



## PUBLIC SECTOR NEWSLETTER - VICTORIA

As COVID-19 cases continue to increase again in overseas jurisdictions, we remain thankful our COVID-19 cases remain on a downward trend in Victoria.

In this edition, subject to Court approval, a record penalty of \$1.3 billion has been proposed in conjunction with Australia's Financial Intelligence and Regulatory Agency for a breach of anti-money laundering and counter terrorism financing laws.

Privacy remains a focus of the community, with Australians remaining concerned about the control, collection and use of their personal data. Of assistance, the Office of the Australian Information Commissioner has released a resource to assist in determining when a government agency should conduct a privacy impact assessment. Also in this issue are a number of decisions concerning the operation of the *Privacy Act 1988* and damages for breaches of that Act.

Finally, as always we have included links to a range of COVID-19 directions and information published by the Courts along with details and concerns raised in respect of the *COVID-19 Omnibus Bill 2020*.

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

### IN THE MEDIA

#### Record penalty for breaches of anti-money laundering laws

Westpac has reached an agreement with AUSTRAC, Australia's financial intelligence and regulatory agency to pay a record \$1.3 billion penalty for breaching anti-money laundering and counter terrorism financing laws.

The Court will now consider the appropriateness of the agreed penalty, which - if approved - would represent the largest ever civil penalty awarded in Australian history (24 September 2020). <https://minister.homeaffairs.gov.au/peterdutton/Pages/record-penalty-for-breaches-anti-money-laundering-laws.aspx>

#### Latest research shows consumer privacy concerns around data misuse rising

Office of the Australian Information Commissioner's new report on attitudes around privacy highlights challenges with targeting ads and collecting or combining data without consent. (24 September 2020) <https://www.cmo.com.au/article/683198/latest-research-shows-consumer-privacy-concerns-around-data-misuse-rising/>

#### Australians want more control over privacy, survey shows

Privacy is a major concern for 70% of Australians while 87% want more control and choice over the collection and use of their personal information, our Australian Community Attitudes to Privacy Survey 2020 shows. (24 September 2020) <https://www.oaic.gov.au/updates/news-and-media/australians-want-more-control-over-privacy-survey-shows/>

#### Simplified insolvency processes welcome, but government must consult now to avoid unforeseen consequences

The Law Council welcomes the government's interest in assisting small business to deal with the inevitable insolvency impacts that will be felt in the economy in the aftermath of the COVID-19 economic crisis. The Law Council, through its Business Law Section Insolvency and Restructuring Committee, has been considering possible reforms. (24 September 2020) <https://www.lawcouncil.asn.au/media/media-releases/simplified-insolvency-processes-welcome-but-government-must-consult-now-to-avoid-unforeseen-consequences>

#### Government welcomes decision to extradite Malka Leifer

The Morrison Government has welcomed a decision by an Israeli court that has paved the way for former Melbourne school teacher Malka Leifer to finally face due process back in Australia. (22 September 2020) <https://www.attorneygeneral.gov.au/media/media-releases/government-welcomes-decision-extradite-malka-leifer-22-september-2020>

### Appointment to the Federal Circuit Court of Australia

Mr Patrick O'Shannessy SC has been appointed as a judge of the Federal Circuit Court of Australia and will commence in the Melbourne registry on 18 September 2020. (18 September 2020) <https://www.attorneygeneral.gov.au/media/media-releases/appointment-federal-circuit-court-australia-18-september-2020>

### Reappointments to the Administrative Appeals Tribunal

The Morrison Government is pleased to announce 16 reappointments to the Administrative Appeals Tribunal. The Tribunal serves an important function of providing independent merits review and the Government is committed to ensuring the Tribunal has the resources it needs to provide high quality merits review with minimum delay. (18 September 2020) <https://www.attorneygeneral.gov.au/media/media-releases/reappointments-administrative-appeals-tribunal-18-september-2020>

### Law Council reports 'welcome shift' in equitable briefing

According to the latest equal opportunity data released by the Law Council of Australia, there has been a rise in the number of female barristers being briefed on matters. (18 September 2020) <https://www.lawcouncil.asn.au/media/media-releases/a-shifting-culture-towards-equal-opportunity-for-women-in-law>

