



PUBLIC SECTOR NEWSLETTER - VICTORIA

We are pleased to welcome you back to our Public Sector Newsletter, the first for 2021.

Despite COVID-19 continuing to dominate the news, cases in Victoria and Australia fortunately remain relatively low. However, issues flowing from Government responses to the impacts of COVID-19 continue to arise, including in the alleged fraudulent receipt of JobKeeper payments.

In other news, privacy continues to remain a focus for the Public Sector, with new tools being developed to enhance security over sensitive personal information and consideration being given to the personal data large technology firms are able to access.

In Court decisions, the High Court has considered in *Gerner v Victoria* [2020] HCA 48 whether directions under the *Public Health and Wellbeing Act 2008* (Vic) infringed upon any freedom of movement implicit in the Australian Constitution. In another interesting decision, the Supreme Court of Victoria has considered in *She v RMIT University & Anor* [2021] VSC 2 the assistance to be afforded to a self-represented litigant by the Court and whether a failure to provide such assistance results in a denial of procedural fairness and natural justice.

We hope you enjoy this edition of our Public Sector Newsletter and we look forward to continuing to provide you with relevant updates and news throughout 2021.

IN THE MEDIA

Release of National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession

Eliminating sexual harassment in the legal profession is part of the Law Council's long-running commitment to inclusion and diversity in the legal profession. The release of the National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession heralds the start of a united and coordinated process to address the issue. (23 December 2020) <https://www.lawcouncil.asn.au/media/media-releases/release-of-national-action-plan-to-reduce-sexual-harassment-in-the-australian-legal-profession->

Acting IBAC Deputy Commissioner appointed

Victoria's Independent Broad-based Anti-corruption Commission, IBAC, has welcomed the appointment of Ms Kylie Kilgour as IBAC's new Acting Deputy Commissioner. (23 December 2020) <https://www.ibac.vic.gov.au/media-releases/article/acting-ibac-deputy-commissioner-appointed>

Brutally honest review of national environment laws leads to calls for urgent reforms

Australia's peak marine conservation organisation has described the final review of national environment laws as a brutally honest assessment of the failure of the law to act to protect our oceans. (29 January 2021) https://www.marineconservation.org.au/brutally-honest-review-of-national-environment-laws-leads-to-calls-for-urgent-reforms/?utm_source=miragenews&utm_medium=miragenews&utm_campaign=news

JobKeeper payments for prisoners, the dead and other fraud cases probed by ATO

Employers claiming JobKeeper on behalf of fictitious employees are being pursued by an ATO investigation. FOI documents show the ATO was investigating 5,974 cases of "inflated employees" as at September. (29 January 2021) <https://www.abc.net.au/news/2021-01-29/ato-probes-jobkeeper-cash-for-prisoners,-dead-and-other-fraud/13096864>

Human factor dominates latest data breach statistics

Data breaches attributed to human error continue to increase according to the Office of the Australian Information Commissioner's (OAIC) latest Notifiable Data Breaches Report. (28 January 2021) <https://www.oaic.gov.au/updates/news-and-media/human-factor-dominates-latest-data-breach-statistics/>

New CSIRO tool to boost data security

The Commonwealth Scientific and Industrial Research Organisation (CSIRO) has developed a new data privacy tool to help ensure key datasets can be publicly shared with an extra layer of security. (28 January 2021) <https://www.govtechreview.com.au/content/gov-datacentre/news/data61-nsw-govt-develop-tool-to-boost-safe-data-sharing-1231048971>

Australia takes on Google advertising dominance in latest Big Tech fight

An Australian regulator is considering letting internet users choose what personal data companies like Google share with advertisers, as part of the country's attempts to shatter the dominance of tech titans. The ACCC also proposed limiting the internet giants' ability to access users' online histories to cross-sell products. (28 January 2021) <https://www.reuters.com/article/us-australia-media-regulator-idUSKBN29X02X>

Commission reports on PS productivity

The Productivity Commission has begun the release of its latest report on public services, providing a report card on the equity, effectiveness and efficiency of Government services across Australia. (26 January 2021) <https://www.pc.gov.au/research/ongoing/report-on-government-services>

