



## PUBLIC SECTOR NEWSLETTER - VICTORIA

As COVID-19 restrictions ease, we would like to take the opportunity to thank all members of the public sector who have worked so hard to reduce COVID-19 numbers and keep us safe during this difficult time. Your efforts are appreciated and we hope you are enjoying a well-deserved drink at your local and the opportunity to catch up with loved ones.

In this edition, IBAC is in the news undertaking hearings in a number of states, including Victoria, examining dealings in the public transport sector, the Department of Education and Training and the Victorian School Building Authority. There has also been focus on what a Federal IBAC may look like.

Also topical, there have been some thoughts put forward by the Law Council about the need for law reform to balance the need to protect public interest journalism and the rights of an accused against the risk that releasing certain information may be prejudicial to national security.

In the Courts, consideration has been given to the meaning of a "gift" and "political donation" in the *Electoral Act 2002 (Vic)* in *Harris v Victorian Electoral Commission [2020] VSC 676*.

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

### IN THE MEDIA

#### IP Australia focuses on service

IP Australia has implemented a quality framework that takes a principles-based approach to quality to recognise the skills, capability and judgement of its staff. A new Customer Service Charter outlines IP Australia's commitment to quality measured through customer feedback in its annual Customer Satisfaction Survey. (22 October 2020) <https://www.ipaustralia.gov.au/about-us/news-and-community/news/ip-australias-new-approach-quality>

#### Agencies join UN bribery network

The Australian Federal Police (AFP) and Attorney-General's Department have joined with some of the nation's biggest companies to help businesses prevent, detect and address bribery and corruption. (22 October 2020) <https://www.afp.gov.au/news-media/media-releases/bribery-prevention-network-launches-australia-protect-business-community>

#### Aus Post CEO stood aside in Cartier watches probe

Finance minister Mathias Cormann and communications minister Paul Fletcher said the Government expects all government entities, including Government Business Enterprises, to act ethically and adhere to high standards regarding the expenditure of money, as the public also rightly expects, said in a joint statement (22 October 2020) <https://www.governmentnews.com.au/aus-post-ceo-stood-aside-in-cartier-watches-probe/>

#### Legislative reforms to provide greater privacy protections for participants in Disability Royal Commission

The Morrison Government is taking further measures to ensure that people with disability and their supporters will be able to recount their experiences and fully participate in the Royal Commission into Violence, Abuse, Neglect & Exploitation of People with Disability. (20 October 2020) <https://www.attorneygeneral.gov.au/media/media-releases/legislative-reforms-provide-greater-privacy-protections-participants-disability-royal-commission-20-october-2020>

#### Passenger travel card to go digital

The Department of Home Affairs has announced plans to replace the Incoming Passenger Card completed by Australia-bound travellers, with a new digital system it says will support the quick and secure collection of incoming passenger information. (19 October 2020) <https://minister.homeaffairs.gov.au/alantudge/Pages/preparing-australia-for-reopening-to-the-world.aspx>

**Law Council President, Pauline Wright, support to Bernard Collaery**

The Law Council considers the National Security Information (Criminal and Civil Proceedings) Act 2004 (Cth) currently tilts the balance too far in favour of the interests of protecting broadly-defined national security at the expense of the rights of the accused, and maintains that it is not a proportionate response to addressing the risk that information prejudicial to national security may be released. (19 October 2020) <https://www.lawcouncil.asn.au/media/media-statements/law-council-president-pauline-wright-support-to-bernard-collaery>

**Public interest journalism deserves legislative protection**

The Law Council of Australia believes the announcement that the AFP will not prosecute ABC journalist Dan Oakes for reporting on serious allegations of wrongdoing by Australian special forces in Afghanistan, highlights the need for urgent law reform to protect public interest journalism. (16 October 2020) <https://www.lawcouncil.asn.au/media/media-releases/public-interest-journalism-deserves-legislative-protection>

**Privacy and Data Protection Deputy Commissioner commences examination of privacy and security in Victorian higher education**

OVIC has commenced an examination into the protection of personal information in Victorian universities. The governance practices and policies of eight Victorian universities that have privacy obligations under the Privacy and Data Protection Act 2014 (Vic) (PDP Act) will be examined. (21 October 2020) <https://ovic.vic.gov.au/newsitem/privacy-and-data-protection-deputy-commissioner-commences-examination-of-the-privacy-and-security-in-victorian-higher-education/>

**Victorian public transport sector to face corruption probe**

IBAC will examine the integrity of the processes and management of major contracts between V/Line, Metro and suppliers. Victoria's corruption watchdog will open public hearings into whether senior public officers in the state's public transport sector improperly influenced the awarding of contracts. (15 October 2020) <https://www.governmentnews.com.au/victorian-public-transport-sector-to-face-corruption-probe/>

**Victorian Bar and County Court reach agreement to assist parties efficiently access mediation services for commercial disputes**

