



## PUBLIC SECTOR NEWSLETTER - VICTORIA

Amazingly, Victoria is now well past the 28 day mark of having no reported cases of COVID-19 which is a credit to all Victorians who worked hard to follow restrictions.

As a result, there have been a number of announcements as part of a new State Budget to kick start the economic recovery. Such announcements include a new statutory authority to develop and oversee a 10 year public and community housing plan.

Victorian Courts are also eyeing opening up again, with plans put in place to recommence jury trials.

In other headline news, a new Federal agency is to be established to coordinate the Commonwealth's role in future natural disasters, human rights groups have welcomed the release of the IGADF Inquiry into the activities of Australian special forces in Afghanistan and many Victorian councils are awaiting a Supreme Court review of whether their WorkCover self-insurance arrangements can continue.

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

### IN THE MEDIA

**HRLC: Afghan and Australian human rights groups welcome release of the Brereton Afghanistan Inquiry Report**

Afghan and Australian human rights organisations have welcomed the release of the report of the IGADF Inquiry, into alleged war crimes by Australian special forces in Afghanistan and have called on the Australian Government to now move swiftly to implement its recommendations and establish a proper redress mechanism for victims. <https://www.hrlc.org.au/news/2020/11/20/afghan-aus-human-rights-brereton-afghanistan-inquiry>

LCA response

[Law Council President, Pauline Wright, response to reports of war crimes by members of the ADF](#)

**Put families over politics, abandon flawed family court merger**

A report by Government Senators into the Attorney-General's flawed merger bill regrettably fails to prioritise the wellbeing of families and children, ignores credible expert input, and instead doubles down in promulgating the government's proposed merger, according to the Law Council of Australia. <https://www.lawcouncil.asn.au/media/media-releases/put-families-over-politics-abandon-flawed-family-court-merger>

**Senate inquiry endorses Family Court reform Bills**

The Morrison Government has welcomed the findings of a 12-month Senate inquiry, which recommended that legislation designed to fix the broken structure of the family court system be passed by Parliament. <https://www.attorneygeneral.gov.au/media/media-releases/senate-inquiry-endorses-family-court-reform-bills-20-november-2020>

**Aged care performance data must be made public**

Consumers need easy access to data about the performance of individual aged care facilities so that they can make informed decisions, says the Australian Lawyers Alliance (ALA). <https://www.lawyersalliance.com.au/news/aged-care-performance-data-must-be-made-public>

**ASIO warns on social media spies**

A new security campaign designed by the Australian Security Intelligence Organisation (ASIO) has been launched to raise awareness of the threat of malicious social media users, with the campaign Think Before You Link. <https://psnews.com.au/2020/11/19/asio-warns-on-social-media-spies/?state=aps>

### OAIC keeps tabs on COVIDSafe privacy

The OAIC is auditing the handling of personal and private information by COVIDSafe. The Australian Information Commissioner and Privacy Commissioner, said the OAIC audit will look for compliance with the strict protections the Government put in place, with its first report due by the end of this year. <https://psnews.com.au/2020/11/19/oaic-keeps-tabs-on-covidsafe-privacy/?state=aps>

### ACMA seeks views on kids' TV content

The ACMA is seeking feedback on proposed new rules governing Australian content and children's television standards. The draft Broadcasting Services (Australian Content and Children's Television) Standards 2020 established a new Australian content quota system for commercial television broadcasters. <https://psnews.com.au/2020/11/19/acma-seeks-views-on-kids-tv-content/?state=aps>

### Nine News breached privacy rules by disclosing police addresses: ACMA

Channel Nine News has been found to have breached broadcasting privacy rules by the Australian Communications and Media Authority (ACMA) in multiple broadcasts dating back to October, 2019. <https://mumbrella.com.au/nine-news-breached-privacy-rules-by-disclosing-police-addresses-acma-658639>

### Productivity experts back policy for COVID recovery

The Productivity Commission has released new research that emphasises the important role of policy when the time comes for improving relative living standards and increasing productivity after COVID-19. <https://psnews.com.au/2020/11/19/productivity-experts-back-policy-for-covid-recovery/?state=aps>

### Public views sought for Digital Identity

The Australian public is to be asked its views on proposed legislation supporting and strengthening an expanded Digital Identity system in Australia. In a statement, DTA said the Digital Identity legislation sought to further enhance existing privacy and consumer safeguards and establish permanent governance arrangements. <https://psnews.com.au/2020/11/19/public-views-sought-for-digital-identity/?state=aps>

### OAIC: Privacy safeguards examined in COVIDSafe Assessment Program

The handling of personal information by COVIDSafe is being audited by the national privacy regulator for compliance with strict protections put in place by the Australian Government, with the first report due by the end of the year. <https://www.oaic.gov.au/updates/news-and-media/privacy-safeguards-examined-in-covidsafe-assessment-program/>

### Let's talk about a federal Human Rights Act

The Law Council of Australia believes that now is the time to reignite the conversation and calls on the

