



PUBLIC SECTOR NEWSLETTER - VICTORIA

In this edition of the Public Sector Newsletter, an Independent Review is to be led by Sex Discrimination Commissioner Ms Kate Jenkins to ensure best practice in the prevention and handling of bullying, sexual harassment and sexual assault in all Commonwealth Parliamentary workplaces.

In other significant news, the Royal Commission into Aged Care, Quality and Safety has released its final report making some 148 recommendations.

In the Courts, the use of statements made in Parliament as evidence and parliamentary privilege have been considered in the decision of *Leyonhjelm v Hanson-Young* [2021] FCAFC 22.

Finally, the Victorian Government has introduced the *Workplace Injury Rehabilitation and Compensation Amendment (Arbitration) Bill 2021* proposing to allow the Accident Compensation Conciliation Service to hear and make binding determinations in workers compensation disputes not resolved by conciliation.

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

IN THE MEDIA

Lawyers join push for Christian Porter inquiry as accuser's ex-boyfriend offers to testify

The pressure to investigate against Christian Porter's fitness to be Australia's top law officer is growing. An independent inquiry, that would be consistent with past practices and it would provide an opportunity for Porter to go through a fair process. (13 March 2021) <https://thenewdaily.com.au/news/politics/australian-politics/2021/03/13/christian-porter-rape-claims/>

Law Council questions need for broad surveillance powers

If passed, the three new warrant-based powers proposed in the Surveillance Legislation Amendment (Identity and Disrupt) Bill 2020, will fundamentally alter Australia's

criminal intelligence framework, and potentially reach into and disrupt the lives of innocent bystanders. (11 March 2021) <https://www.lawcouncil.asn.au/media/media-statements/law-council-questions-need-for-broad-surveillance-powers>

Telco First pays \$79,800 penalty for spam text messages

Marketing company Telco First (trading as Compare With Us) has paid a \$79,800 infringement notice after an Australian Communications and Media Authority (ACMA) investigation found it sent more than 65,000 illegal spam text messages. (10 March 2021) <https://www.acma.gov.au/articles/2021-03/telco-first-pays-79800-penalty-spam-text-messages>

Law Council supporting RRR communities

The launch of the Law Council of Australia's Rural, Regional and Remote (RRR) National Strategic Plan 2021-2023, heralds the profession's reinvigorated commitment to RRR lawyers. "Access to justice is undermined when there is a critical shortage of suitable legal representation in particular regions. (09 March 2021) <https://www.lawcouncil.asn.au/media/media-releases/law-council-supporting-rrr-communities>

Parliament stands for behaviour review

The aim of the Independent Review would be to ensure that all Commonwealth Parliamentary workplaces were safe and respectful, and that the national Parliament reflected best practice in the prevention and handling of bullying, sexual harassment and sexual assault. (08 March 2021) <https://humanrights.gov.au/CPWReview>

Statement on allegations against the Australian Attorney-General

The Human Rights Law Centre believes there should be a proper, fair, prompt and independent inquiry into the allegations against the Australian Attorney-General Christian Porter. (05 March 2021) <https://www.hrlc.org.au/news/2021/3/5/statement-on-allegations-against-the-australian-attorney-general>

Independent review into parliamentary workplace culture a positive says Law Council

The appointment of Sex Discrimination Commissioner Ms Kate Jenkins to oversee the inquiry is to be applauded. All employers have a duty to eliminate sex discrimination, sexual harassment and victimisation. Sexual harassment is entirely unacceptable wherever it occurs. (05 March 2021) <https://www.lawcouncil.asn.au/media/media-statements/independent-review-into-parliamentary-workplace-culture-a-positive-says-law-council>

Aged care regulator comes of age

The Aged Care Quality and Safety Commission is to be strengthened with increased funding, extra staff members and a wide transformation program following the sweeping findings of a Royal Commission into Aged Care Quality and Safety. The final report from the Royal Commission makes 148 recommendations. (04 March 2021) <https://agedcare.royalcommission.gov.au/publications/final-report>

COVID complaints keep Ombudsman busy

The Commonwealth Ombudsman said his Office received 3,706 complaints during the period, an 8.3 per cent decrease on the previous year's total. He said concerns about benefits, membership and service were the major cause of complaints. (04 March 2021) <https://www.ombudsman.gov.au/publications/reports/state-of-the-health-funds/all-reports/docs/2020-state-of-the-health-funds-report>

