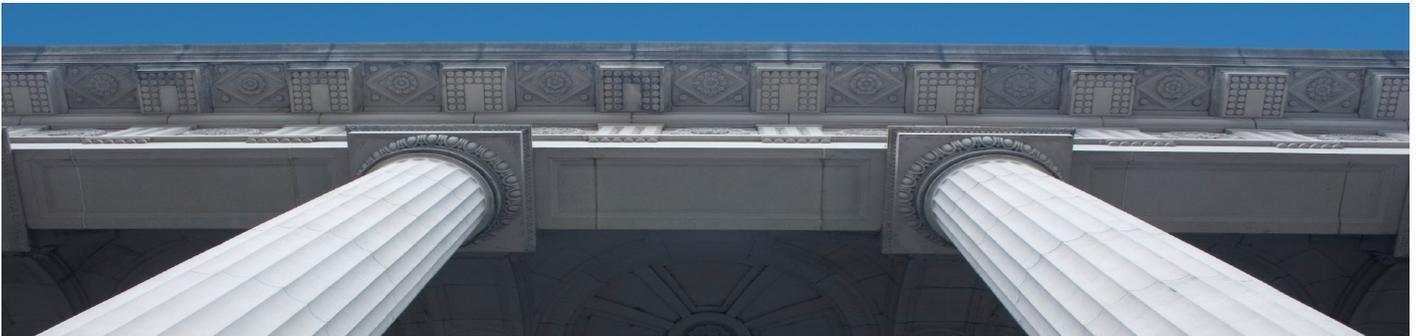


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PUBLIC SECTOR NEWSLETTER - VICTORIA

It has been a busy period for both Covid-19 and, thankfully, non-Covid-19 news!

The Government has announced a Judicial Inquiry into Victoria's Hotel Quarantine Program and the Victorian Parliament has called for submissions into the Government's response to the Covid-19 pandemic. Meanwhile, concerns have been expressed about heavy handed policing in Victoria's Covid-19 hot spots.

In non-Covid-19 news, the Commonwealth Government has released a new workplace exposure standard for silica dust to coincide with the taking effect of new workplace manslaughter laws and the passage of laws to improve access to justice and make it easier to bring class actions for silicosis, wage theft and other wrongdoings.

The Commonwealth and State Governments have also announced measures to achieve funding certainty for legal assistance, which the legal profession has welcomed, and all levels of the profession have responded to recent findings in relation to sexual harassment within the judiciary and the profession generally.

The Victorian Government has also appointed a new Public Sector Commissioner and made an appointment to the Victorian Law Reform Commission, and two new Judicial Registrars have been appointed to the Supreme Court.

In the Courts, the Supreme Court has considered a number of matters involving VCAT, IBAC and other Departments and Agencies which go to VCAT's jurisdiction, procedural fairness, denial of natural justice, IBAC's powers, standing and other issues.

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

IN THE MEDIA

Funding certainty for legal assistance services

The announcement that the National Legal Assistance Partnership (NLAP) – a five-year funding agreement for the legal assistance sector – is welcomed by the Law Council of Australia. (01 July 2020) <https://www.lawcouncil.asn.au/media/media-releases/funding-certainty-for-legal-assistance-services-from-today>

\$2 billion partnership to deliver legal assistance services for Australians

A new partnership between the Commonwealth and states and territories will provide a significant boost to legal services available to vulnerable Australians, including people affected by domestic violence. (30 June 2020) <https://www.attorneygeneral.gov.au/media/media-releases/2-billion-partnership-deliver-legal-assistance-services-australians-30-june-2020>

New workplace exposure standard for silica dust

The Morrison Government is acting to protect Australian workers against the harmful effects of silica dust by reducing the workplace exposure standard (WES) for respirable crystalline silica from 1 July this year. Attorney-General and Minister for Industrial Relations, Christian Porter, said the change represented an important step forward in the fight against preventable dust diseases in the workplace. (30 June 2020) <https://www.attorneygeneral.gov.au/media/media-releases/new-workplace-exposure-standard-silica-dust-30-june-2020>

