



## PUBLIC SECTOR NEWSLETTER - VICTORIA

It has been a less successful fortnight for those challenging Covid-19 restrictions, with the Victorian Supreme Court dismissing a challenge to Victoria's curfew and the High Court of Australia dismissing a challenge to Western Australia's border closure.

The Commonwealth Government has released consultation papers on a Federal integrity commission and a review of the *Privacy Act*.

IBAC has released its Annual Report and furthered its investigations into the public transport sector and planning and property decisions, and a Melbourne man has been the first person charged under foreign interference laws.

Other highlights include the Law Council of Australia's response to the Royal Commission into Natural Disasters Arrangements Report, the introduction of legislation to remove the stigma of having to disclose minor convictions, the Law Institute of Victoria's support for a bill preventing the disclosure of names of victims of sexual assault without consent and the appointment of two new Justices to the High Court of Australia.

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

### IN THE MEDIA

**Clive Palmer has lost his WA border battle. What does it mean for state and territory boundaries?**

The High Court has knocked back billionaire miner Clive Palmer's challenge against Western Australia's COVID-19 hard border closure. Chief Justice Susan Kiefel said the court had found the Act complied with the constitution. (06 November 2020) <https://www.abc.net.au/news/2020-11-06/clive-palmer-has-lost-his-wa-border-battle-so-what-does-it-mean/12856366>

**PS corruption watchdog a step closer**

The Attorney-General has announced that work has begun to establish a Commonwealth Integrity

Commission (CIC) to strengthen anti-corruption measures and law enforcement directed at the national Public Service to keep it free from criminal corruption. (05 November 2020) <https://www.ag.gov.au/integrity/consultations/commonwealth-integrity-commission-consultation-draft>

**Warm welcome for review of Privacy Act**

The OAIC Angelene Falk has welcomed a review of the Australian Privacy Act 1988, saying it provided a landmark opportunity to ensure the country's privacy framework could respond to new challenges in the digital environment. The review is to be led by the Attorney-General's Department. (02 November 2020) <https://www.ag.gov.au/system/files/2020-10/privacy-act-review--issues-paper-october-2020.pdf>

**The Morrison Government release of Commonwealth Integrity Commission consultation draft**

Commonwealth Integrity Commission (CIC) designed to strengthen and complement the existing multi-agency approach to integrity, anti-corruption and law enforcement at a federal level. (02 November 2020) <https://www.attorneygeneral.gov.au/media/media-releases/release-commonwealth-integrity-commission-consultation-draft-2-november-2020>

**LCA: Response to the release of the Royal Commission into National Natural Disasters Arrangements Report**

As noted in the report, the delivery of legal assistance is a key example of non-government recovery support playing a fundamental role in helping individuals who are adversely affected by natural disasters. The report includes a recommendation for pre-agreed recovery programs that includes the provision of legal assistance. (30 October 2020) <https://www.lawcouncil.asn.au/media/media-statements/response-to-the-release-of-the-royal-commission-into-national-natural-disasters-arrangements-report>

### Privacy Act review - terms of reference and issues paper

The Morrison Government has released the terms of reference and issues paper for a wide-ranging review of the Privacy Act 1988 (the Privacy Act). (30 October 2020) <https://www.attorneygeneral.gov.au/media/media-releases/privacy-act-review-30-october-2020>

### Appointments to the High Court of Australia

His Excellency the Governor-General has accepted the advice of the Government to appoint the Honourable Justice Simon Steward and the Honourable Justice Jacqueline Gleeson as Justices of the High Court of Australia. (28 October 2020) <https://www.attorneygeneral.gov.au/media/media-releases/appointments-high-court-australia-28-october-2020>

### Lifting life long burden of spent convictions welcome

Legislation to remove the stigma of having to disclose minor convictions will lift a life-long burden for many people, according to the Law Institute of Victoria. (27 October 2020) <https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/October-2020/Lifting-life-long-burden-of-spent-convictions-welc>

### We need movement on the Commonwealth Integrity Commission

The Law Council of Australia is calling on the Federal Government to move forward with the establishment of a Commonwealth Integrity Commission, by releasing the Exposure Draft of the Bill as soon as possible.

The government is falling behind Australia's obligations as a signatory of the United Nations Convention against Corruption, which includes developing policies in relation to anti-corruption. (26 October 2020) <https://www.lawcouncil.asn.au/media/media-releases/we-need-movement-on-the-commonwealth-integrity-commission>

### High Court dismisses challenge to Victoria's coronavirus lockdown

The High Court has thrown out a challenge to Victoria's COVID-19 lockdown from a Mornington Peninsula hotelier whose business was damaged by the state's restrictions. The High Court said it accepted the Victorian Government's arguments there was no foothold in the Constitution for such an implied right. (06 November 2020) <https://www.abc.net.au/news/2020-11-06/high-court-challenge-to-victorias-covid-19-lockdown-dismissed/12856416>