LCA: Government must act on Royal Commission recommendations

The findings and recommendations outlined in the final report of the Royal Commission into Aged Care Quality and Safety released recently, indicate there is much to be done to address systemic issues within the aged care sector says the LCA. The rights of older people need to be embedded in the planning, provision and monitoring of aged care services. (01 March 2021) <https://www.lawcouncil.asn.au/media/media-releases/government-must-act-on-royal-commission-recommendations>

Former Victoria Police Superintendent sentenced following IBAC investigation

Following an investigation by the Independent Broad-based Anti-corruption Commission (IBAC), former Victoria Police Superintendent Paul Rosenblum was sentenced yesterday for unauthorised access of Victoria Police information. (12 March 2021) <https://www.ibac.vic.gov.au/media-releases/article/former-victoria-police-superintendent-sentenced-following-ibac-investigation>

Anti-vilification laws should be strengthened

Reforms recommended by Parliament's Legal and Social Issues Committee to expand anti-vilification protections have been welcomed by the Law Institute of Victoria. (04 March 2021) <https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/March-2021/Anti-vilification-laws-should-be-strengthened>

Drug and alcohol counsellor from St Paul's Prevention Rehabilitation ordered to pay half a million dollars of misappropriated funds

The County Court of Victoria has ordered Anthony Dieni to pay \$448,805.76 as part of a Pecuniary Penalty Order relating to a charge of false accounting. Mr Dieni misappropriated the government funds while employed as a drug and alcohol counsellor and coordinator at St Paul's Prevention Rehabilitation, a Strathmore-based charity. (04 March 2021) <https://www.ibac.vic.gov.au/media-releases/article/drug-and-alcohol-counsellor-from-st-paul-s-prevention-rehabilitation-ordered-to-pay-half-a-million-dollars-of-misappropriated-funds>

Two Victoria Police officers have guilty verdicts and penalties re-imposed following appeal in County Court

Two Victoria Police officers have had their guilty verdicts and penalties re-imposed by Her Honour Judge Quin in the County Court of Victoria. (03 March 2021) <https://www.ibac.vic.gov.au/media-releases/article/two-victoria-police-officers-have-guilty-verdicts-and-penalties-re-imposed-following-appeal-in-county-court>

Faster and Fairer Outcomes for Injured Workers

The Andrews Labor Government's Workplace Injury Rehabilitation and Compensation Amendment (Arbitration) Bill 2021 allows the Accident Compensation Conciliation Service (ACCS) to hear and make binding determinations on disputes not resolved by conciliation. (02 March 2021) <https://www.premier.vic.gov.au/faster-and-fairer-outcomes-injured-workers>

IN PRACTICE AND COURTS

[AAT updates special measures practice directions](#)

The AAT has updated the special measures practice directions put in place last year to facilitate operations during COVID-19. Following changed circumstances and government advice, the AAT will now provide some in-person services, and the practice directions have been updated to reflect this.

[AHRC: Independent Review into Commonwealth Parliamentary Workplaces](#)

The Australian Human Rights Commission is conducting an Independent Review (Review) into the workplaces of Commonwealth Parliamentarians and their staff. The Commission will not be investigating nor making findings about individual allegations of bullying, sexual harassment or sexual assault as part of the Review. (05 March 2021)

[Victorian Sentencing Manual updated](#)

The Victorian Sentencing Manual has been updated to include a new Chapter 26 - Other offences against the person. Offences include: Kidnapping, false imprisonment and child stealing; Blackmail, extortion, and threats; Endangerment offences. The addition of this new chapter completes all specific offence chapters involving serious harms to the person.

Library Bulletin

The Law Library of Victoria produces a fortnightly bulletin that summarises the latest legislation and cases for the Victorian jurisdiction, as well as High Court of Australia cases.

[Law Library Bulletin No 4](#) (fortnight ending 12 March 2021).

[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.