Heavy Vehicle National Law review taking shape

The National Transport Commission (NTC) has released a consultation regulation impact statement in an important step to improve the Heavy Vehicle National Law (HVNL). (25 June 2020) <https://minister.infrastructure.gov.au/mccormack/media-release/heavy-vehicle-national-law-review-taking-shape>

Complaints show more work needed in legal profession to address sexual harassment

The Australian Lawyers Alliance (ALA) welcomes the High Court of Australia's announcement that it will immediately strengthen its policies and training to prevent incidents of sexual harassment, following an investigation upholding complaints against former High Court Judge Dyson Heydon. (23 June 2020) <https://www.lawyersalliance.com.au/news/category/media-releases>

Judicial Inquiry Into Hotel Quarantine Program

Premier Daniel Andrews announced that The Honourable Jennifer Coate AO will head the inquiry, which will examine the operation of Victoria's hotel quarantine program for returning travellers. (02 July 2020) <https://www.premier.vic.gov.au/judicial-inquiry-into-hotel-quarantine-program/>

Victoria Police officer convicted following IBAC investigation Operation Ithaca

A former Victoria Police Sergeant, Robert Beckingham, was convicted and sentenced at the Melbourne Magistrates' Court to a \$7,500 fine after pleading guilty to a charge of unauthorised access to police information contained on the LEAP database that related to nine different persons. (01 July 2020) <https://www.ibac.vic.gov.au/media-releases/article/victoria-police-officer-convicted-following-ibac-investigation-operation-ithaca>

Victorian Workplace Manslaughter Laws Now In Effect

Workplace manslaughter is now a criminal offence in Victoria with tough new laws introduced by the Victorian Government coming into effect from 1 July. Negligent employers now face fines of up to \$16.5 million and individuals face up to 25 years in jail. (01 July 2020) <https://www.ibac.vic.gov.au/media-releases/article/victoria-police-officer-convicted-following-ibac-investigation-operation-ithaca>

Concerns re risk of heavy-handed policing in Melbourne hot spots

Extraordinary police measures being used to enforce lock downs in Melbourne virus hot spots must be measured and be culturally appropriate. (01 July 2020) <https://www.ibac.vic.gov.au/media-releases/article/victoria-police-officer-convicted-following-ibac-investigation-operation-ithaca>

New Victorian Public Sector Commissioner

Adam Fennessy has been named as the new Victorian Public Sector Commissioner. Minister for Government Services Danny Pearson announced Mr Fennessy's appointment to the role. As Commissioner, Mr Fennessy will be responsible for driving excellence in policy, service and administration across the public sector and will work to maintain the sector's professionalism and integrity. (30 June 2020) <https://www.premier.vic.gov.au/new-victorian-public-sector-commissioner-2/>

Legal profession has a problem with sexual harassment

The legal profession needs to step up to protect lawyers from the scourge of sexual harassment, according to the Law Institute of Victoria. (24 June 2020) <https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/June-2020/Legal-profession-has-a-problem-with-sexual-harassm>

New Appointment to the Victorian Law Reform Commission

The Victorian Government has announced the appointment of the Hon. Jennifer Coate AO, who brings to the Commission 35 years of experience across five court jurisdictions. It also announced the reappointment of Gemma Varley PSM. (19 June 2020) <https://www.premier.vic.gov.au/new-appointment-to-the-victorian-law-reform-commission/>

New Laws To Improve Access To Justice Pass Parliament

Changes to improve access to justice and make it easier to bring class actions for silicosis, wage theft and other forms of wrongdoing are now law. The Justice Legislation Miscellaneous Amendments Act 2019 paves the way for class actions – including cases of silicosis and wage theft. (19 June 2020) <https://www.premier.vic.gov.au/new-laws-to-improve-access-to-justice-pass-parliament/>

IN PRACTICE AND COURTS

[New Law Council of Australia Guidelines - Equitable Briefing Policy](#)

The Law Council's portal for the annual reporting by Equitable Briefing Policy adoptees (Policy adoptees) will soon open on 1 July 2020. To assist in this process, the Law Council has updated its Equitable Briefing Policy Reporting Template and Guidelines in response to feedback from previous reporting periods. Policy adoptees have until 30 September 2020 to provide their annual report, and will be updated once the portal is opened on 1 July 2020.

