



PUBLIC SECTOR NEWSLETTER - VICTORIA

Welcome to Issue 83 of the Victorian Public Sector Newsletter.

Yet another fortnight dominated by COVID-19, with plenty of commentary on the National Cabinet's COVIDSafe App and the related privacy protections, the LIV welcoming the changes to the requirements for the witnessing of documents during COVID-19 and increased funding by both the Commonwealth and Victorian Governments for frontline legal services in the wake of COVID-19. The Commonwealth public service has also released transition plans for the return to offices.

In non COVID-19 news, the Victorian Government will invest \$20m in justice infrastructure across Victoria, the operator of the Hazelwood mine has been fined for breaches of the OH&S Act and the Commonwealth Government has released a style manual. The Commonwealth Parliament has also established a Committee of Enquiry into class actions.

In the Courts, the Federal Court was asked to consider issues relating to the removal of brumbies from Victoria's high country and the Supreme Court of Victoria was asked to review a medical panel determination in relation to current work capacity.

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

IN THE MEDIA

\$20 million justice infrastructure investment welcomed by LIV

The State Government investment of \$20 million in justice infrastructure across Victoria will make our courts safer and more accessible to all users, according to the Law Institute of Victoria. (20 May 2020) [https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/May/\\$20-million-justice-infrastructure-investment-welc](https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/May/$20-million-justice-infrastructure-investment-welc)

Hazelwood Power fined \$1.56m after mine fire

Hazelwood Power Corporation Pty Ltd, was this week fined a total of \$1.56 million for breaches of the OHS Act after a major fire that burned for several weeks in 2014. (19 May 2020) <https://www.murrayvalleystandard.com.au/story/6761332/hazelwood-operators-fined-19m-over-fire/>

Govt style manual updated for digital age

The government is updating its official Style Manual to bring public servants' communication skills into the digital age. The Australian Government Style Manual provides rules and guidance for writing and editing with the aim of ensuring clarity and consistency in government communications. (18 May 2020) <https://www.governmentnews.com.au/government-style-manual-updated-for-digital-age/>

OAIC: COVID-19

The OAIC understands Australian Government agencies and organisations covered by the Privacy Act 1988 are facing unprecedented challenges in combating the spread of COVID-19. (16 May 2020) <https://www.oaic.gov.au/updates/news-and-media/covid-19/>

New rules for staff changes in pandemic

The APSC has issued a new Circular dealing with staffing mobility arrangements in response to COVID-19. The focus of Agencies and employees should be on the continued delivery of critical functions to the Australian public, as well as ensuring workplaces are safe for all. (18 May 2020) <https://www.apsc.gov.au/circular-20206-temporary-mobility-arrangements-part-continued-response-covid-19>

APSC sets scene for return to offices

The Australian Public Service Commission (APSC) has issued a Circular calling on Agency heads to implement a transition plan to return employees to their usual workplaces. (14 May 2020) <https://www.apsc.gov.au/circular-20206-temporary-mobility-arrangements-part-continued-response-covid-19>

OAIC expands oversight role as privacy safeguards for COVIDSafe app made law

Australian Information Commissioner and Privacy Commissioner Angelene Falk has welcomed changes to the Privacy Act 1988 that enshrine strict privacy safeguards for COVIDSafe app data in law. (14 May 2020) <https://www.oaic.gov.au/updates/news-and-media/oaic-expands-oversight-role-as-privacy-safeguards-for-covidsafe-app-made-law/>

COVIDSafe privacy protections now locked in law

The privacy protections behind Australia's COVIDSafe contact tracing app are now enshrined in law after the underpinning legislation passed through parliament with minor improvements. (14 May 2020) <https://www.itnews.com.au/news/covidsafe-privacy-protections-now-locked-in-law-548119>

Law Council pleased to see legislation for Tracing app passed

The Law Council of Australia is pleased to see the passage of the Privacy Amendment (Public Health Contact Information) Bill 2020 through Parliament. This will put the regulatory framework governing the operation of the COVIDSafe App on a statutory footing, replacing the Determination made under the Biosecurity Act 2015 (Cth). (14 May 2020) <https://www.lawcouncil.asn.au/media/media-releases/law-council-pleased-to-see-legislation-for-tracing-app-passed>

Law Institute of Victoria welcomes emergency regulation changes to witnessing legal documents during COVID-19

New government emergency regulations will overcome many of the problems in signing legal documents, according to the Law Institute of Victoria. (13 May 2020) <https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/May/LIV-welcomes-emergency-regulation>