### Former Victoria Police Sergeant Rosa Rossi sentenced following IBAC investigation

A former Victoria Police Sergeant was sentenced to four years and six months imprisonment, with a non-parole period of two years and four months, for obtaining property by deception, unlawfully accessing police records and perjury following Operation Salina. (16 September 2020) <https://www.ibac.vic.gov.au/media-releases/article/former-victoria-police-sergeant-rosa-rossi-sentenced-following-ibac-investigation>

### Coalition began writing landmark environment bill before receiving review it had ordered

The Morrison Government started preparing controversial legislation to amend Australia's environmental laws before it had received a report from a formal review into whether the act was working. Drafted legislation will hand over environmental responsibility to state regimes without national standards. (16 September 2020) <https://www.theguardian.com/environment/2020/sep/16/coalition-began-writing-landmark-environment-bill-before-receiving-review-it-had-ordered>

### Five steps to improving data literacy in the APS

From helping police forces to reduce crime rates to better identifying the healthcare needs of patients, data is increasingly being used to improve the efficiency of the Australian Public Service (APS) and deliver the agile services that citizens expect. (15 September 2020) <https://www.governmentnews.com.au/type-contributors/five-steps-to-improving-data-literacy-in-the-aps/>

### Enshrining privacy and security regime for data use key to the delivery of simple and accessible government services

A major milestone in the Morrison Government's reforms to government services has been reached with the release of the Data Availability and Transparency Bill for public comment. The Bill will establish the foundations of a seamless and proactive experience of government services, by enshrining in legislation privacy and security safeguards that set out modern foundations for use of data across the Commonwealth government. (14 September 2020) <https://www.datacommissioner.gov.au/media-hub/enshrining-privacy-and-security-regime-data-use-key-delivery-simple-and-accessible>

### IBAC charges four people as part of Operation Lansdowne

IBAC has charged four people with a range of offences as part of Operation Lansdowne. IBAC's Operation Lansdowne investigation examined allegations of serious corruption involving the Victorian vocational education and training, and transport sectors. (25 September 2020) <https://www.ibac.vic.gov.au/media-releases/article/ibac-charges-four-people-as-part-of-operation-lansdowne>

### The Victorian Bar and Australian Bar Association raise concerns about the COVID-19 Omnibus Bill 2020

Concerns about the criteria for appointment and power of "authorised officers" under the Bill have been raised by the Victorian Bar with the Attorney-General, supported by the Australian Bar Association. (23 September 2020) <https://www.vicbar.com.au/news-events/media-release-%E2%80%93-victorian-bar-and-australian-bar-association-raise-concerns-about-covid>

### New Judicial Appointments to Magistrates' Court

The Victorian Government has announced the appointment of Alexandra Burt, Guillaume Bailin, Kimberley Swadesir and Melissa Stead to the Magistrates' Court of Victoria. (22 September 2020) <https://www.premier.vic.gov.au/new-judicial-appointments-magistrates-court>

### Victoria's Homelessness Response: audit finding

While the audited entities have achieved some positive outcomes for clients, DHHS does not know whether HRSAP programs are reducing the incidence and impacts of rough sleeping in Victoria. The audit made 13 recommendations to DHHS, including six to improve planning and implementation for future homelessness initiatives. (17 September 2020) <https://www.audit.vic.gov.au/report/victorias-homelessness-response>

### VLA: New fee for child protection readiness hearings following review

VLA have added a preparation fee for practitioners who appear in readiness hearings in child protection matters in the Children's Court, regardless of whether the matter reaches a settlement, and also expanding these fees to make them available for parties across Victoria. (16 September 2020) <https://www.legalaid.vic.gov.au/about-us/news/new-fee-for-child-protection-readiness-hearings-following-review>

### **Youth Justice Trial To Boost Safety And Reduce Reoffending**

A pilot program to help young people build important life skills including developing stronger relationships and make better life choices is now underway in Victorian youth justice centres. (16 September 2020) <https://www.premier.vic.gov.au/youth-justice-trial-boost-safety-and-reduce-reoffending>