[Joint statement by the Heads of Jurisdiction of Victoria's courts and tribunals](#)

In a joint statement, the Heads of Jurisdiction of Victoria's courts and tribunal committed to making sure that our courts and tribunal are safe, healthy and respectful workplaces. You can read the statement here. (29 June 2020)

[Announcement of two new judicial registrar appointments](#)

23 June 2020 - The Court will welcome two new judicial registrars over the coming months.

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

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.

[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.

CASES

[The Big Apple Group Pty Ltd v Melbourne City Council \[2020\] VSC 393](#)

ADMINISTRATIVE LAW – Victorian Civil and Administrative Tribunal – Consent orders dismissing claim and counterclaim – Subsequent application to set aside consent orders – Whether VCAT has jurisdiction to collaterally review the existence of the agreement on which consent orders were based – Whether the existence of the agreement is a jurisdictional fact – Whether VCAT has implied or inherent power to set aside orders – Whether VCAT functus officio once consent orders made – Whether VCAT orders have effect until set aside – Victorian Civil and Administrative Tribunal Act 1998 ss 93(1), 119 and 120. granting planning permits for licensed premises.

[Kweifio-Okai v SPG Corporation Pty Ltd \[2020\] VSC 386](#)

ADMINISTRATIVE LAW – VCAT – Application for leave to appeal on questions of law – Application seeking return of deposit for purchase of apartment and damages in tort for property damage – Necessary parties not joined – No VCAT jurisdiction in tort claim – Whether it was open to VCAT to summarily strike out the application – Order that applicant pay respondents' costs – Whether costs order justified – Whether applicant was denied procedural fairness – Duty to assist self-represented litigant – Victorian Civil and Administrative Tribunal Act 1998 ss 75 and 109.

[Teen Entertainment Enterprise Network Pty Ltd v A&H Natoli Pty Ltd \[2020\] VSC 388](#)

ADMINISTRATIVE LAW – Appeal from orders of Victorian Civil and Administrative Tribunal in proceedings under Australian Consumer Law and Fair Trading Act 2012 (Vic) – Whether Tribunal denied appellant natural justice by deciding claim on a basis not pleaded or argued – Whether Tribunal denied appellant natural justice by refusing adjournment application – Tribunal's jurisdiction to determine 'consumer and trader dispute' – Australian Consumer Law and Fair Trading Act 2012 (Vic), ss 182, 184 – Victorian Civil and Administrative Tribunal Act 1998 (Vic), s 148.

[Weber v Carkeek \[2020\] VSC 366](#)

ADMINISTRATIVE LAW – Appeal from orders of Victorian Civil and Administrative Tribunal in proceedings under Australian Consumer Law and Fair Trading Act 2012 (Vic) – Whether reasonable apprehension of bias on part of Tribunal member – Whether Tribunal hearing was fair – Tribunal's jurisdiction to determine 'consumer and

trader dispute' – Whether Tribunal applied provisions of Australian Consumer Law in determining dispute – Adequacy of Tribunal's reasons – Australian Consumer Law and Fair Trading Act 2012 (Vic), ss 182, 184 – Victorian Civil and Administrative Tribunal Act 1998 (Vic), ss 117, 148.

