



## PUBLIC SECTOR NEWSLETTER - VICTORIA

Local Council elections have sparked a number of articles, and the release of a video explaining how the public can make a complaint or report wrongdoing in local government. A timely reminder to complete and return your ballot by 6pm on 23 October 2020!

Meanwhile the Sentencing Advisory Council has reported that too many children are held on remand before being convicted of a crime as a result of a lack of alternative support and the Office of the Victorian Information Commissioner are conducting an investigation into impediments to prompt FOI decision making and document release.

In the Courts, the Supreme Court and Court of Appeal has considered the finality of settlements in historical child sexual abuse claims and the judicial review of decisions of the Medical Panel, VCAT and an Adjudicator's determination under the *Building and Construction Industry Security of Payment Act 2002*.

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

### IN THE MEDIA

#### Text message sparks council candidate complaint over newspaper bias

An errant text message from a newspaper editor has sparked a bitter battle involving allegations a media outlet is trying to sway a council election. (08 October 2020) <https://www.abc.net.au/news/2020-10-08/council-candidate-lodges-complaint-over-newspaper-bias/12744644>

#### Video urges Victorians to report corruption in local government

Victoria's anti-corruption agencies have produced a video explaining how members of the community can make a complaint or report wrongdoing in local government. (05 October 2020) <https://www.governmentnews.com.au/video-urges-victorians-to-report-corruption-in-local-government/>

#### Controversial proposed COVID detention powers should be scrapped

The Human Rights Law Centre has called on the Victorian Government to amend proposed legislation currently before the Victorian Parliament to remove controversial powers to detain people based on what they might do. (28 September 2020) <https://www.hrlc.org.au/news/2020/9/27/controversial-proposed-covid-detention-powers-should-be-scrapped>

#### Report confirms we must make better choices to stop children being locked up

The Sentencing Advisory Council's (SAC) report Children held on remand in Victoria shows that too many children are being locked away before being found guilty of a crime, due to a lack of basic supports like a home to go to. It provides further evidence that imprisonment is not always a last resort for children in Victoria. (28 September 2020) <https://www.legalaid.vic.gov.au/about-us/news/report-confirms-we-must-make-better-choices-to-stop-children-being-locked-up>

### IN PRACTICE AND COURTS

#### [IBAC: Making it easy for Victorians to report wrongdoing in local government](#)

Victoria's integrity agencies want Victorians to know how they can make a complaint, or report wrongdoing in local government. A new video explains which integrity agency people can complain to about issues and suspected wrongdoing with council matters, councillors, and local government officials. (05 October 2020)

#### [OVIC: submissions on prompt FOI decisions and information release](#)

The Office of the Victorian Information Commissioner (OVIC) are conducting an investigation into impediments of prompt FOI decision making and information release in Victorian under the Freedom of Information Act 1982 (Vic). The investigation will examine the FOI practices of agencies. More information can be found on OVIC's website.

### [Supreme Court of Victoria: Coronavirus information](#)

The Supreme Court of Victoria is following State and Commonwealth government advice regarding coronavirus (COVID-19) (01 October 2020).

### **Magistrates' Court of Victoria**

New Practice Directions were issued by the Court this week:

#### [Practice Direction 23 of 2020](#)

To support the rollout of Practice Direction 23, the Court has developed, in consultation with the Intermediary Pilot Committee, the Ground rules hearings – informant fact sheet and Ground rules hearings – informant questionnaire for completion prior to ground rules hearings.

#### [Practice Direction 24 of 2020](#)

The purpose of Practice Direction 24 is to revoke Practice Direction 20 of 2020. Practice Direction 20 is now replaced by Practice Direction 21 of 2020 (for regional Victoria) and Practice Direction 22 of 2020 (for metropolitan Melbourne) – the majority of criminal cases continue to be adjourned pursuant to Practice Direction 5 of 2020, which remains in place until 19 October (for regional Victoria) and 9 November (for metropolitan Melbourne).

[The State of Disaster Declaration – Practice Direction No. 20 of 2020](#) has been extended to 24 October 2020.

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

### [Children Held on Remand in Victoria: A Report on Sentencing Outcomes](#)

The released report analysed the outcomes of cases for which children were held on remand for at least one day in Victoria in 2017–18. The report finds that two-thirds (66%) of children held on remand in 2017–18 did not ultimately receive a custodial sentence.

