tenancy disputes, insurance, credit and debt related problems, work related claims and the remaining \$13.5 million on IT upgrades is a welcome injection of funding that will help meet a rise in demand for legal services. (08 May 2020) <https://www.lawcouncil.asn.au/media/media-releases/funding-boost-will-help-front-line-legal-services>

#### OAIC confronts PS pandemic privacy

The OAIC has revealed that Government Agencies and other organisations are struggling with their obligations under the Privacy Act 1988 while combatting the spread of COVID-19. (07 May 2020) <https://www.oaic.gov.au/updates/news-and-media/covid-19/>

#### COVID-19: The duty to document does not cease in a crisis, it becomes more essential

Australian and New Zealand Information Access Commissioners join with their international counterparts in their clear call for documentation, preservation and access to information during COVID-19. (06 May 2020) <https://www.ipc.nsw.gov.au/statements/covid-19-duty-document-does-not-cessate-crisis-it-becomes-more-essential>

### Extension For Royal Commission in Victoria

The final reporting date for the Royal Commission into the Management of Police Informants has been extended after a request from the Royal Commission. Given the seriousness of the matters involved, it's important the Royal Commission is able to fully complete its vital work to preserve the integrity of the criminal justice system. (05 May 2020) <https://www.premier.vic.gov.au/statement-on-extension-for-royal-commission/>

### Supreme Court rules Victorian Government prima facie breached duty of care to person in prison in their response to COVID-19 pandemic

In an important decision, the Supreme Court of Victoria has found that the Victorian Government has prima facie breached their duty to take reasonable care for the health of a person behind bars during the COVID-19 pandemic. (01 May 2020) <https://www.hrlc.org.au/news/2020/5/1/supreme-court-vic-govt-duty-of-care-prison-covid-19>

### Laws Commence To Deliver Fairer Birth Certificates

Trans and gender diverse Victorians can now alter the sex recorded on their birth certificate without having to undergo invasive and costly sex affirmation surgery, with new laws now in effect. (01 May 2020) <https://www.premier.vic.gov.au/laws-commence-to-deliver-fairer-birth-certificates/>

### Commission welcomes COVIDSafe App

The Australian Human Rights Commission has welcomed the COVIDSafe App as an important public health initiative, which can help protect the rights of Australians to health and life. The App also opens the possibility of easing restrictions on other human rights, such as freedom of movement and freedom of association. (27 April 2020) <https://humanrights.gov.au/about/news/media-releases/commission-welcomes-covidsafe-app>

## IN PRACTICE AND COURTS

### [Attorney-General: COVIDSafe draft legislation](#)

We have developed draft legislation, the Privacy Amendment (Public Health Contact Information) Bill 2020, to support the COVIDSafe app (released on 26 April 2020) and provide strong ongoing privacy protections. The Australian Government intends to introduce this draft legislation in Parliament in the week of 11 May 2020.

### [Australia update](#)

The Family Court of Australia and the Federal Circuit Court of Australia have announced they are establishing a court list dedicated to deal exclusively with urgent parenting-related disputes that have arisen due to the COVID-19 pandemic. The list will commence on 29 April 2020.

### [Alternative Dispute Resolution](#)

The Courts have issued a to electronic Alternative Dispute Resolution. This guide is for ADR events conducted in the Family Court of Australia and the Federal Circuit Court of Australia. (28 April 2020)

### [OAIC: COVID-19 Privacy guidance](#)

The OAIC has released privacy guidance for agencies and private sector employers to help keep workplaces safe and handle personal information appropriately as part of the COVID-19 response. This includes answers to frequently asked questions. New detailed advice will help regulated entities assess the privacy risks involved in changed working environments, and a new step-by-step tool to help guide them through the Privacy Impact Assessment process. (05 May 2020)

### [AAT: COVID-19: New special measures practice directions – 28 April 2020](#)

The AAT President has issued five special measures practice directions that set out how the AAT will operate while COVID-19 impacts its services. The special measures practice directions may take precedence over other directions that deal with the same matter. These directions are in effect from 29 April 2020 for the following divisions.

### [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.

### [Value of Fee and Penalty Units set for 2020-21](#)

The Treasurer has set an annual rate increase for 2020-21 of 0.00 per cent. The values of a fee unit and a penalty unit or the next financial year commencing 1 July 2020 are: the value of a fee unit is \$14.81; and the value of a penalty unit is \$165.22.

## Victorian Courts

The Supreme Court of Victoria is following State and Commonwealth government advice regarding coronavirus (COVID-19).