[Hunter v Vaishnav & Ors \[2020\] VSC 361](#)

ADMINISTRATIVE LAW – Appeal from decision of Victorian Civil and Administrative Tribunal – Whether Tribunal failed to provide fair hearing and adequate assistance to self-represented litigant – exercise of discretion under s 74(2)(b) – Applicant to show reasons for displacing status quo when claim has been finalised – Appeal dismissed – Victorian Civil and Administrative Tribunal Act 1998 (Vic) ss 74(2)(d), 148(2) – Rodger Hoskin v Department of Education – FOI Manager [2005] VCAT 2921.

[GH \(a pseudonym\) v IBAC \[2020\] VSCA 175](#)

ADMINISTRATIVE LAW – Judicial review – Investigative agency – Corruption investigation – Coercive powers – Summons to attend for examination – Power to require immediate attendance – Applicant summoned to attend immediately – Judicial review of decision to issue summons – Application for stay pending final hearing – Whether serious question to be tried – Whether delay in attendance likely to result in serious prejudice to investigation – Whether reasonable grounds for apprehension of risk – Whether decision unreasonable – No serious question raised – No basis for stay – Leave to appeal refused – Independent Broad-based Anti-corruption Commission Act 2011 ss 15, 60, 120, 124.

[Maguire v Parks Victoria \[2020\] VSCA 172](#)

JUDICIAL REVIEW – Standing – Whether applicant had standing to challenge decision on basis of lack of public consultation – Applicant asserted that he would participate in public consultation – Whether interference with claimed amenity sufficient to support standing – Absence of a special interest – Standing not established – Australian Conservation Foundation v Commonwealth (1980) 146 CLR 493; [1980] HCA 53, applied – Leave to appeal refused.

[Daher v Bell \[2020\] VSC 346](#)

JUDICIAL REVIEW – Order 56 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) – Application for extension of time within which to commence judicial review proceedings – Special circumstances required – Period of delay, reason for delay, strength of case for judicial review, justice to both parties and the public interest in the finality of litigation to be taken into account in determining if special circumstances made out – Lazarevic v Victoria Police [2015] VSC 13; Lazarevic v Victoria Police [2014] VSC 497; Glass (a pseudonym) v Chief Examiner & Ors [2015] VSCA 127; (2015) 50 VR 577; Richards v Victorian Magistrates Court (No 2) [2018] VSC 226.

[Minogue v Secretary to the Department of Justice and Community Safety \[2020\] VSC 355](#)

JUDICIAL REVIEW – Prisoner seeks review of decisions relating to removal and reinstatement on conditions of his telephone access and limitations on telephone access for the purpose of accessing the internet - Application for extension of time to add additional grievances to existing proceeding – Application for leave to further amend relief sought in amended originating motion – Comparison between the tests for extension of time and amendment of existing relief – Extension of time granted in relation to refusal of telephone calls for the purpose of recipient contacting plaintiff’s lawyers by use of the internet – Extension of time refused in relation to challenge to Corrections Regulations 2019 (Vic) because seeks advisory opinion – Leave refused in relation to some reformulations of relief – Observations as to the utility of interlocutory challenge to reformulations of relief where plaintiff unrepresented – rr 36.01 and 56.02 Supreme Court (General Civil Procedure) Rules 2015 (Vic).

[Radman v Open Plan \[2020\] VSC 318](#)

ADMINISTRATIVE LAW – Judicial review – Relief in the nature of certiorari – Whether Adjudication Determination under the Building and Construction Industry Security of Payment Act 2002 (Vic) is vitiated by jurisdictional error – Proceeding resolved by consent orders without adjudication on the merits - Application for indemnity certificate for costs under the Appeal Costs Act 1998 (Vic) – Whether an Adjudication Determination is an ‘appeal’ and whether the Adjudicator is a ‘court’ under s 3 of the Appeal Costs Act 1998 (Vic) – Order allowing appeal by consent – Circumstances in which such an order can be made - Whether orders made by consent in the absence of any judicial determination result in the plaintiffs succeeding in their proceeding to review the subject Adjudication Determination within the meaning of s 4 of the Appeal Costs Act 1998 (Vic) - Whether in the Court’s discretion in the circumstances there should be the grant of an indemnity certificate – Appeal Costs Act 1998 (Vic), ss 3, 4 and 5.