Law Council calls on government to Raise the Age

"Last night's call by 31 countries meeting at the United Nations Universal Periodic Review that Australia raise the minimum age of criminal responsibility, is a stark reminder that Australia is falling behind the rest of the world in dealing with juvenile offenders. (21 January 2021) <https://www.lawcouncil.asn.au/media/media-statements/law-council-calls-on-government-to-raise-the-age>

Privacy Commissioner calls for law changes

The Australian Information Commissioner is calling for changes to be made to Australia's privacy laws to ensure privacy protections are consistent with the nation's values. Ms Falk said the submission also recommended reforms to ensure it could take proportionate regulatory action through broadening the jurisdiction of the courts to hear privacy matters. (18 January 2021) <https://www.oaic.gov.au/assets/engage-with-us/submissions/Privacy-Act-Review-Issues-Paper-submission.pdf>

Victorian prisoners get unfair sentence reductions as a result of COVID-19 restrictions, Opposition says

Some prisoners in Victorian jails have had almost a month shaved off their sentences due to the restrictions imposed during the coronavirus pandemic, giving them an effective "get out of jail free card", the State Opposition says. (31 January 2021) <https://www.abc.net.au/news/2021-01-31/get-out-of-jail-free-cards-for-victorian-prisoners-locked-down-/13106620>

Malka Leifer returns to Victoria to face child sexual abuse charges after years-long extradition process

Former Melbourne principal Malka Leifer has returned to Victoria to face charges of child sexual abuse, nearly 13 years after leaving the country and six years after an extradition request was first lodged. (27 January 2021) <https://www.abc.net.au/news/2021-01-27/malka-leifer-back-in-victoria-child-sex-abuse-charges/13091948>

Australian Senate endorses News Media Bargaining Code

Latest approval takes bargaining code between news media companies and Google and Facebook a step closer to law. Australia's controversial and internationally debated News

Media Bargaining Code is a step closer to being enacted into legislation following the Senate's decision to pass the Media and Digital Platforms Mandatory Bargaining Code Bill 2020. (12 February 2021) <https://www.cmo.com.au/article/686261/australian-senate-endorses-news-media-bargaining-code/>

Energy suppliers to face tougher laws

Ms Savage said the new and stronger penalties were introduced provide greater incentives for businesses to comply with laws designed to protect Australian electricity and gas consumers. The provides a significant scaling up of the penalties available to the courts and the AER. (08 February 2021) <https://www.aer.gov.au/news-release/stronger-penalties-demand-energy-businesses-prioritise-compliance-with-the-law>

Changes in culture of OMCGs

The AIC has released two papers revealing the changing culture within outlaw motorcycle gangs (OMCG). Police frequently see the damaging impact outlaw motorcycle gangs have on individuals, their families, and the community, many of who regret their decision to join a gang and now live with the consequences of their decisions. (04 February 2021) <https://www.aic.gov.au/media-centre/news/changes-culture-omcgs>

New Court Dog "Kiki" To Support Children Giving Evidence

Attorney-General Jaclyn Symes today welcomed Kiki as the newest member of the Court Dog Program – a project delivered by the Office of Public Prosecutions (OPP) and the Child Witness Service in the Department of Justice and Community Safety. (08 February 2021) <https://www.premier.vic.gov.au/new-court-dog-kiki-support-children-giving-evidence>

New Fund Supports LGBTIQ+ Sector In Covid-19 Recovery

The Andrews Labor Government is giving businesses and organisations that cater to Victoria's LGBTIQ+ communities a funding boost to help them recover from the impacts of the coronavirus pandemic (09 February 2021) <https://www.premier.vic.gov.au/new-fund-supports-lgbtqi-sector-covid-19-recovery>

'Disappointing' progress on Victorian farm trespass inquiry recommendations

Victorian farmers have accused the government of being slow to adopt measures to keep activists off farms. (05 February 2021) <https://www.abc.net.au/news/2021-02-05/animal-rights-activists-farm-trespass-inquiry-victoria/13120456>

Long overdue laws to decriminalise public drunkenness before Victorian Parliament

Today, reforms to decriminalise public drunkenness will be debated in the Victorian Parliament. Victoria is one of only two states in Australia yet to act on the recommendation of the Royal Commission. (02 February 2021) <https://www.hrlc.org.au/news/2021/02/02/long-overdue-laws-to-decriminalise-public-drunkenness-before-vic-parliament>

IN PRACTICE AND COURTS

[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.