CASES

[Leyonhjelm v Hanson-Young \[2021\] FCAFC 22](#)

CONSTITUTIONAL LAW – whether s 16 Parliamentary Privileges Act 1987 (Cth) or Art 9 Bill of Rights 1688 (UK) precludes court hearing evidence or determining whether particular words were spoken in proceedings in Parliament – where dispute about words said by member in Chamber in course of proceedings in Parliament – whether lawful for court to take evidence of member of Parliament for purpose of deciding whether or what words were spoken in proceedings in Parliament – whether s 16 or Art 9 precludes court determining as a fact whether and what words spoken in proceedings in Parliament

DEFAMATION – qualified privilege – whether statement outside Parliament relating to words spoken in proceedings in Parliament made on occasion of qualified privilege pursuant to s 30 Defamation Act 2005 (NSW) or the implied constitutional freedom of communication on government political matters – whether reasonable for publisher not to check own recollection of words spoken in debate before publishing matter complained of – where publisher politician and not professional journalist or commercial news media publisher

DEFAMATION – malice – whether publisher actuated by malice in publishing matters complained of pursuant to s 30(4) Defamation Act 2005 (NSW) – whether publisher intended to shame political opponent by gratuitous attack going beyond what reasonably necessary to express publisher's views

[Lalios v O'Brien & Anor \[2021\] VSC 105](#)

ADMINISTRATIVE LAW – Judicial Review – Procedural fairness – Plaintiff made workplace complaint against CEO of second defendant – First defendant appointed probity auditor of investigation into plaintiff's complaint – Probity audit report made findings critical of plaintiff –

Application for declaration that report findings breached rules of natural justice and were beyond first defendant's power – Plaintiff previously subject of adverse findings in probity report in prior investigation – Whether plaintiff should have been provided opportunity to respond to adverse findings – Whether plaintiff on notice of potential findings by probity auditor – Plaintiff sufficiently on notice of possible findings – No breach of procedural fairness – Application dismissed – Local Government Act 1989 ss 77, 104, 105, 106, 107, 108, 109, 110.

[Kralcopic Pty Ltd \(admins apptd\) v Minister for Resources \[2021\] VSC](#)

JUDICIAL REVIEW – Mining licences – Application for renewals – Whether licensee likely able to finance proposed works and rehabilitation of land – Whether upon application for licence renewals the Minister's delegate was satisfied that licensee no longer complied with that requirement – Relevant and irrelevant considerations – Whether jurisdictional errors – Whether property left on land to which licence applied had become property of the Crown – Mineral Resources (Sustainable Development) Act 1990, ss 15(2)(d), 31(2)(f), 80, 114.

WORDS AND PHRASES – 'likely to be able to finance', 'may', 'no longer'.

[Ganesh v National Australia Bank \[2021\] VSCA 45](#)

PRACTICE AND PROCEDURE – Appeal – Order discontinuing proceeding – Effect of order to also discontinue counterclaim – Complex procedural history before referral to trial – Counterclaim substantially pleaded within defence but certain documents specifying relief by counterclaim struck out before referral – Whether judge erred by basing decision to grant leave to discontinue on mistaken fact that no counterclaim on foot – Error shown – Appeal upheld – Supreme Court (General Civil Procedure) Rules 2015 rr 10.08, 25.02.

PRACTICE AND PROCEDURE – Costs – Self-represented litigants – Whether judge erred by making no order as to costs on basis that defendants self-represented – Self-represented litigants entitled to costs orders and to recover disbursements – Cachia v Hanes (1994) 179 CLR 403, Bell Lawyers v Pentelov [2019] HCA 29; (2019) 93 ALJR 1007, United Petroleum Australia Pty Ltd v Herbert Smith Freehills [2020] VSCA 15, considered – Supreme Court (General Civil Procedure) Rules 2015 rr 25.05, 63.15.

[Alison Sandy and Department of the Prime Minister and Cabinet \(Freedom of information\) \[2021\] AICmr 7](#)

Freedom of Information – Whether document contains information the disclosure of which would reveal a Cabinet deliberation or decision – Whether document contains deliberative matter prepared for a deliberative process – Whether contrary to public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5), 34(3), 47C

[Yuanda Vic Pty Ltd v Facade Designs International Pty Ltd \[2021\] VSCA 44](#)

BUILDING CONTRACTS – Building and Construction Industry Security of Payment Act 2002 – Payment claim indicating claimed amount –

BUILDING CONTRACTS – Whether claimed amount included items based on alleged fraudulent settlement agreement – Whether claims individually substantiated – Relevance of alleged fraudulent settlement agreement – Whether ‘fraud unravels everything’.

STATUTORY INTERPRETATION – Consequences of non-compliance with statutory requirement not to include ‘excluded amount’ in ‘claimed amount’ – Building and Construction Industry Security of Payment Act 2002 evinces policies of preventing recovery of excluded amounts and encouraging adjudication to resolve disputes – Court role limited to enforcement of statutory liability – Enforcement unavailable where ‘claimed amount’ non-compliant.

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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

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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