Improving justice outcomes for class action members

Ensuring Australians get their fair share of legal settlements will be the focus of a parliamentary committee inquiry which will examine all aspect of the class action system, including the enormous profits being made by litigation funders. (13 May 2020) <https://www.attorneygeneral.gov.au/media/media-releases/improving-justice-outcomes-class-action-members-13-may-2020>

Law Council President, Pauline Wright, statement on the release of COVIDSafe source code

The Australian Government's release of the COVIDSafe app source code on the weekend is welcomed by the Law Council of Australia, giving all Australians the chance to satisfy themselves that the app will be used in the way that it is intended. (11 May 2020) <https://www.lawcouncil.asn.au/media/media-releases/law-council-president-pauline-wright-statement-on-the-release-of-covidsafe-source-code>

Legal assistance boost during COVID-19 welcomed

Increased funding to front line legal services by the Victorian and Federal Governments will provide greater support to people with legal problems during the current COVID-19 crisis, according to the Law Institute of Victoria. (11 May 2020) <https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/May/Legal-assistance-boost-during-COVID-19-welcomed>

IN PRACTICE AND COURTS

[APSC Circular 2020/5 Preparing for a COVID-safe transition for APS workplaces](#)

The APSC says that in developing their transition plans, Agency heads need to review the balance between working from home and returning to usual workplaces, ensuring the health and wellbeing of their staff along with Agency productivity, and the delivery of essential services. (14 May 2020)

[Aged Care Visitor Access Code](#)

The Aged Care Visitor Access Code, developed in conjunction with consumer peak bodies sets out a nationally consistent, principles-based approach to maintaining residents' visitation and communication. (13 May 2020)

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

Draft legislation, the Privacy Amendment (Public Health Contact Information) Bill 2020, will 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.

[OAIC Privacy guidance](#)

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. Revised detailed advice helps regulated entities assess the privacy risks involved in changed working environments, as many organisations implement or expand remote working arrangements. Organisations and agencies can also download our new step-by-step tool to help guide them through the Privacy Impact Assessment process (16 May 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.

[Parliament of Victoria: Inquiry into the Victorian Government's Response to the COVID-19 Pandemic](#)

The Public Accounts and Estimates Committee is accepting submissions to its Inquiry into the Victorian Government's response to the Covid-19 pandemic. Submissions close on 31 July 2020.

[LIV: Wills and powers of attorney can be signed and witnessed remotely](#)

New Victorian government COVID-19 emergency regulations for the remote signing and witnessing of several important types of legal documents became law on 12 May 2020. (20 May 2020)

[Update on VCAT Hearings](#)

From 18 May 2020, VCAT will be progressing currently listed matters using telephone or video conferencing where they can reasonably proceed. VCAT will contact parties to confirm whether their matter will progress on the listed date and by which technology. VCAT are still accepting all relevant matters and will contact you to discuss potential hearing dates.

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Personnel Security: Due Diligence over Public Service Employees](#)

In this audit, we examined personnel security measures at all eight government departments, and the Victorian Public Service Commission. We specifically assessed agencies' employment screening practices and how they are managing conflict of interest risks during recruitment.

[Investigations into allegations of nepotism in government schools](#)

Family members and associates of principals in Victorian government schools continue to be hired without principals properly declaring or managing their conflicts of interest.

[Investigation of alleged improper conduct by Executive Officers at Ballarat City Council](#)

This report examines allegations that two of Ballarat City Council's most senior officers engaged in improper conduct. The officers are Council's Director, Infrastructure and Environment, Terry Demeo, and its Chief Executive Officer, Justine Linley.

[Issues paper: Constitutional framework for the declaration of a State of National Emergency](#)

This issues paper explores legal and constitutional questions surrounding the concept of a declaration of a 'state of national emergency' by the Commonwealth of Australia, and how this might operate with existing state and territory emergency management frameworks.