Australian Government to implement a federal Human Rights Act, launching the Law Council's policy position, that many Australians would not know that their human rights are not protected by the Constitution or legislation. <https://www.lawcouncil.asn.au/media/media-releases/lets-talk-about-a-federal-human-rights-act>

### Govt in \$1.2b robodebt backdown

The commonwealth government has agreed to pay \$112 million in compensation to members of the robodebt class action in a \$1.2 billion settlement. The system was widely criticised for resulting in errors, incorrect debts and unnecessary hardship for welfare recipients and culminated in the largest class action in Australian legal history. <https://www.governmentnews.com.au/govt-in-1-2b-robodebt-backdown/>

### Review of the firefighter provisions of the Safety, Rehabilitation and Compensation Act 1988 (SRC Act) report released

The Morrison Government welcomes the findings of a review of workers compensation arrangements for firefighters employed under the SRC Act, which will expand coverage and streamline claims. <https://www.attorneygeneral.gov.au/media/media-releases/review-firefighter-provisions-report-released-13-november-2020>

### New Disaster Agency to lead nation

A new Federal Agency is to be established to coordinate the Commonwealth's role in future natural disasters as part of the Australian Government's response to the recent Royal Commission into National Natural Disaster Arrangements. <https://psnews.com.au/2020/11/16/new-disaster-agency-to-lead-nation/?state=aps>  
The Commonwealth's response to the Royal Commission's report can be accessed at this [PS News link](#).

### Reforms to National Natural Disaster Arrangements

The Australian Government announced major reforms as part of our response to the Royal Commission into National Natural Disaster Arrangements. Introduced legislation will give the Australian Government the power to declare a national emergency to help mobilise Commonwealth resources and help tackle the challenges states and local communities may face. <https://www.pm.gov.au/media/reforms-national-natural-disaster-arrangements>

### Launch of the Victorian Graffiti Register

Victorians can now easily report graffiti after the launch of a new database and easy-to-use app. The Victorian Graffiti Register (VICGR) enables users, such as council workers or members of the public, to record graffiti via the app or website, as soon as they see it and while they're on the move. <https://www.justice.vic.gov.au/news-archive/launch-of-the-victorian-graffiti-register>

### 'It's a game changer': Community sector celebrates historic housing pledge

Community groups have applauded the announcement, which also includes plans to establish a new statutory authority that will develop and oversee a 10-year public and community housing growth plan. Community leaders say the sector's advocacy efforts were vital to securing the multi-billion dollar announcement. <https://probonoaustralia.com.au/news/2020/11/its-a-game-changer-community-sector-celebrates-historic-housing-pledge/>

### IBAC dismisses allegation of Vatican funds in Pell case

IBAC confirms it received information based on media reports which alleged Vatican funds were transferred to individuals in support of the recent case against George Pell. IBAC has reviewed the information and found the threshold to commence inquiries or an investigation was not met. <https://www.ibac.vic.gov.au/media-releases/article/ibac-dismisses-allegation-of-vatican-funds-in-pell-case>

### Council insurance scheme thrown into doubt ahead of Supreme Court fight

Dozens of councils in Victoria are awaiting a Supreme Court review of a WorkSafe finding that their workplace insurance schemes were not "fit and proper" to continue. But WorkSafe rejected the application on October 15 in a decision that the MAV wants overturned by a judicial review filed with the Supreme Court last month. <https://www.theage.com.au/national/victoria/council-insurance-scheme-thrown-into-doubt-ahead-of-supreme-court-fight-20201105-p56bpi.html>

## IN PRACTICE AND COURTS

### [Consultation on proposed new conduct rule](#)

The Law Council of Australia has released a consultation paper proposing that a new rule 11A be added to the Australian Solicitors' Conduct Rules. The proposed rule clarifies how existing ethical principles relating to conflicts of interest may be applied when providing short-term legal assistance services. The consultation closes on 7 December 2020.

### [OAIC Consultation: Requirements to collect personal information for contact tracing purposes](#)

The OAIC and state and territory privacy regulators have produced the following draft guidelines to support a nationally consistent approach to requirements for businesses and venues to collect contact information. The closing date for comments is 4 December 2020.

### [County Court of Victoria - Revised Recommencement of Melbourne Jury Trials Guide](#)

On 11 November, the County Court released a revised version of the Recommencement of Melbourne Jury Trials Guide. The revised version: clarifies the empanelment process for a legacy/non-upgraded

courtroom, and amends the rapid testing protocol sections to emphasise this is a voluntary process.

### [Electronic document lodgement is coming soon to the Magistrates' Court of Victoria and the Children's Court of Victoria](#)

Electronic document lodgement, known as eDocs, is being implemented at both Courts across Victoria from November through to January 2021. This is a preliminary first step being introduced as part of a broader new case management system that will be rolled out over the next few years.

### Coronavirus information

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

### [DHHS: General information](#)

Victoria has plans in place to manage and control the risks of infectious diseases like coronavirus (COVID-19) and these plans are being reviewed and amended as information emerges. The Court will continue to update advice and information as we receive it.

