



PUBLIC SECTOR NEWSLETTER - VICTORIA

As we start to consider life after lockdown, the Federation of Community Legal Centres and the Law Institute of Victoria have released a nine point plan to reduce the number of people in Victoria's prison system, the COVIDSafe App has been updated and improved, the Government has extended a ban on evictions and rent increases, Local Government elections have been scheduled for 24 October 2020 and the Courts have issued a number of COVID-19 Practice Notes and Operational Updates.

Meanwhile, the Government has announced reforms to ensure victim survivors can speak up, amendments to the Corporations Regulations 2001 have taken effect to regulate litigation funding schemes and a number of Parliamentary Committee Inquiries have requested submissions.

In the Courts, the Federal Court has considered the validity of border closures and the Supreme Court has considered an application to prohibit publication of persons named in submissions to the Royal Commission into the Management of Police Informants.

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

IN THE MEDIA

Pathway to Decarceration: protecting Victorians from COVID-19 outbreaks

The Federation of Community Legal Centres and the Law Institute of Victoria have released a nine-point plan to reduce the number of people in Victoria's prison system to protect from further outbreaks of COVID-19. (26 August 2020) <https://www.liv.asn.au/Staying-Informed/Submissions/submissions/August-2020/Pathway-to-Decarceration--protecting-Victorians-fr>

COVIDSafe app updated and improved

The Digital Transformation Agency (DTA) has released an update of the COVIDSafe app, set to improve notifications and allow users to use the app in Turkish

and Punjabi. The Agency said that since the app's launch a number of iterative enhancements had been made, focused on performance, privacy and accessibility. (24 August 2020) <https://www.dta.gov.au/news/covidsafe-helps-slow-spread-covid-19>

Pause On Evictions Extended and Extra Renter Protections

The Victorian Government will extend a ban on evictions and rental increases until the end of the year, increase assistance and ensure tenant turnover is taken into account in rental negotiations – giving tenants certainty and security they won't lose their home or workplace during the pandemic. (20 August 2020) <https://www.premier.vic.gov.au/pause-evictions-extended-and-extra-renter-protections>

Local Government Elections to go Ahead In October

On advice from the Victorian Chief Health Officer, Professor Brett Sutton, local government elections will go ahead as scheduled for Saturday, 24 October 2020. (19 August 2020) <https://www.premier.vic.gov.au/local-government-elections-go-ahead-october>

Urgent Changes to Ensure Victim-Survivors Can Speak Up

Attorney-General Jill Hennessy has announced that reforms will be fast-tracked to streamline processes for victim-survivors who wish to speak out. This change will mean the majority of victims will no longer require a court order to tell their stories if they have given informed consent to being identified. (28 August 2020) <https://www.premier.vic.gov.au/urgent-changes-ensure-victim-survivors-can-speak>

IN PRACTICE AND COURTS

Consultation on interest payable on fidelity fund claims

The Legal Services Council has issued a consultation paper proposing a new formula to calculate the interest payable on fidelity fund claims made under the Legal Profession Uniform Law. The interest rate is fixed at 5 per cent by s 243(2) of the Uniform Law in the absence of specific provision in the Uniform General Rules.

[Regulation of litigation funding schemes](#)

Amendments to the Corporations Regulations 2001 (Cth) took effect on 22 August 2020, providing for the regulation of litigation funding schemes as managed investment schemes. The Legal Services Council has amended the Legal Profession Uniform General Rules 2015 with effect from 22 August 2020 so the prohibitions in s 258(1) and (3) of the Legal Profession Uniform Law do not apply in relation to litigation funding schemes now regulated as managed investment schemes. The new rule will operate for 12 months to allow for consultation.

[Operational updates in response to directions from the Chief Health Officer](#)

20 August 2020 - Further measures to limit the movement of people during Stage 4 restrictions.

[VICBAR: Court and Tribunal updates](#)

All Victorian Courts and Tribunals, including VCAT, are "Permitted Work Premises" for the purposes of the new Business and Industry Stage 4 Restrictions, and able to remain on-site to hear urgent and priority matters. Court updates included:

Court Services Victoria (CSV) has implemented a COVIDSafe Plan that demonstrates the measures being taken to minimise the introduction of COVID-19 into Victorian courts and VCAR. A summary of this COVIDSafe Plan is available on the CSV website.

Parliamentary committee inquiries currently seeking submissions include:

[Inquiry into the Use of Cannabis in Victoria](#)

[Inquiry into the impact of social media on elections and electoral administration](#)

The Electoral Matters Committee is accepting submissions to its Inquiry into the impact of social media on elections and electoral administration. Submissions close on 30 September 2020.

