



PUBLIC SECTOR NEWSLETTER - VICTORIA

Another fortnight dominated by COVID-19.

Thankfully there is support for the Government's requirement that Victorians must wear a mask or face covering when leaving their homes.

Meanwhile, National Cabinet deliberations, which will no doubt one day be a great chronicle of these times, may not be exempt from freedom of information disclosure. Additionally the Australian Federal Police have warned of the need for vigilance given the potential surge in on-line abuse as a result of Victorian students' return to on-line learning.

In non COVID-19 news, the Law Council of Australia has opined the Council of Attorneys-General should prioritise nationally consistent Power of Attorney laws to mitigate elder abuse and the Government has sought Victorians' views on reforms to allow vets and animal shelters to legally re-unite pets and their owners.

In the Courts, the Supreme Court has considered two applications for judicial review of Medical Panel determinations and the Court of Appeal has considered the power to re-open proceedings after judgment.

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

IN THE MEDIA

National cabinet deliberations may not be exempt from FoI, legal advice says

Deliberations of the national cabinet may not be exempt from freedom of information disclosures as the Morrison government claims, according to legal advice obtained by a major environment group. (30 July 2020) <https://www.theguardian.com/australia-news/2020/jul/30/national-cabinet-deliberations-may-not-be-exempt-from-foi-legal-advice-says>

HRLC: Masks, COVID-19 and human rights

The Victorian Government is requiring people in Melbourne and the Mitchell Shire to wear a face covering or mask when leaving their home to help stop the spread of COVID-19. This explainer seeks to debunk claims that the requirement breaches people's human rights. (29 July 2020) <https://www.hrlc.org.au/news/2020/7/29/explainer-masks-covid-19-and-human-rights>

Nationally consistent power of attorney laws key to mitigating elder abuse

Enhancing protections relating to the use of enduring power of attorney instruments (EPOAs) is a welcome priority for the Council of Attorneys-General and significant focus should be given to creating nationally consistent laws, according to the Law Council of Australia. (24 July 2020) <https://www.lawcouncil.asn.au/media/media-releases/nationally-consistent-power-of-attorney-laws-key-to-mitigating-elder-abuse>

Parents warned of surge in online abuse

The Australian Federal Police (AFP) have urged parents to be vigilant in keeping their children safe online amid a return to remote learning in metropolitan Melbourne. (23 July 2020) <https://www.afp.gov.au/news-media/media-releases/predators-exploiting-kids-online-during-virus-second-wave>

IBAC finds improper evidentiary and disclosure practices were used by some Victoria Police officers during the Silk-Miller murder investigation

In a special report tabled to Parliament, IBAC reveals that improper evidentiary and disclosure practices were used by some Victoria Police officers connected to the investigation of the murders of Sergeant Gary Silk and Senior Constable Rodney Miller in 1998. A number of statements made by important witnesses were never included in the prosecution brief or disclosed at trial. (31 July 2020) <https://www.ibac.vic.gov.au/media-releases/article/ibac-finds-improper-evidentiary-and-disclosure-practices>

Victoria Police officers sentenced for assault following IBAC investigation

Three Victoria Police officers found guilty of unlawful assault, received adjourned undertakings without conviction following an investigation by Victoria's independent police oversight body, IBAC. (29 July 2020) <https://www.ibac.vic.gov.au/media-releases/article/victoria-police-officers-sentenced-for-assault-following-ibac-investigation>

Views Sought On Safely Reuniting Lost Pets With Owners

The Victorian Government is encouraging Victorians to have their say on reforms to allow vets and animal shelters to legally reunite lost pets with their owners (28 July 2020). <https://www.premier.vic.gov.au/views-sought-safely-reuniting-lost-pets-owners>

Former deputy secretary of Department of Education and Training convicted over fraud related to Ultranet project

A former deputy secretary of the Department of Education and Training, Darrell Fraser, has been convicted and sentenced at Melbourne's County Court following an investigation by Victoria's anti-corruption agency, IBAC. (24 July 2020) <https://www.ibac.vic.gov.au/media-releases/article/former-deputy-secretary-of-department-of-education-and-training-convicted-over-fraud-related-to-ultranet-project>

IN PRACTICE AND COURTS

Coronavirus information

23 July 2020 - The Supreme Court of Victoria is following State and Commonwealth government advice regarding coronavirus (COVID-19).

The latest Directions from the Chief Health Officer

22 July 2020 - Physical attendance at the Supreme Court of Victoria remains limited to reduce the spread of coronavirus (COVID-19). Those who are required to attend physically the following information is provided.

CASES

Rafati v Victorian WorkCover Authority [2020] VSC 444

ADMINISTRATIVE LAW – Judicial Review – Medical Panel – Jurisdictional Error – Whether the Medical Panel mistook or misinterpreted the findings of a previous medical panel – Whether the mistake amounted to jurisdictional error – Whether the work-caused aggravation materially contribute to the plaintiff's present condition – Error of law – Decision quashed – Accident Compensation Act 1985 s 134AB – Wingfoot Australia Partners Pty Ltd v Kocak [2013] HCA 43; (2013) 252 CLR 480 – Chang v Neill [2019] VSCA 151.

Sidiqi v Kotsios [2020] VSC 446

ADMINISTRATIVE LAW – Judicial review – Opinion of a Medical Panel – Diagnosis of chronic pain syndrome – Panel's opinion that worker could perform pre-injury duties and had 'current work capacity' – Whether Panel failed to have regard to relevant matters – Whether Panel's opinion irrational or not open – Whether Panel's reasons adequate – No error established – Proceeding dismissed – Workplace Injury Rehabilitation and Compensation Act 2013 (Vic), s 313.

Jafari v 23 Developments Pty Ltd [No 2] [2020] VSCA 187

PRACTICE AND PROCEDURE – Court of Appeal – Applications – Filing – Power of registrar – Application to reopen proceeding after judgment – Applicant had sought special leave to appeal to High Court – Special leave refused – Registrar refused to accept application for filing – Applicant sought review of registrar's decision – Final judgment – No power to reopen – Application for direction refused – Bodycorp Repairers Pty Ltd v Oakley Thompson & Co Pty Ltd [No 2] [2018] VSCA 203 applied – Supreme Court (General Civil Procedure) Rules 2015 r 64.43(1), (5).

One of the issues both at trial and on the application for leave to appeal concerned whether the land which was to be developed was contaminated.

Naik v Monash University Academic Board (Human Rights) [2020] VCAT 797

Section 75 of Victorian Civil and Administrative Tribunal Act 1998 – principles to be applied – allegation of victimisation. The respondent's application under section 75 (1) (a) of the Victorian Civil and Administrative Tribunal Act 1998 is granted and the proceeding is wholly dismissed.

LEGISLATION

Victoria

Statutory Rules

No 76 [Public Health and Wellbeing Amendment \(Further Infringement Offences\) Regulations 2020](#)
22 July 2020

KEY CONTACTS

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- 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

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