### IBAC warns misuse of personal information held by local government can amount to corrupt conduct

Victorian councils need to improve how they protect the information they hold, according to a research report released by the Independent Broad-based Anti-corruption Commission. (05 November 2020) <https://www.ibac.vic.gov.au/media-releases/article/ibac-warns-misuse-of-personal-information-held-by-local-government-can-amount-to-corrupt-conduct>

### First person charged under foreign interference laws

A 65-year-old Melbourne man has become the first person in Australia to be charged under foreign interference laws. The Australia Federal Police allege the man, Duong Di Sanh, has a relationship with a foreign intelligence agency but have not named which country. (05 November 2020) <https://www.abc.net.au/news/2020-11-05/first-person-charged-foreign-interference-laws/12852974>

### IBAC continues to expose and prevent corruption during a challenging year

Victoria's independent anti-corruption agency, IBAC, continued to expose corruption and support the public sector, including Victoria Police, to build corruption resistance during a challenging year. Tabled to Parliament, IBAC's annual report outlines IBAC's performance for 2019/20. (29 October 2020) <https://www.ibac.vic.gov.au/media-releases/article/ibac-continues-to-expose-and-prevent-corruption-during-a-challenging-year>

### A spent convictions scheme means a fairer Victoria

Last month's Bill legislating a spent convictions scheme for minor offences will mean Victorians who have carried the burden of past convictions through their lives will have a better chance at building a future for themselves. (27 October 2020) <https://www.legalaid.vic.gov.au/about-us/news/spent-convictions-scheme-means-fairer-victoria>

### Victims privacy deserve protection, says Law Institute of Victoria

A Bill to prevent victims of sexual assault being named without consent, even after death, is designed to protect the privacy of vulnerable members of our community, according to the Law Institute of Victoria. (27 October 2020) <https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/October-2020/Victims-privacy-deserve-protection--says-Law-Insti>

## IN PRACTICE AND COURTS

### Supreme Court: Loielo v Giles - judgment

The judgment in the matter of Loielo v Associate Professor Giles was handed down on Monday, 2 November. Justice Tim Ginnane of the Supreme Court of Victoria has handed down his judgment in this matter, dismissing Ms Loielo's application challenging the Stay at Home Directions made by Associate Professor Giles.

### COVID: Magistrates' Court of Victoria

On Monday 26 October, the Court issued an updated version of Practice Direction 9 – Diversion on the Papers, which relates to diversion hearings on the papers in the Court during COVID-19. The updated Practice Direction is available on the Court's website [here](#). Also, the Chief Magistrate has extended the Modified Access and Procedure Order (MAP) until Sunday 25 April 2021 pursuant to section 33D of the Open Courts Act 2013 (Vic). A copy of the MAP is available [here](#).

## 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](#).

### [Inquiry into the Victorian Government's COVID 19 Contact Tracing System and Testing Regime - Have your say](#)

The Legislative Council Legal and Social Issues Committee is accepting submissions to its Inquiry into the Victorian Government's COVID-19 contact tracing system and testing regime. Information about this inquiry will be posted in the tabs above as it becomes available (November 2020).

### [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.

### [IBAC: Operation Esperance public hearings](#)

6 November 2020 - Public hearings by IBAC into allegations of serious corrupt conduct in Victoria's public transport sector have concluded.

### [IBAC Public Hearings](#)

IBAC's public hearings into allegations of serious corrupt conduct in relation to planning and property development decisions in Victoria to resume with expanded scope in November

## Supreme Court Practice Notes

### [SC CL 4 Major Torts List](#)

The purpose of this Practice Note is to describe the procedures to be followed in the Major Torts List. The List is a case management list within the Common Law Division of the Supreme Court of Victoria.

## CASES

### [Loiello v Giles \[2020\] VSC 722](#)

JUDICIAL REVIEW – COVID 19 Pandemic – State of emergency – Directions by authorised officer – Stay at Home Directions - Whether power to impose Curfew – Whether plaintiff had standing - Whether authorised officer acted at the direction or behest of the Premier – Whether Curfew decision unreasonable, irrational or illogical – Public Health and Wellbeing Act 2008 ss 4, 5, 6, 7, 8, 9, 10, 11, 111, 197, 198, 199, 200.

HUMAN RIGHTS – COVID-19 Pandemic - Stay at Home Restrictions – Curfew – Right of freedom of movement – Right to liberty – Whether restrictions on rights proportionate – Whether less restrictive means reasonably available – Whether act of imposing Curfew incompatible with human rights – Whether proper consideration given to human rights in making Curfew decision – Plaintiff's standing to bring Charter claims – Charter of Human Rights and Responsibilities Act 2006 ss 7(2), 12, 21, 38, 39.

## LEGISLATION

### Acts

#### [Worker Screening Act 2020 \(Vic\)](#)

Act Number: 34/2020 Date of assent: 4 November 2020

#### [Police and Emergency Legislation Amendment Act 2020 \(Vic\)](#)

Act Number: 29/2020 Date of assent: 27 October 2020

### Bills

#### [Spent Convictions Bill 2020 \(Vic\)](#)

Date of second reading speech: 28 October 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](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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