



PUBLIC SECTOR NEWSLETTER - VICTORIA

It has been a busy fortnight dominated by the publication of the Final Report of the Royal Commission into the Management of Police Informants and the responses the Government and the legal profession made to that Report; the prospect of laws abolishing the crime of public drunkenness and conversion practices; and the legal profession's responses to increased funding for justice in the State Budget.

Meanwhile, the Law Institute of Victoria has released a report advocating cultural diversity in Victoria's legal profession, a report into Continuing Professional Development has made significant recommendations for change and Dr Vivian Waller and Kathleen Foley have been appointed to the Victorian Law Reform Commission.

In the Courts, judgments have been delivered in relation to, amongst other things, whether payphone cabinets are exempt from planning laws, the judicial review of Medical Panel Determinations and the cancellation of a teacher's registration.

We hope you enjoy this edition of our Public Sector Newsletter, the last for what has been an extra-ordinary year. We would like to take this opportunity to wish all our readers a happy and safe holiday period and a healthy 2021. We will resume again in early February, with an edition summarising any significant news arising over the holiday period.

IN THE MEDIA

The legal profession has taken a hit over Lawyer X. Can mandatory reporting fix it?

The Lawyer X royal commission found Nicola Gobbo breached the fundamental rules at the heart of the legal profession. While lawyers largely support the idea of mandatory reporting of misconduct, some believe police should be subjected to the same rules. <https://www.abc.net.au/news/2020-12-01/lawyers-support-reforms-on-mandatory-reporting-gobbo-lawyer-x/12937372>

Publication of the Final Report of the Royal Commission into the Management of Police Informants

The Australian Bar Association welcomes the publication of the Final Report of the Royal Commission into the

Management of Police Informants. <https://austbar.asn.au/index.php/news-media/publication-of-the-final-report-of-the-royal-commission-into-the-management-of-police-informants>

Victoria

Public drunkenness laws should be abolished

Abolishing public drunkenness laws will help protect vulnerable members of our community, according to the Law Institute of Victoria. <https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/December-2020/Public-drunkenness-laws-should-be-abolished>

Report advocates for cultural diversity in the Victorian legal profession

A comprehensive report by Law Institute of Victoria president Sam Pandya has called on the Victorian legal profession to take a series of measures to promote ethnic diversity in the legal profession (02 December 2020). <https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/December-2020/Report-advocates-for-cultural-diversity-in-the-Vic>

Government To Act On All Recommendations Of Royal Commission Into The Management Of Police Informants

The Government welcomes the Final Report of the Royal Commission into the Management of Police Informants released today and remains committed to implementing all recommendations. <https://www.premier.vic.gov.au/government-act-all-recommendations-royal-commission-management-police-informants>

Royal Commission provides a roadmap for criminal justice reform and the legal profession

The Royal Commission into the Management of Police Informants provides a roadmap to reform the criminal justice system and restore public confidence in the legal profession, according to the Law Institute of Victoria. <https://austbar.asn.au/news-media/publication-of-the-final-report-of-the-royal-commission-into-the-management-of-police-informants>

Victoria Poised To Abolish The Crime Of Public Drunkenness

The Government has welcomed an independent report that will help implement new laws to decriminalise public drunkenness and save lives. <https://www.premier.vic.gov.au/victoria-poised-abolish-crime-public-drunkenness>

Welcome funding to deliver modern access to justice in Melbourne

Victoria Legal Aid has welcomed the announcement of funding in the Victorian State Budget to ensure continued access to justice for Victorians, addressing COVID-19 related delays within the justice system. <https://www.legalaid.vic.gov.au/about-us/news/welcome-funding-to-deliver-modern-access-to-justice-in-melbourne>

'Getting the point?' report into CPD in Victoria makes significant recommendations for change

The Victorian Legal Services Board and Commissioner CPD review report found that while the CPD system is not broken, it needs improvement (25 November 2020) 'Getting the point?' report into CPD in Victoria makes significant recommendations for change. <https://lsbc.vic.gov.au/news-updates/news/getting-point-report-cpd-victoria-makes-significant-recommendations-change>

New Appointments To Victorian Law Reform Commission

The Victorian Government has today announced the appointment of Dr Vivian Waller and Kathleen Foley to the Victorian Law Reform Commission (VLRC). <https://www.premier.vic.gov.au/new-appointments-victorian-law-reform-commission>

Banning Cruel Conversion Practices For Good

Cruel and bigoted practices that seek to change or suppress a person's sexual orientation or gender identity will soon be stamped out across Victoria, thanks to new laws introduced to Parliament today. <https://www.premier.vic.gov.au/banning-cruel-conversion-practices-good>

Law Institute of Victoria welcomes justice sector investment

The large investment in the legal assistance sector and justice facilities in today's State Budget will help the justice system recover from the COVID-19 pandemic, according to the Law Institute of Victoria. <https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/November-2020/Law-Institute-of-Victoria-welcomes-justice-sector>

Massive Boost for Court Capacity

The *Victorians Budget 2020/21* delivers major investments in new courts and court systems – to provide a strong, efficient, cutting-edge justice system that allows matters to be heard remotely and safely. <https://www.premier.vic.gov.au/massive-boost-court-capacity>

IN PRACTICE AND COURTS

[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.