## **CASES**

### [WCB v Roman Catholic Trusts Corporation for the Diocese of Sale \(No 2\) \[2020\] VSC 639](#)

STATUTES – INTERPRETATION – Historical child sexual abuse – Action on a previously settled cause of action founded on personal injury resulting from child abuse – Application by plaintiff to set aside deed of settlement – Statutory interpretation – Limitation of Actions Act 1958 (Vic) ss 27QD and 27QE – Just and Reasonable – Retrospective removal of barriers to actions for personal injury resulting from child abuse – No limitation for actions for personal injury resulting from child abuse – Limitation of Actions Act 1958 (Vic) s 27P – Identification of Proper Defendant – Legal Identity of Defendants (Organisational Child Abuse) Act 2018 (Vic) – Vicarious liability – Prince Alfred College Inc. v ADC [2016] HCA 37; (2016) 258 CLR 134 – Lapse of time and prejudice to defendant – Brisbane South Regional Health Authority v Taylor [1996] HCA 25; (1996) 186 CLR 541.

PRACTICE AND PROCEDURE – Permanent Stay – Abuse of Process – Whether it would be manifestly unfair to defendant or would otherwise bring administration of justice into disrepute if claim proceeded – Limitation of Actions Act 1958 (Vic) s 27R – Connellan v Murphy [2017] VSCA 116 – Moubarak v Holt [2019] NSWCA 102; (2019) 100 NSWLR 218.

### [Withers v Chalmers Industries Pty Ltd \[2020\] VSC 635](#)

ADMINISTRATIVE LAW – Judicial review – Opinion of a Medical Panel – Claimed injury admitted by employer in Magistrates' Court proceeding – Panel's opinion that worker did not suffer claimed injury – Whether Panel assessed wrong injury – Whether Panel failed to have regard to employer's admission – Whether Panel's departure from parameters of dispute between parties procedurally unfair – Whether Panel's reasons adequate – Jurisdictional errors established – Whether relief should be refused because worker acquiesced in or contributed to errors – Whether questions should be reconsidered by differently constituted Medical Panel – Workplace Injury Rehabilitation and Compensation Act 2013 (Vic), s 304.

### [Anasis v Hume City Council & Anor \[2020\] VSC 620](#)

JUDICIAL REVIEW AND APPEAL – Application for judicial review of decision by VCAT to make enforcement order under s 114 Planning and Environment Act 1987 (Vic) for contravention of Council Planning Scheme – Whether Tribunal erred in weighting of evidence amounting to denial of natural justice – No error of law in Tribunal's approach to evidence – Whether denial of opportunity to cross examine on affidavit received after conclusion of evidence amounts to denial of procedural fairness – No denial of procedural fairness arises where Tribunal gave no weight to affidavit – No grounds of review made out – Application dismissed.

### [1155 Nepean Highway Pty Ltd v Promax Buildings Pty Ltd \[2020\] VSCA 253](#)

ADMINISTRATIVE LAW – Judicial review – Adjudicator's determination under Building and Construction Industry Security of Payment Act 2002 – Applicant failed to provide payment schedule in response to builder's payment claim and barred from providing adjudication response – Whether adjudicator impermissibly drew adverse inference that applicant incapable of credibly challenging payment claim – Permissible to draw adverse inference from failure to provide payment schedule but not absence of adjudication response – Any inference drawn permissible – Whether adjudicator overlooked relevant evidence – Evidence not before adjudicator and irrelevant to review of determination – Whether adjudicator failed to conduct independent assessment of claim – Adjudicator's reasons brief and reliant on builder's trade summary – Brevity not indicative of failure to independently assess – Reliance on trade summary appropriate given contractual significance – Whether adjudicator impermissibly failed to consider contractually incorporated plans – Adjudicator required to consider provisions of contract but not incorporated documents.

## LEGISLATION

### Acts

#### [Retail Leases Amendment Act 2020 \(Vic\)](#)

Date of commencement: 1 October 2020 - Part 3 Division 2 (sections 9 to 14) of the Act came in by forced commencement on 1 October 2020 s. 2(3) Act Number: 26/2020

### Statutory Rules

#### No 98 Supreme Court (Chapters I and II Judicial Registrars, Admission to Legal Profession and Public Notaries Amendment) Rules 2020

These rules come into operation 05/10/2020: rule 3 SG (No. 491) 28/9/2020 p. 1

#### No 107 [COVID-19 Omnibus \(Emergency Measures\) \(Commercial Leases and Licences\) Miscellaneous Amendments Regulations 2020](#)

29 September 2020 - To amend the COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020—(a) to extend the operation of those Regulations; and

(b) to prescribe the eligible lease requirements; and

(c) to modify the operation of certain provisions relating to rent relief; and

(d) to empower the Small Business Commission to make orders directing landlords under eligible leases to give or agree to give specified rent relief to tenants under eligible leases; and

(e) to confer jurisdiction on VCAT to enforce orders referred to in paragraph(d).

## 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.



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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](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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