



PUBLIC SECTOR NEWSLETTER - VICTORIA

In this edition we see more COVID-19 measures put in place by the State Government to reduce community transmission including mandating the wearing of a mask when leaving home. A one page factsheet on using a mask has been published by the Department of Health.

Victoria's public sector also continues to adapt to the changing situation, including Courts which continue to operate in an online environment although the recommencement of jury trials has been delayed for the time being.

In other news, the State Government has announced a review of sexual harassment, prevention, support, enforcement and education in all Victorian Courts and Tribunals and across the legal profession.

In the Courts, there have been some recent decisions in the Victorian Supreme Court regarding the *Flora and Fauna Guarantee Act 1988*, the *Sustainable Forests (Timber) Act 2004* and the *Building and Construction Industry Security of Payment Act 2002*.

Finally, with much interest the correspondence relating to the dismissal of the Australian Government in 1975 between the Australian Governor General and Her Majesty the Queen have been made public following the High Court's decision.

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

IN THE MEDIA

National Roundtable on Addressing Sexual Harassment in the Legal Profession

Following informative and practical discussions, participants agreed on certain proposals for further consideration and advancement by the Law Council. (17 July 2020) <https://www.lawcouncil.asn.au/media/news/national-roundtable-on-addressing-sexual-harassment-in-the-legal-profession>

Federal Parliament to be cancelled amid growing interstate COVID-19 outbreaks

The next sitting of Federal Parliament will be cancelled because of the risk of coronavirus transmission as cases rise in NSW and Victoria. Parliament was going to sit for a fortnight from August 4 but the next sitting week will now be from August 24. (18 July 2020) <https://www.theage.com.au/politics/federal/federal-parliament-sitting-cancelled-amid-growing-interstate-covid-19-outbreaks-20200718-p55d7w.html>

ACMA moves to block more illegal gambling websites

The ACMA is set to request Australian internet service providers (ISPs) to block more illegal offshore gambling websites. ACMA has received over 35 complaints about these services that are accessible in Australia. ACMA investigations found them to be operating in breach of the Act 2001. (17 July 2020) <https://www.acma.gov.au/articles/2020-07/acma-moves-block-more-illegal-gambling-websites>

Correspondence between the Queen and Sir John Kerr sheds new light on Whitlam dismissal

A first look at the newly released 'Palace letters' reveals then governor-general Sir John Kerr dismissed the Whitlam government before telling the Queen, because "it was better for Her Majesty not to know". (14 July 2020) <https://www.abc.net.au/news/2020-07-14/sir-john-kerr-queen-whitlam-palace-letters-released/12452616>

Health makes marks with mask sheet

The Department of Health has released a factsheet explaining when people should wear a facemask to protect themselves and the community from COVID-19. The Department's factsheet also provides guidance on how to wear a mask properly, including sanitising hands before touching the mask and putting it on. (13 July 2020) <https://www.health.gov.au/sites/default/files/documents/2020/07/when-should-masks-be-worn-in-the-community-in-australia.pdf>

AHRC: Commission warns of ASIO Bill overreach

The Australian Human Rights Commission says the Bill would simultaneously expand ASIO's questioning powers while limiting oversight of those powers, including by limiting the subject's right to legal representation during questioning and enabling prescribed authorities to remove, at their discretion, a lawyer deemed to be 'unduly disrupting' questioning. (09 July 2020) <https://humanrights.gov.au/about/news/commission-warns-asio-bill-overreach>

Finding a path towards justice

The Government is currently considering justice targets as part of a refresh of closing the gap. Given the renewed focus on addressing the over-incarceration Aboriginal and Torres Strait Islander people. (07 July 2020) <https://www.alrc.gov.au/news/finding-a-path-towards-justice/>

Police Cracking Down On Deliberate Directive Breaches

Victoria Police continue to ensure Victorians are following the most recent directions of the Chief Health Officer, with 546 fines issued since Stage 3 "Stay at Home" restrictions were reintroduced throughout metropolitan Melbourne and Mitchell Shire. (15 July 2020) <https://www.premier.vic.gov.au/police-cracking-down-on-deliberate-directive-breaches/>