## **IN PRACTICE AND COURTS**

### **[LCA: Guide to help legal practitioners with Elder Abuse](#)**

Coinciding with Dementia Action Week, the Law Council of Australia has released a Best Practice Guide for Legal Practitioners in relation to Elder Financial Abuse (the Guide). The Guide is intended to assist legal practitioners to identify and address potential issues regarding elder financial abuse in the preparation and execution of wills and other advance planning documents. (23 September 2020)

### **[Consultation on Financial Products and the Personal Property Securities Act 2009](#)**

The Attorney-General's Department has released its consultation paper on the Personal Properties Securities Act 2009 and Financial Products. This consultation process will inform the Attorney-General's policy considerations and help ensure the law regarding financial property and intermediated securities is clear and fit for purpose in the PPS Act. Consultation closes on 30 October 2020.

### **[OAIC: New privacy resource: When do Australian Government agencies need to conduct a privacy impact assessment?](#)**

The Office of the Australian Information Commissioner has released a privacy resource to assist Australian Government agencies to determine when they need to conduct a privacy impact assessment. (14 September 2020)

### **[Ombudsman Recommendations](#)**

This fact sheet outlines what government agencies or other entities can expect when the Ombudsman seeks assurance that recommendations have been implemented. (25 September 2020)

### **[LSC: Regulation of litigation funding 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.

### **[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.

### **[County Court of Victoria](#)**

The Court has issued the Emergency Case Management Model Protocol Phase Five and Criminal Division Hearings – WebEx Information Guide (version 2) with a new section on how to change your virtual background. These documents are available on the Court's website here. (25 September 2020)

### **[Magistrates' Court of Victoria](#)**

The State of Disaster Declaration – Practice Direction No. 20 of 2020 has been extended to 24 October 2020. The updated Practice Direction is available here. (25 September 2020)

### **[Supreme Court of Victoria: Guide to seeking permission to publish information about victims of sexual offences](#)**

These provisions are found in the Judicial Proceedings Reports Act 1958, which was amended in February 2020. The Supreme Court, County Court and Magistrates' Court have developed guidance to assist those wishing to publish information, and a form is provided for those making application to the Supreme Court. Guidance and forms in similar terms are also available at the County Court and Magistrates Court. (17 September 2020)

## **PUBLISHED - ARTICLES, PAPERS, REPORTS**

### **[Investigation into review of parking fines by the City of Melbourne](#)**

Pursuant to sections 25 and 25AA of the Ombudsman Act 1973 (Vic), the Investigation into review of parking fines by the City of Melbourne, 16 September 2020. Council responded constructively to the investigation. Joint discussions between the Council and the Ombudsman's office gave rise to four recommendations pursuant to section 23(2A) of the Ombudsman Act.

## **CASES**

### **[Knowles v Secretary, Department of Defence \[2020\] FCA 1328](#)**

ADMINISTRATIVE LAW – judicial review – decisions made by the respondent in relation to applications made under the Privacy Act 1988 (Cth) (hereafter, the "Privacy Act") for access to and correction of certain information – various species of relief sought – whether Privacy Act mandates provision of access to information within 30 days – appropriateness of declaratory relief – whether existence of other remedies for the review of administrative decisions should incline the court against granting prerogative or other relief – whether private information might be corrected by associating or attaching other documents to it – whether a demand that information be destroyed qualifies as a request for correction under the Privacy Act – further amended originating application dismissed with cost.

['VU' and 'VV', 'VW' \(Privacy\) \[2020\] AICmr 52](#)

Privacy — Privacy Act 1988 (Cth) — Australian Privacy Principles — Breach of APP 12 — Failure to provide access to personal information — Remedial action declared — Respondent required to provide access to personal information.

['VR' and Department of Defence \(Freedom of information\) \[2020\] AICmr 50](#)

Freedom of Information — Access grant — Whether disclosure would unreasonably affect an organisation in respect of its lawful business affairs — Whether contrary to the public interest to release conditionally exempt documents — (CTH) Freedom of Information Act 1982 ss 11A(5) and 47G.