7 May 2020 - [Electronic court books for virtual courtrooms](#)

7 May 2020 - [Updated - Virtual hearings page now includes new eCourt Book Guide](#)

7 May 2020 - [Updated - Guidance for criminal proceedings affected by coronavirus](#)

7 May 2020 - [Updated - Guidance for civil proceedings affected by coronavirus](#)

6 May 2020 - [Orders admitting new lawyers to practise](#)

1 May 2020 - [Information about accessing virtual hearings](#)

1 May 2020 - [Criminal Division trial by judge alone COVID-19 emergency protocol](#)

**PUBLISHED - ARTICLES, PAPERS, REPORTS**[First interim report of the Joint Select Committee on implementation of the National Redress Scheme April 2020](#)

The establishment of the National Redress Scheme in 2018 has made a symbolic and practical contribution to the pursuit of justice for survivors of institutional child sexual abuse. However, as this interim report demonstrates, much more needs to be done to improve.

[Protecting human rights in locked environments during COVID-19](#)

The following information outlines the rights of people in 'locked environments' in Queensland, and the rights of their families and staff. 'Locked environments' refers to accommodation from which a person is not physically free to leave at any time.

**CASES**[Page v Sydney Seaplanes Pty Ltd \[2020\] FCA 537](#)

HIGH COURT AND FEDERAL COURT – jurisdiction of Federal Court – application concerning death of applicant's daughter during intra-state seaplane flight – claim for damages pursuant to ss 28, 31 and 25 of the Civil Aviation (Carriers' Liability) Act 1959 (Cth) "as incorporated by" s 5 of the Civil Aviation (Carriers' Liability) Act 1967 (NSW) – whether federal jurisdiction arises in respect of a claim for damages relating to an intra-state flight – application dismissed for want of jurisdiction.

Constitution, ss 75, 76, 77; Civil Aviation (Carriers' Liability) Act 1959 (Cth), ss 26, 27, 28, 31 and 35; Civil Aviation (Carriers' Liability) Act 1967 (NSW), ss 4, 5, 6A; Federal Court of Australia Act 1976 (Cth), s 19; Judiciary Act 1903 (Cth), ss 38, 39, 39B

[Defteros v Google LLC \[2020\] VSC 219](#)

DEFAMATION – Publication – Whether internet search engine provider published search results and webpage reached by clicking on hyperlink within search results – When defendant was on notice that search results included matters complained of – When and to whom matters published – Whether pleaded imputations conveyed by the matters published.

DEFAMATION – Defences – Common law qualified privilege – Whether community of interest between defendant and users of its search engine – No community of interest – Statutory qualified privilege – Whether users of search engine had 'interest or apparent interest' sufficient for statutory defence – Sufficient interest established for some but not all users – Whether defendant acted reasonably in publishing matters to users with sufficient interest – Whether statutory defences of fair report, innocent dissemination and triviality established – Whether defence of consent established – Defamation Act 2005 (Vic), ss 29, 30, 32, 33.

DEFAMATION – Damages – Hurt and distress of plaintiff – Seriousness of imputations – Limited publication – No evidence of grapevine effect – Whether aggravated damages warranted by conduct of defence – Whether damages mitigated – Defamation Act 2005 (Vic) ss 34, 38.

[NTJ v NTJ \(Human Rights\) \[2020\] VCAT 547](#)

Human Rights List – Voluntary Assisted Dying Act 2017 (Vic) – Open Courts Act 2013 (Vic) – Preliminary matters to be determined – Whether applicant an 'eligible applicant' – Whether decision of applicant a 'decision' pursuant to s 4 of the Victorian Civil and Administrative Tribunal Act 1998 (Vic) and the enabling enactment – Whether subject person eligible for access to voluntary assisted dying – Requirement that subject person be ordinarily resident in Victoria and ordinarily resident in Victoria for 12-months at time of making first request – Where subject person retired and travelling – Indicia of residency – Meaning of 'ordinarily resident' considered – Held subject person ordinarily resident in Victoria – Voluntary Assisted Dying Act 2017 (Vic) ss 1, 5, 9(1)(b) (ii)-(iii), 68, 72(a), 72(c).

**LEGISLATION**[COVID-19 Omnibus \(Emergency Measures\) Bill 2020](#)

Date of second reading speech: 23 April 2020. The purpose is to temporarily amend certain Acts, and to temporarily empower the making of regulations, to modify the application of the law in Victoria in certain respects for the purpose of responding to the COVID-19 pandemic. Chapter 2—Temporary modification of the law by regulation Part 2.1—Regulations temporarily modifying Justice Acts and laws

[Appropriation \(Interim\) Bill 2020](#)

Date of second reading speech: 23 April 2020. Secures \$24.5 billion in emergency funding to save lives, support jobs and businesses, and set Victoria up to recover from the pandemic over the next two years. Act Number: 12/2020 Date of assent: 28 April 2020

## KEY CONTACTS

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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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