### COVID: Magistrates' Court of Victoria

On 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 25 April 2021 pursuant to section 33D of the Open Courts Act 2013 (Vic). A copy of the MAP is available on the Court's website [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.

### [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.

**PUBLISHED – ARTICLES, PAPERS, REPORTS**[Statement by the Commonwealth Ombudsman Michael Manthorpe on the Australian Federal Police's handling of allegations made about the Hon Angus Taylor MP](#)

Commonwealth Ombudsman: 16 November 2020  
Based on the events that had occurred, and in deciding whether to investigate this matter, the AFP identified several potential offences, under both Commonwealth and ACT law.

[Reports, allegations and inquiries into serious misconduct by Australian troops in Afghanistan 2005–2013](#)

APH Library Research Publication: 09 November 2020  
A growing body of actual and anecdotal evidence from the past decade suggests that the personal and professional ethics of some have been deeply compromised.

[Strengthening Victoria's Victim Support System: Victim Services Review](#)

Victims of crime: 16 November 2020  
Examines Victoria's victim support system and proposes a program of reform to improve the service response.

**CASES**[Secretary, Department of Education and Training v Paul \[2020\] VSCA 280](#)

ADMINISTRATIVE LAW – Judicial review – Decision of Disciplinary Appeals Board to reinstate teacher following dismissal for misconduct and instead to reprimand him and reduce his classification – Whether jurisdictional error committed – Legal unreasonableness – Whether Board misconstrued its statutory functions under Education Training Reform Act 2006 – Minister for Immigration and Citizenship v Li (2013) 249 CLR 333, Minister for Immigration and Border Protection v SZVFW [2018] HCA 30; (2018) 264 CLR 541, considered – Education Training Reform Act 2006 ss 1.2.1, 2.4.60, 2.4.61, 2.4.28.

[Mulder v Victoria Police \(Review and Regulation\) \[2020\] VCAT 1250](#)

Freedom of Information Act 1982 (Vic), section 33(1) – documents arising from Victoria Police's 2006 and 2007 Ethical Standards Department investigation into two complaints – one complaint concerned conduct of applicant when undertaking police duties – whether unreasonable to release names and other personal affairs information of people involved in family dispute which formed the back to the two complaints – whether unreasonable to release name and identifying information relevant to second complaint which concerned events and an officer not connected to applicant.

[Pogorzelski v Latrobe City Council \[2020\] VSC 718](#)

ADMINISTRATIVE LAW – Judicial review – Application to review decision of VCAT not to extend planning permit – Natural justice - Whether applicant was put on notice of issues – Whether Tribunal failed to take account of relevant considerations - No error - Planning and Environment Act 1987 (Vic) s 69(2) - Victorian Civil and Administrative Tribunal Act 1998 (Vic) s 148 - SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs [2006] HCA 63; (2006) 228 CLR 152, Commissioner for ACT Revenue v Alphaone Pty Ltd [1994] FCA 1074; (1994) 49 FCR 576 applied.

[Jerak v Dr Lazarus & Ors \[2020\] VSC 729](#)

JUDICIAL REVIEW – Workers compensation – Medical Panel – 0% whole person impairment assessed by the panel – Dr Lazarus member of panel and previously engaged to examine the plaintiff – Breach of s 537(8) of Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) ('WIRC Act') due to failure to preserve impartiality and independence – Breach of s 537(8) is not cured by s 540 – Jurisdictional Error – Opinion set aside – Remitted to differently constituted panel – Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355 – Wingfoot Australia Partners Pty Ltd v Kocak [2013] HCA 43; (2013) 252 CLR 480 – Masters v McCubbery & Others [1995] VICSC 209; [1996] 1 VR 635 – Ryan v The Grange at Wadonga Pty Ltd & Ors [2015] VSCA 17 – WIRC Act s 56, 311, 312, 537, 540 – Accident Compensation (General Amendment) Act (No 64 ) 1989 – Accident Compensation (Workcover) Act (No 67) 1992 s 63(5).

PROCEDURAL FAIRNESS - Application of AMA Guides – Chapter 2 & 8 – No failure to resolve disparity as to underlying cause of eye injury – Medical Panel acted in accordance with the Guides and its obligation of procedural fairness – HJ Heinz & Anor v Kotzman & Ors [2009] VSC 311 – American Medical Association Guides to the Evaluation of Permanent Impairment (Fourth Edition).

## 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.



#### Cameron Roberts

Partner  
+61 3 9641 8696  
+61 438 510 885  
croberts@tglaw.com.au



#### Loretta Reynolds

Partner, Markets  
+61 3 8080 3705  
+61 403 069 819  
lreynolds@tglaw.com.au



#### Emma-Jane Stevens

Partner  
+61 3 8535 3510  
+61 414 371 361  
estevens@tglaw.com.au



#### Bruce Crosthwaite

Partner  
+61 3 9641 8618  
+61 408 372 104  
bcrosthwaite@tglaw.com.au

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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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