Reviews To Address Sexual Harassment In Courts And Law

Practices to prevent and address sexual harassment across the state's courts and VCAT will be closely examined as part of a review announced by the Victorian Government. This review will consider measures to prevent sexual harassment, improve reporting and support for those who experience sexual harassment. (13 July 2020) <https://www.premier.vic.gov.au/reviews-to-address-sexual-harassment-in-courts-and-law/>

The culture and practices across the legal sector must change –the Law Institute of Victoria and the Victorian Bar

The Law Institute of Victoria and the Victorian Bar welcome the Victorian Government's announcement of a review of sexual harassment prevention, support, enforcement and education in the state's courts and tribunal and across the profession. (13 July 2020) <https://www.vicbar.com.au/news-events/media-release-%E2%80%93-culture-and-practices-across-legal-sector-must-change-%E2%80%93-joint-media>

IN PRACTICE AND COURTS

[Family Court of Australia and Federal Circuit Court of Australia COVID-19 update: Victorian restrictions](#)

An update from Family Court of Australia and Federal Circuit Court of Australia has been provided regarding the COVID-19 Victorian restrictions. (08 July 2020)

[Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#)

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability is seeking submissions in relation to its terms of reference.

[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) opened 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.

Supreme Court

[New health and safety measures](#)

15 July 2020 - Anyone in Victoria's court or tribunal buildings will be expected to wear face masks when they are moving around in a court building.

[Review to address sexual harassment](#)

14 July 2020 - A joint review will consider measures to prevent sexual harassment, and improve accountability across the state's courts and VCAT.

[Jury trials recommencement delayed](#)

08 July 2020 - Statement from the Chief Justice of the Supreme Court and Chief Judge of the County Court

PUBLISHED - ARTICLES, PAPERS, REPORTS

[The prevalence of domestic violence among women during the COVID-19 pandemic](#)

Almost six percent (5.8%) of women experienced coercive control and 11.6 percent reported experiencing at least one form of emotionally abusive, harassing or controlling behaviour.

CASES

[Williams on behalf of Dangan Balun \(Five Rivers\) People v State of Queensland \[2020\] FCA 938](#)

NATIVE TITLE – application under s 66B(1) of the Native Title Act 1993 (Cth) (the NTA) to replace an authorised applicant – whether the authorisation process which authorised the replacement applicant was defective – whether there was a traditional decision making process to be followed under s 251B(a) of the NTA – application granted

PRACTICE AND PROCEDURE – application to amend a claimant application under r 8.21 of the Federal Court Rules 2011 (Cth) – whether the authorisation process which authorised the amendments was defective – whether certain respondents were denied procedural fairness by the authorisation process – whether the power to allow the amendments is within the ambit of r 8.21 – application granted .Native Title Act 1993 (Cth)

[WOTCH Inc v VicForests \(No 4\) \[2020\] VSC 433](#)

PRACTICE AND PROCEDURE – Interim injunction – Whether serious question to be tried – Whether balance of convenience favours granting injunction – Timber harvesting of State forests – Application of the precautionary principle – Protection of threatened species following 2019/20 Victorian bushfires – Flora and Fauna Guarantee Act 1988 (Vic) – Sustainable Forests (Timber) Act 2004 (Vic) – Code of Practice for Timber Production 2014.

[Noy v Greyhound Racing Victoria \[2020\] VSC 422](#)

ADMINISTRATIVE LAW – Judicial review – Victorian Civil and Administrative Tribunal – Review of decision of Racing Victoria Racing Appeals and Disciplinary Board – Greyhound Racing Victoria – Charges for possession of sheepskin for purposes in relation to greyhound racing pursuant to r 42.18 of the Greyhound Racing Victoria Rules – Whether the Tribunal failed to acknowledge the proceedings were vexatious – Whether the Tribunal failed by applying a penalty in r 42.22 – Whether this was a breach of natural justice principles – Whether documentation before the Tribunal was incomplete – Application for leave to appeal dismissed – Victorian Civil and Administrative Act 1998 ss 49, 148.