Supreme Court Practice Notes

[Notice to the Profession-Probate Office-original wills stored in solicitors' offices](#)

19 August 2020 - The Stage 4 public health restrictions require most legal practitioners to work from home. The Court is conscious that original wills may be stored at solicitors' offices.

[Supreme Court COVID - Coronavirus information](#)

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

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Examination into the use of apps and web-based learning tools in Victorian government primary schools](#)

This examination involved collecting information from the Department of Education (DET) and four government

primary schools to understand how digital learning tools are being used from Prep to Year 6. Schools are obliged to consider privacy when selecting digital learning tools.

[Building integrity during times of crisis or emergency](#)

These resources aim to help state and local government sectors review and strengthen integrity responses and improve capacity to prevent corrupt conduct during times of emergency and crisis.

CASES

[Palmer v State of Western Australia \(No 3\) \[2020\] FCA 1220](#)

The Directions prohibit entry into Western Australia of persons other than those defined as "exempt travellers". On 25 May 2020, the applicants, Clive Frederick Palmer and Mineralogy Pty Ltd (the Palmer parties), commenced proceedings in the High Court of Australia seeking a declaration that the Emergency Management Act and/or the Directions are invalid, in whole or in part, on the basis that they contravene s 92 of the Constitution. Section 92 of the Constitution provides that, "trade, commerce, and intercourse among the States...shall be absolutely free".

PRACTICE AND PROCEDURE – issue remitted from High Court of Australia – whether intervener requires leave to withdraw – leave to withdraw not required – whether respondents would be prejudiced by withdrawal – where respondents seek rehearing of evidence – rehearing refused

Constitution s 92; Judiciary Act 1903 (Cth) ss 44 and 78A

[Chief Commissioner of Victoria Police v Chairperson of the Royal Commission into the Management of Police Informants \[2020\] VSCA 214](#)

ADMINISTRATIVE LAW – Application for certiorari and mandamus – Application to Royal Commissioner to prohibit publication of information relating to identity of person referred to in submissions of counsel assisting – Application refused by Royal Commissioner – Whether Royal Commissioner misinterpreted relevant statutory provision – Whether Royal Commissioner misconstrued applicant's submissions – Whether Royal Commissioner failed to accord procedural fairness – Whether Royal Commissioner took into account irrelevant considerations – Whether decision legally irrational – Application refused – Proceeding dismissed – Inquiries Act 2014, s 26.

ROYAL COMMISSIONS – Application to prohibit publication of information relating to identity of specified person – Whether publication of information might cause harm to safety of person – Level of risk of harm – Cogency of evidence relied upon in support of application – Relevance of risk of harm to reputation – Countervailing factors – Balancing exercise – Exercise of discretion – Inquiries Act 2014, s 26(2)(a).

[Bald Hills Wind Farm Pty Ltd v South Gippsland Shire Council \(No 2\) \[2020\] VSC 513](#)

ADMINISTRATIVE LAW — Judicial review — Notification to Council of alleged nuisance due to noise from wind farm, under s 62(1) Public Health and Wellbeing Act 2008 (Vic) — Council resolution under s 62(3), recording finding of intermittent nuisance of the kind alleged and Council's opinion that matter better settled privately — Whether resolution amenable to certiorari — Whether Council failed to have regard to mandatory considerations in finding that a nuisance existed — Whether Council disregarded material essential to performance of its statutory task — No jurisdictional error established — Public Health and Wellbeing Act 2008 (Vic), s 62.

[Bald Hills Wind Farm Pty Ltd v South Gippsland Shire Council \[2020\] VSC 512](#)

ADMINISTRATIVE LAW — Judicial review — Notification to Council of alleged nuisance due to noise from wind farm, under s 62(1) Public Health and Wellbeing Act 2008 (Vic) — Council resolution under s 62(3), recording finding of intermittent nuisance of the kind alleged and Council's opinion that matter better settled privately — Whether wind farm operator had standing to seek judicial review of Council's resolution — Whether resolution amenable to certiorari — Whether Council failed to have regard to mandatory considerations in finding that a nuisance existed — Whether Council disregarded material essential to performance of its statutory task — No jurisdictional error established — Public Health and Wellbeing Act 2008 (Vic), s 62.

LEGISLATION

Statutory Rules

[No 85: Children's Court Criminal Procedure Amendment Rules 2020](#)

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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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