[Supreme Court of Victoria](#)

Advice on the use of face masks in Supreme Court buildings - 18 January 2021 - Face masks are not required to be worn in SCV buildings, however it is strongly recommended you wear one where you cannot keep 1.5 metres distance from others.

[Inquiry into the Use of Cannabis in Victoria - Have your say](#)

The reporting date for this inquiry has been extended to 1 June 2021. Once the report is tabled in Parliament, an electronic copy will be available for download from the Report page.

[Inquiry into Management of Child Sex Offender Information - Have your say](#)

The reporting date for this inquiry has been extended to 30 August 2021. Once the report is tabled in Parliament, an electronic copy will be available for download from the Report page.

[County Court of Victoria](#)

The Court's sitting dates for 2020–2021 are available here. Monthly civil list - Available in January 2021. Civil trials resume 18 January 2021.

[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. In the meantime, if you have any questions, view the Frequently Asked Questions here.

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

See the schedule here for the COVID-19 Inquiry and 2020–21 Budget Estimates Inquiry hearings. Following further public hearings, the committee will present another report to the Parliament by 29 January 2021.

PUBLISHED – ARTICLES, PAPERS, REPORTS

[Investigation into the detention and treatment of public housing residents arising from a COVID-19 'hard lockdown' in July 2020](#)

The timing of the lockdown of the North Melbourne and Flemington public housing towers on 4 July 2020 was not based on direct health advice and violated Victorian human rights laws, this investigation by the Victorian Ombudsman has found.

[2021 State of reconciliation in Australia report](#)

This report assesses the current status of reconciliation and outlines some practical actions that need to be taken in order to continue to progress the reconciliation process.

CASES

[Gerner v Victoria \[2020\] HCA 48](#)

Constitutional law (Cth) – Implications from Constitution – Where directions made under s 200(1)(b) and (d) of Public Health and Wellbeing Act 2008 (Vic) restricted movement of persons within Victoria – Where plaintiffs sought declarations that directions and s 200(1)(b) and (d) of Public Health and Wellbeing Act were invalid as an infringement of a freedom to move wherever one wishes for whatever reason ("freedom of movement") said to be implicit in Constitution – Where defendant demurred on ground that Constitution did not imply freedom of movement – Whether freedom of movement implicit in federal structure of Constitution – Whether freedom of movement protected by implied freedom of political communication – Whether freedom of movement implicit in s 92 of Constitution.

[She v RMIT University & Anor \[2021\] VSC 2](#)

ADMINISTRATIVE LAW – Judicial review – Magistrates' Court of Victoria decision to strike out plaintiff's statement of claim – Procedural fairness – Practical content of fairness – Whether Magistrate gave self-represented litigant a reasonable opportunity to respond to the first defendant's application to strike out – Failure to assist self-represented litigant – Whether error in Magistrate's failure to grant leave to file another statement of claim – Magistrates' Court General Civil Procedure Rules 2010 rr 23.01, 23.02, 23.04; Roberts v Harkness (2018) 57 VR 334 applied.

HUMAN RIGHTS – Right to fair hearing – Self-represented litigants - Charter of Human Rights and Responsibilities Act 2006 (Vic) s 24; Tomasevic v Travaglini & Anor [2007] VSC 337; (2007) 17 VR 100 and Matsoukatidou v Yarra Ranges Council [2017] VSC 61; (2017) 51 VR 624 considered.

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

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.

This Alert is produced by Thomson Geer. It is intended to provide general information in summary form on legal topics, current at the time of publication. The contents do not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in particular matters. Liability limited by a scheme approved under Professional Standards Legislation.