[Browne v Beckingham \[2020\] VSC 301](#)

CRIMINAL PROCEDURE – Statutory offence – Independent Broad-based Anti-corruption Commission – Respondent charged with disclosure in breach of confidentiality notice – Notices prohibited disclosure of restricted matters – Proofs – Validity of charges – Whether notices lacked particulars of source of confidentiality obligation – Whether notices invalid for uncertainty in scope for want of constraining parameters – Independent Broad-based Anti-corruption Commission Act 2011 ss 3, 42, 44.

[McKechnie v Magistrates’ Court \(Wangaratta Victoria\) & Anor \[2020\] VSC 358](#)

ADMINISTRATIVE LAW – Criminal Practice and Procedure – Application for judicial review of

Magistrate’s order to adjourn summary criminal proceedings to a contest mention on a fixed date instead of granting indefinite stay – No substance in plaintiff’s complaints – Application for review dismissed.

LEGISLATION

Bills

[Consumer and Other Acts Miscellaneous Amendments Bill 2020](#)

Assembly 2nd reading 16 June 2020 - Makes a range of miscellaneous amendments to consumer legislation, including gambling licensing arrangements, residential tenancies reform, working with children checks, and the Victims of Crime Assistance Tribunal.

Acts Commencement

[Crimes Amendment \(Manslaughter and Related Offences\) Act 2020 \(Vic\)](#)

Increases the maximum penalty for these offences from 20 years to 25 years’ imprisonment. Sections 1 to 27 of this Act came in by forced commencement 1 July 2020 s.2(2). Act Number: 16/2020 Date of commencement: 1 July 2020

[Justice Legislation Miscellaneous Amendments Act 2020 \(Vic\)](#)

Sections 1 to 27 of this Act came in by forced commencement 1 July 2020 s.2. Act Number: 22/2020 Date of commencement: 1 July 2020.

[Justice Legislation Amendment \(Access to Justice\) Act 2018 \(Vic\)](#)

Part 10 Division 5 (sections 67 to 71) of this Act came in by forced commencement 1 July 2020 s.2(5). Act Number: 15/2018 Date of commencement: 1 July 2020

[Sentencing Amendment \(Emergency Worker Harm\) Act 2020 \(Vic\)](#)

Sections 1 to 6, 9 to 20 of this Act came in by forced commencement 1 July 2020 s.2(1). Act Number: 23/2020 Date of commencement: 1 July 2020.

[Firefighters’ Presumptive Rights Compensation and Fire Services Legislation Amendment \(Reform\) Act 2019 \(Vic\)](#)

Part 3 to Part 11 of this Act came into operation on 1 July 2020 (SG328 30.6.2020). Act Number: 20/2019 Date of commencement: 1 July 2020

[Police Legislation Amendment \(Road Safety Camera Commissioner and Other Matters\) Act 2019 \(Vic\)](#)

Part 2 (sections 3 to 12) of this Act came into operation on 1 July 2020 (SG323 30.6.2020). Act Number: 39/2019 Date of commencement: 1 July 2020.

[Integrity and Accountability Legislation Amendment \(Public Interest Disclosures, Oversight and Independence\) Act 2019 \(Vic\)](#)

Part 5 (sections 175-187) of this Act came in by forced commencement on 01 July 2020 s. 2(4). Act Number: 2/2019 Date of commencement: 30 June 2020

Acts Assented

[Justice Legislation Miscellaneous Amendments Act 2020 \(Vic\)](#)

Act Number: 22/2020 Date of assent: 30 June 2020

[Sentencing Amendment \(Emergency Worker Harm\) Act 2020 \(Vic\)](#)

Act Number: 23/2020 Date of assent: 30 June 2020

[Wage Theft Act 2020 \(Vic\)](#)

Act Number: 21/2020 Date of assent: 23 June 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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