The Victorian Bar is delighted that it has agreed protocols with the Commercial Division of the County Court of Victoria for the Court to refer matters to Bar mediators under an agreed Protocol. The Protocol will assist parties and their lawyers find appropriate, nationally accredited barrister mediators, to help resolve their disputes out of court. (19 October 2020) <https://www.vicbar.com.au/news-events/media-release-%E2%80%93-victorian-bar-and-county-court-reach-agreement-assist-parties>

**Empowering Victim-Survivors To Speak On Their Terms**

Attorney-General Jill Hennessy has announced amendments to the Judicial Proceedings Reports Act to empower victim-survivors to tell their stories – without having to seek court permission. The Justice Legislation Amendment (Supporting Victims and Other Matters) Bill 2020 will provide more control to victim-survivors over how, when and in what way their identity and story is published. (13 October 2020) <https://www.premier.vic.gov.au/empowering-victim-survivors-speak-their-terms>

**IBAC charges four people with conspiracy to defraud and misconduct in public office**

IBAC has charged four people with offences, including conspiracy to cheat and defraud and misconduct in public office. The charges follow an IBAC investigation, Operation Merrica, into allegations of serious corruption involving a provider of quantity surveying services, and contracts issued by the Department of Education and Training and the Victorian School Building Authority. (13 October 2020) <https://www.ibac.vic.gov.au/media-releases/article/ibac-charges-four-people-with-conspiracy-to-defraud-and-misconduct-in-public-office>

**IN PRACTICE AND COURTS****[Un-redacted Royal Commission reports released](#)**

20 October 2020 - Two un-redacted reports and a third previously unreleased report from the Royal Commission into Institutional Responses to Child Sexual Abuse have been made public.

**[ACMA NBN consumer experience rules](#)**

ACMA has enhanced NBN consumer experience rules to protect Australians during the final phase of the NBN migration. The enhancements to the Service Continuity Standard and Service Migration Determination will start on 14 December 2020, while most enhancements to the Complaints Handling Standard and Consumer Information Standard will start on 1 April 2021. (20 October 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 expires on 20 January 2021.

### Notification of NSW District Court of attendance of Victorian residents

On 15 October, the Chief Judge of the District Court of NSW advised on attendance of Victorian residents at the Court. Although residents of Victoria are required to self-isolate for 14 days upon arrival in New South Wales, a border entry permit (NSW) may exempt them from self-isolation when they are required to attend court.

### Justice Connect commences trial of the Victorian Bar's Pro Bono Platform

Starting the week of the 19 October, Justice Connect will commence using Victorian Bar's Pro Bono Platform to refer pro bono work on a trial basis. Jobs posted on the Platform can be accepted by barristers via the Platform.

### COVID Update: Supreme Court and County Court of Victoria

The Courts announced that a limited number of Melbourne-based criminal jury trials are planned to resume in a measured way from 16 November 2020 – the announcement is [here](#). The Courts have also produced Q&As about the resumption of criminal jury trials, which are available on the Supreme Court website [here](#).

### COVID Update: County Court of Victoria

On Monday 19 October, the Court issued the revised Trial by Judge Alone – Emergency Protocol COVID-19. The Protocol is available on the Court's website [here](#).

### [Inquiry into the Victorian Government's Response to the COVID-19 Pandemic - Have your say](#)

The Public Accounts and Estimates Committee is accepting submissions to its Inquiry into the Victorian Government's response to the COVID-19 pandemic. Submissions are open until 30 November 2020.

### [VAGO Annual Report 2019-2020](#)

This report covers the activities of VAGO for the period 1 July 2019 to 30 June 2020. It is prepared in accordance with the Audit Act 1994 and the Financial Management Act 1994, and complies with the requirements of relevant Australian Accounting Standards and Interpretations, Standing Directions and Financial Reporting Directions. (14 October 2020)

### Supreme Court Practice Notes

#### [SC Gen 2 Structure of the Trial Division](#)

The purpose of this Practice Note is to set out the divisional structure of the Trial Division of the Court, the specialist Lists within the Trial Division and the allocation of matters within that structure.

#### [SC GEN 10 Conduct of Group Proceedings \(Class Actions\) \(Second revision\)](#)

The purpose of this Practice Note is to provide guidance on the conduct and management of group proceedings (commonly referred to as 'class actions') within the Supreme Court of Victoria.

### [Notice to the Profession - Group Proceedings List - 13 October 2020](#)

The purpose of this Notice is to notify court users of the establishment of a new cross-divisional Group Proceedings List in which all group proceedings filed pursuant to Part 4A of the Supreme Court Act 1986 (Vic) will be managed within the Court.

### Magistrates' Court of Victoria

New Practice Directions by the Court this week:

#### *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). Practice Direction 24 is available [here](#).

*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](#).

### [Law Library of Victoria](#)

Fortnightly bulletin that summarises the latest legislation and cases for the Victorian jurisdiction, as well as High Court of Australia cases. Download the Law Library Bulletin No 20 (fortnight ending 22 October 2020).