[William Yabsley and Australian Federal Police \(Freedom of information\) \[2020\] AICmr 48](#)

Freedom of Information — Whether reasonable steps taken to find documents — Whether material in documents irrelevant to the request — Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency — Whether disclosure of personal information unreasonable — Whether contrary to the public interest to release conditionally exempt documents — (CTH) Freedom of Information Act 1982, ss 11A(5), 22, 24A, 47E and 47.

['VO' and Northern Australia Infrastructure Facility \(Freedom of information\) \[2020\] AICmr 47](#)

Freedom of Information — Whether documents subject to legal professional privilege — Whether material obtained in confidence — Whether disclosure would disclose commercially valuable information — Whether documents contain deliberative matter prepared for a deliberative purpose — Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency — Whether disclosure would unreasonably affect an organisation in respect of its lawful business affairs — Whether disclosure would prejudice the future supply of information to the Commonwealth — (CTH) Freedom of Information Act.

[Xianzhu v Chen \(No 2\) \[2020\] VSC 621](#)

ADMINISTRATIVE LAW — Judicial review — Appeal from decision of a Magistrate on a question of law — Whether the Magistrate erred in law by excluding hearsay evidence — Whether the Magistrate erred in law by admitting an expert report into evidence and having regard to it — Gerlach v Clifton Brick Pty Ltd (2002) 209 CLR 478 — Dasreef Pty Ltd v Hawchar [2011] HCA 21; (2011) 243 CLR 588 — Wilson v Bauer Media (Ruling No 7) [2017] VSC 357 — Magistrates' Court Act 1989 s 109 — Evidence Act 2008 ss 63, 79, pt 2 cl 4(1)(f) — Appeal dismissed.

[Chief Commissioner of Police v IHF & Anor \[2020\] VSC 608](#)

ADMINISTRATIVE LAW — Victoria Police Act 2013 (Vic) ss 146, 152 — Judicial review — Where a Victorian police officer was found guilty of a charge of 'disgraceful conduct' contrary to s 125(1)(j) of the Act brought by the Chief Commissioner of Police and dismissed from Victoria Police — Where upon a review of the dismissal decision pursuant to s 146 the Police Registration and Services Board set aside the dismissal of the police officer and decided he was not guilty of the charge — Where the Board's power to make a different decision was conditioned on it being satisfied pursuant to s 152(2) that the decision to dismiss was 'harsh, unjust or unreasonable' — Whether the Board's decision was affected by jurisdictional error — Whether the Board constructively failed to reach the requisite state of satisfaction — Whether the Board failed to afford procedural fairness to the Chief Commissioner by declining to permit further evidence on the hearing of the review.

[CDC Clinics Pty Ltd & Anor v Health Complaints Commissioner \[2020\] VSC 597](#)

JUDICIAL REVIEW AND APPEAL — Appeal from decision of the Health Complaints Commissioner — Complaint made to Commissioner — Breach of general code of conduct for general health services — Complaint also made about medical practitioner — Commissioner's jurisdiction to exercise functions and power when a complaint has been referred to AHPRA — Legislative direction to act co-operatively — No error in apprehending jurisdiction conferred by s 27 of the Act — Commissioner acted within scope of the Health Complaints Act 2016 (Vic) ('the Act') ss 13, 18, 20, 25, 26, 27, 45, 90, 95, 96 — Health Practitioner Regulation National Law (Victoria) Act 2009 ('the National Law') s 150.

PROCEDURAL FAIRNESS — Referral of complaint to AHPRA — AHPRA investigation — Whether it was legally unreasonable to make orders inconsistent with AHPRA investigations — Minister for Immigration and Citizenship v Li [2014] FCAFC 1; (2013) 249 CLR 332.

NATURAL JUSTICE — Apprehended bias — Whether Commissioner's exercise of discretion was affected by bias — Ebner v Official Trustee in Bankruptcy [2000] HCA 63; (2000) 205 CLR 337 — Test applies to administrative decision makers — Published comment by Commissioner — Perspective of fair minded lay observer — No prejudgment — CNY17 v Minister for Immigration and Border Protection [2019] HCA 50; (2019) 375 ALR 47 — Minister for Immigration and Multicultural Affairs v Jia Legeng (2001) 205 CLR 507 — SZCOS v Minister for Immigration & Citizenship [2008] FCA 570.

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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](mailto: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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