CASES

[Australian Brumby Alliance Inc v Parks Victoria Inc \[2020\] FCA 605](#)

ADMINISTRATIVE LAW - Environment Protection and Biodiversity Conservation Act 1999 (Cth) Act s 15B(5) -

action to prevent removal of brumbies from the Bogong High Plains and Eastern Victorian Alps within the Australian Alps National Parks and Reserves - whether removal will have or is likely to have a significant impact on the National Heritage values of the Australian Alps National Parks and Reserves - whether prohibiting the removal is reasonably appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention - whether brumbies are part of the National heritage values of the Australian Alps National Parks and Reserves - whether the Biodiversity Convention protects cultural and social values - proper construction of s 15B(5) and (6)

[Batovas v CCRM Pty Ltd \[2020\] VSC 178](#)

ADMINISTRATIVE LAW - Judicial Review - Certificate of Medical Panel - No current work capacity - Suitable employment - More than one medical condition - Need to consider each medical condition in combination with other relevant personal circumstances of worker - Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) s 3 - Richter v Driscoll (2016) 51 VR 95 applied
ADMINISTRATIVE LAW - Judicial Review - Reasons - Adequacy - Where question referred to Medical Panel required determination of work capacity from time weekly payments stopped to Medical Panel's examination of worker and 'currently' - No path of reasoning for earlier period - No inference that Medical Panel plainly engaged with prior medical reports dated during earlier period - Wingfoot Australia Partners Pty Ltd v Kocak [2013] HCA 43; (2013) 252 CLR 480 applied

[Hoe v Lennox \[2020\] VSC 262](#)

JUDICIAL REVIEW - Appeal from orders of the Magistrates' Court - s 109 Magistrates Court Act 1989 - Claim struck out pursuant to order 23.02 of Magistrates' Court General Civil Procedure Rules 2010 - Unilateral communication to the court to obtain a dismissal of proceeding rather than a strike out as previously ordered - Denial of procedural fairness - Orders quashed - Order striking out proceeding remains. COSTS - Self-represented litigant - No entitlement to recover cost of time spent by non-legal practitioner in preparation and presentation of case - Cachia v Hanes (1994) 179 CLR 403 - Disbursements recoverable - Section 24 Supreme Court Act 1986; Order 63 Supreme Court (General Civil Procedure) Rules 2015.

[Marke v Victoria Police \(Review and Regulation\) \[2020\] VCAT 557](#)

Freedom of Information Act 1982 (Vic), sections 33(1), 35(1)(b) and 55(2) - whether unreasonable to release names and other personal affairs information of 31 people, including a number of police officers - whether information communicated in confidence and its disclosure would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair Victoria Police's ability to obtain similar information in future - relevance of information already released to application - relevance of applicant's past use of information - whether onus discharged.

[Goodrich v Racing Victoria Racing Appeals and Disciplinary Board \[2020\] VSCA 110](#)

ADMINISTRATIVE LAW – Judicial review – Applicant charged with refusing to allow two stewards to inspect a horse on a race day – Racing Victoria Racing Appeals and Disciplinary Board decision to suspend applicant’s racehorse trainer’s licence for three months – Review of that decision by Victorian Civil and Administrative Tribunal – Racing Victoria proposed order that Board’s decision be set aside with costs – Applicant rejected proposed order and sought documents to determine whether two stewards validly appointed – Tribunal dismissed proceeding on basis its continuation was an abuse of process – Whether judge erred in finding open to Tribunal to do so – Leave to appeal granted – Appeal allowed.

LEGISLATION

[Telecommunications \(Interception and Access\) \(Emergency Service Facilities—Victoria\) Instrument 2020](#)

18/05/2020 - This instrument specifies the names of the forces and services operating premises in Victoria that have been declared to be an emergency service facility. It revokes the Telecommunications (Interception and Access) (Emergency Service Facilities – Victoria) Instrument 2012.

Acts Commencements

[Children’s Services Amendment Act 2019 \(Vic\)](#)

Date of commencement: 17 May 2020 - Sections 1 to 23 of this Act came into operation on 17 May 2020 (SG232 12.05.2020) Act Number: 37/2019

Statutory Rules

No 34 [COVID-19 Omnibus \(Emergency Measures\) \(Electronic Signing and Witnessing\) Regulations 2020](#)

12 May 2020 - The objective of these Regulations is to modify the application of various provisions of the following Acts to further provide for electronic signatures, witnessing the signing of documents by audio visual link, and related matters

No 38 [COVID-19 Omnibus \(Emergency Measures\) \(Integrity Entities\) Regulations 2020](#)

19 May 2020 - The objective of these Regulations is to modify the application of various provisions of the following Acts to further provide for service, attendance by audio visual link and related matters

Current Reprint Statutory Rules

No 6 [Victorian Civil and Administrative Tribunal Rules 2018](#)

Statutory rule number 77/2018 - Version 006 - 15 May 2020

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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

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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