PUBLISHED – ARTICLES, PAPERS, REPORTS

[Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2019–20](#)

VAGO: 24 November 2020

The purpose of this report is to inform Parliament about our audit of the state's 2019–20 Annual Financial Report.

[Accessing Emergency Funding to Meet Urgent Claims](#)

VAGO: 24 November 2020

This assurance review assessed if government departments met their legislative obligations when accessing emergency funding.

CASES

[Melbourne City Council v Telstra Corporation Limited \[2020\] FCAFC 200](#)

COMMUNICATIONS LAW – whether New Payphone Cabinets are “low-impact facilities” within the meaning of clause 6 of Sch 3 to the Telecommunications Act 1997 (Cth) exempt from planning laws – where Telstra sought planning approval to display commercial advertising on New Payphone Cabinets – where New Payphone Cabinets to be installed only after planning approval to display commercial advertising obtained – whether primary judge erred in concluding that the New Payphone Cabinets are “low-impact facilities” – appeal allowed with costs.

[Voss v Downes-Brydon \[2020\] VSC 815](#)

JUDICIAL REVIEW – Medical Panel – Opinion as to worker's medical condition – Whether Panel obliged to have regard to evidence of chronic pain condition – Relevant considerations – Findings of inconsistency in worker's evidence – Whether Panel denied worker natural justice – Whether Panel's determination was unreasonable, irrational or illogical – Whether reasons adequate – Workplace Injury Rehabilitation and Compensation Act 2013, s 284.

[Emmelmann v Thomson Geer Services Pty Ltd \[2020\] VSC 801](#)

ADMINISTRATIVE LAW – Judicial review – Medical panel – Whether medical panel failed to answer question asked – Where first question asked whether plaintiff suffered from any medical condition and second question asked whether the medical condition was related to the relevant injury – Where medical panel accepted that plaintiff suffered from pain – Where medical panel answered that plaintiff did not suffer from a medical condition – Medical panel failed to answer question asked – Workplace Injury Rehabilitation and Compensation Act 2013, s 3 – *Calleja v Franet Pty Ltd* [2000] VSC 339, considered – *Isuzu General Motors Australia v Jordon* (2002) 2 VR 212, applied – *Kakae v Wetspot Consolidated Pty Ltd* [2016] VSC 271, distinguished.

[Taylor v Victorian Institute of Teaching \[2020\] VSC 780](#)

JUDICIAL REVIEW – Cancellation of teaching registration – VCAT proceeding – Subsequent judicial review proceeding – VCAT to determine whether an extension of time should be granted to commence proceeding – Whether judicial review proceeding should be dismissed as vexatious or an abuse of process or summarily dismissed – Civil Procedure Act 2010 s 62, Supreme Court (General Civil Procedure) Rules 2015, 0 23 r 1.

[Fiore v Magistrates' Court of Victoria \[2020\] VSCA 314](#)

ADMINISTRATIVE LAW – Judicial review – Statutory interpretation – Exercise of power conditioned on decision-maker's state of satisfaction – Warrant to arrest – Applicant resided in Western Australia – Charged with serious Victorian offences – Informant sought warrant to secure applicant's extradition – Whether open to magistrate to be satisfied that circumstances constituted 'other good cause' for issue of warrant – Request for reasons – Statement of reasons provided – Whether statement capable of supplementing reason stated on warrant – Whether reasons disclosed 'evident [or] intelligible justification' for decision – Whether permissible to combine charge-sheet and warrant - Leave to appeal refused – Christie v Leachinsky [1947] AC 57 distinguished, Minister for Immigration & Citizenship v Li [2014] FCAFC 1; (2013) 249 CLR 332 applied, Doyle v

Commissioner of Police [2020] NSWCA 11 distinguished – Crimes Act 1958 ss 459, 464A, Criminal Procedure Act 2009 ss 5, 6, 12, 13.

LEGISLATION

Victoria

[Change or Suppression \(Conversion\) Practices Prohibition Bill 2020 \(Vic\)](#)

Date of second reading speech: 26 November 2020.

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HELP DESK SERVICES

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

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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