[Gemcan Constructions Pty Ltd v Westbourne Grammar School \[2020\] VSC 429](#)

ARBITRATION – Agreement to arbitrate – Arbitrator and rules to be nominated pursuant to item of schedule to agreement marked 'Not Applicable' – Whether valid and binding agreement – Commercial Arbitration Act 2011 (Vic), s 10 (number of arbitrators), s 11(3) (court appointment in absence of agreement) and s 19 (determination of rules of procedure).

ARBITRATION – Commercial Arbitration Act 2011 (Vic), 11(3) – Choice of senior or junior counsel as arbitrator - Experience as arbitrator – Fees of arbitrator – Complexity of factual and legal issues in arbitration – Balancing exercise – Senior counsel appointed.

[Watpac Constructions Pty Ltd v Collins & Graham Mechanical Pty Ltd \[2020\] VSC 414](#)

BUILDING CONTRACTS – Building and Construction Industry Security of Payment Act 2002 (Vic) ('the Act') – Deemed termination for convenience on a 'finding' of repudiation by the principal – Reference date referable to the payment claim required a 'finding' of repudiation – Whether requiring a 'finding' of repudiation had the effect of excluding, modifying or restricting the operation of the Act within the meaning of s 48 – Whether s 48 of the Act rendered an offending clause as void in its entirety – Meaning of 'provision' in s 48 of the Act considered.

BUILDING CONTRACTS – Whether severance of the contractual provision engaging s 48 of the Act available.

JUDICIAL REVIEW – Finding by adjudicator of

repudiation – Principles to be applied in deciding jurisdictional facts on judicial review – Burden of proving jurisdictional error rests with the applicant.

JUDICIAL REVIEW – Whether a court may exercise its residuary discretion not to permit a full trial of a construction dispute in determining a review of an adjudicator under the Act queried.

[1155 Nepean Hwy v Promax Buildings \[2020\] VSC 398](#)

ADMINISTRATIVE LAW – Judicial review – Injunction enjoining the Adjudicator from making any adjudication determination – Injunction enjoining first defendant from making any further adjudication application – Compliance with service requirements of s 18(5) of the Building and Construction Industry Security of Payment Act 2002 (Vic) – Whether service required as soon as practicable or within a reasonable time under s 18(5) of the Building and Construction Industry Security of Payment Act 2002 (Vic) - Validity of new adjudication application under s 28 of the Building and Construction Industry Security of Payment Act 2002 (Vic) – Time for service of adjudication application - Building and Construction Industry Security of Payment Act 2002 (Vic), ss 18(5), 20, 22, 28.

[Kinglake Friends of the Forest Inc. v VicForests \(No 2\) \[2020\] VSC 418](#)

ENVIRONMENTAL LAW – Application to extend interim injunction – Timber harvesting in State forest coupes – Whether serious question to be tried that defendant failing to screen timber harvesting operations from view, in breach of statutory forestry management standards – Whether serious question to be tried that harvesting not in accordance with statutory timber release plan – Balance of convenience – Extension of interim injunctions granted – Sustainable Forests (Timber) Act 2004 (Vic), s 46 – Code of Practice for Timber Production 2014 – Management Standards and Procedures for timber harvesting operations in Victoria's State Forests 2014, cl 2.2.1.1.

KEY CONTACTS

PANEL RELATIONSHIP CONTACTS

Your contacts responsible for navigating our firm, connecting you with appropriate expertise and achieving maximum efficiency and your Newsletter editors.



Cameron Roberts

Partner
+61 3 9641 8696
+61 438 510 885
croberts@tglaw.com.au



Loretta Reynolds

Partner, Markets
+61 3 8080 3705
+61 403 069 819
lreynolds@tglaw.com.au



Emma-Jane Stevens

Partner
+61 3 8535 3510
+61 414 371 361
estevens@tglaw.com.au



Bruce Crosthwaite

Partner
+61 3 9641 8618
+61 408 372 104
bcrosthwaite@tglaw.com.au

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.

This Alert is produced by Thomson Geer. It is intended to provide general information in summary form on legal topics, current at the time of publication. The contents do not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in particular matters. Liability limited by a scheme approved under Professional Standards Legislation.