### PUBLISHED - ARTICLES, PAPERS, REPORTS

#### [Tech-xit: can Australia survive without Google and Facebook?](#)

In the wake of threats by Google and Facebook to scale back or close services in Australia should the federal government proceed with plans to charge them for news content, this report identifies serious risks to Australian businesses, government services and consumers if services are...

#### [Australian homelessness monitor 2020](#)

The Australian Homelessness Monitor examines the changes in the scale and nature of homelessness in Australia, as well as how social, economic and policy drivers influence these changes. Recent research shows that the national homelessness rate is set to surge, as short-term coronavirus and housing.

#### [Young people under youth justice supervision and in child protection 2018-19](#)

This report presents information on young people under youth justice supervision during 2018-19 who had received child protection services in the 5 years from 1 July 2014 and 30 June 2019.

### [2019–20 annual report from the Office of the Australian Information Commissioner](#)

The OAIC has continued to deliver on its purpose to uphold and promote privacy and information access rights throughout the pandemic. The OAIC's annual report also highlights its success in addressing a backlog of privacy cases created by sustained increases in complaints over recent years.

### [Select Committee on the Aboriginal Flag: report](#)

The Senate Select Committee on the Aboriginal Flag was established in September 2020 to inquire into and report on current and former copyright and licensing arrangements for the Aboriginal flag design. This report outlines the Committee's recommendations.

## CASES

### [Assets China Pty Ltd & Anor v Eastern Blue Pty Ltd & Anor \[2020\] VSC 685](#)

ADMINISTRATIVE LAW – Judicial review – Appeal from a decision of a Magistrate on a question of law – Whether it was open on the evidence for the Magistrate to find there was a variation to the contract of sale agreement – Whether the Magistrate gave adequate reasons for the finding of joint liability and joint entitlement to relief – Whether it was open on the evidence to make such a finding – Whether the Magistrate decided the proceeding on a basis other than disclosed on the pleadings – No error of law – *Stefanovski v Digital Central Australia (Assets) Pty Ltd* [2018] FCAFC 31; (2018) 368 ALR 607 – *ISPT Pty Ltd v Melbourne City Council* [2008] VSCA 180 – Magistrates' Court Act 1989 s 109 – Appeal dismissed.

### [Watpac Construction v CGM \[2020\] VSC 637](#)

ADMINISTRATIVE LAW – CONSTRUCTION AND ENGINEERING – Judicial Review – Application for certiorari quashing adjudication determination – Challenge to adjudication determination – Adjudicator's jurisdiction – Existence of a valid reference date under Subcontract – Whether Adjudicator compliantly valued part of the adjudication application – Claim for summary judgment – Claim for return of money paid under mistake of fact claim – Money claim for restitution – Money had and received – Return of security – Building and Construction Industry Security of Payment Act 2002 (Vic), ss 9, 16, 23 and 48.

### [Harris v Victorian Electoral Commission \[2020\] VSC 676](#)

ELECTIONS – Proposed payment by Liberal Party of Australia (Victorian Division) to National Party of Australia – Victoria – Whether proposed payment a 'gift' and a 'political donation' within Pt 12, Electoral Act 2002 (Vic) – Whether proposed payment would be made for 'consideration in money or money's worth' – Whether proposed payment would be for inadequate consideration – Where parties ran joint tickets in three Legislative Council regions – Where public funding entitlement in respect of joint tickets paid to Liberal Party

– Where Liberal Party proposed to pay one-third share of that entitlement to National Party – Effect of Coalition Agreement between Liberal Party and National Party – Electoral Act 2002 (Vic), ss 69A, 151, 206, 207F, 211, 212.

STATUTORY INTERPRETATION – Definitions of 'gift' and 'political donation' in s 206(1), Electoral Act 2002 (Vic) – Construction of 'gift' – Meaning of 'consideration in money or money's worth' and 'inadequate consideration' – *Scaffidi v Chief Executive Officer, Department of Local Government and Communities* [2017] WASCA 222; (2017) 52 WAR 368 – *Wheatley v State of New South Wales* [2018] NSWCA 315.

### [CityLink Melbourne Limited v Department of Transport \(Review and Regulation\) \[2020\] VCAT 1078](#)

Freedom of Information Act 1982 (Vic), sections 34(1)(b), 34(4)(a)(ii) and 50(4) – whether 15 year old documents relating to the CityLink project and its upgrades are exempt because they would be likely to expose an undertaking or the agency unreasonably to disadvantage – whether the public interest override applies.

## LEGISLATION

### [Aged Care Legislation Amendment \(Financial Transparency\) Bill 2020 \[No. 2\]](#)

Amends the: Aged Care Act 1997 to require residential aged care providers to disclose their income, costs of food and medication, staff and staff training, accommodation, administration and monies paid to parent bodies in annual financial transparency reports to the Aged Care Quality and Safety Commissioner; and Corporations Act 2001 to ensure residential aged care providers include detailed financial information in annual financial statements.

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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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