



PUBLIC SECTOR NEWSLETTER - VICTORIA

Dominating the media this fortnight is the Commonwealth Government's use of the Biosecurity Act to limit travel of Australian citizens to and from Australia.

In Victorian Government news, a bill has been introduced to ban aggressive and violent parents from entering school grounds. The proposed ban will extend to those parents who engage in threatening or abusive communication through social media and other channels.

In the Courts, jury trials are back with the first criminal jury trial being empaneled since the beginning of the COVID-19 pandemic. The Victorian Supreme Court has recently handed down many judgments concerning administrative law.

Finally, we congratulate Rowena Orr QC on her appointment as the next Victorian Solicitor-General.

We hope you enjoy this edition of our public sector newsletter.

IN THE MEDIA

Australian government ban on overseas travel during pandemic violates rights, Federal Court hears

The Commonwealth government's ban on citizens travelling overseas infringes on the fundamental rights of Australians, the Federal Court has heard. The Australian government has used the Biosecurity Act to prevent citizens from travelling overseas without an exemption. (06 May 2021) <https://www.abc.net.au/news/2021-05-06/australian-government-ban-on-overseas-travel-challenged/100121648>

Victorian government bill would give principals the power to ban abusive parents from school grounds

Schools will have the power to ban aggressive and violent parents from entering school grounds under a Victorian government bill introduced to parliament. The new laws will also target parents who are threatening or

abusive on social media. (04 May 2021) <https://www.abc.net.au/news/2021-05-04/violent-or-abusive-parents-to-be-banned-from-school-grounds/100113758>

Telstra pays \$1.5 million penalty for breaching customer rights

ACMA Chair Nerida O'Loughlin said Telstra's actions had wide-reaching and lengthy impacts on residential and business consumers, as well as the broader telco industry. Australian consumers must have the freedom to change their telco provider to take up services that best suit their needs. (04 May 2021) <https://www.acma.gov.au/articles/2021-05/telstra-pays-15-million-penalty-breaching-customer-rights>

No place for secret trials in Australia

The Human Rights Law Centre has called for new legal safeguards to prevent secret trials following the case of Witness J, an intelligence agent who was prosecuted and jailed in complete secrecy. (04 May 2021) <https://www.hrlc.org.au/news/2021/5/3/no-place-for-secret-trials-in-australia>

IP Australia releases 110 years of data

IP Australia has released the latest edition of its Intellectual Property Government Open Data (IPGOD2021), a publicly available data set that includes over 110 years of information on IP rights applications (03 May 2021) <https://data.gov.au/data/dataset/ipgod2021>

Make privacy a priority this Privacy Awareness Week

Privacy Awareness Week, is an important reminder for organisations and individuals to protect personal information. This year, the Oaic is calling on the Australian community to 'Make privacy a priority' in their professional and personal lives. (03 May 2021) <https://www.oaic.gov.au/updates/news-and-media/make-privacy-a-priority-this-privacy-awareness-week/>

Caution recommended over criminalisation

Appearing at the Parliamentary Joint Committee on Intelligence and Security's (PJCIS) public hearing into extremist movements and radicalisation in Australia, the Law Council of Australia urged the committee to be cautious in scrutinising the case for extending criminal laws to deal with the evolving threat presented by extremist groups. (30 April 2021) <https://www.lawcouncil.asn.au/media/media-releases/caution-recommended-over-criminalisation>

Strengthening the Victorian Criminal Justice System

The Government will strengthen Victoria's criminal justice system with a Special Investigator, Implementation Monitor and significant investment in the Independent Broad-based Anti-Corruption Commission (IBAC) and the courts. (07 May 2021) <https://www.premier.vic.gov.au/strengthening-victorian-criminal-justice-system>

Auditor-general slams rollout of Victorian infringements system while highlighting pressures on public servants

The Victorian Auditor-General's Office has released a scathing report on the state justice department's new infringements system, highlighting failures in governance and risk management. VAGO's report has encouraged Victorian Public Service leaders to facilitate conversations about public servants' role in providing advice to the government. (05 May 2021). <https://www.themandarin.com.au/155793-auditor-general-slams-rollout-of-victorian-infringements-system-while-highlighting-priorities-on-public-servants/>

New Victorian Solicitor-General Appointed

The Victorian Government has announced the appointment of Rowena Orr QC as the next Solicitor-General, the state's most senior legal adviser and advocate. Ms Orr will commence on 10 May. (04 May 2021) <https://www.premier.vic.gov.au/new-victorian-solicitor-general-appointed>

New Laws to Make Schools Safer for Everyone

The Government is giving Victorian schools the power to ban aggressive and violent parents from entering school grounds, to protect students and staff. The new laws will also allow schools to ban parents that engage in threatening or abusive communication through social media and other channels. (04 May 2021) <https://www.premier.vic.gov.au/new-laws-make-schools-safer-everyone>

IBAC investigation finds former CEO of regional health service misused position

An investigation by IBAC has found a former CEO of a Victorian regional health service misused their position by exploiting weaknesses in the agency's systems and controls for their own financial benefit and the benefit of some close associates. (30 April 2021) <https://www.ibac.vic.gov.au/media-releases/article/ibac-investigation-finds-former-ceo-of-regional-health-service-misused-position>

LIV welcomes Courts' announcement to undertake training on family violence cases

Chair of the Executive of the Family Law Section of the Law Institute of Victoria (LIV) Nicky Neville-Jones welcomes the recent announcement from the Federal Circuit and Family Courts in response to the increasing level of family violence, that staff will be undertaking further training to better address the issue. (27 April 2021) <https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/April-2021/LIV-welcomes-Courts-announcement-to-undertake-training>

IN PRACTICE AND COURTS

[Commonwealth and Victorian Courts' COVID updates - Supreme Court of Victoria and County Court of Victoria](#)

On 4 May 2021 the Supreme and County Courts issued a joint update on regional criminal jury trials. A County Court jury will be empanelled in Geelong this week, marking the first criminal trial in regional Victoria since the suspension of criminal jury trials as a result of the COVID-19 pandemic. This will be followed mid-May by the first Supreme Court criminal jury trial in Geelong. Other dates and locations will follow.

[Statutory declarations](#)

Recent changes to the law enable statutory declarations to be made using electronic signatures and for the witness to be 'present' by audio visual link. (28 April 2021)

[Commonwealth and Victorian Courts' COVID updates - Supreme Court of Victoria](#)

The Chief Justice has issued a joint jurisdictional statement on behalf of the Victorian courts and the Victorian Civil and Administrative Tribunal (VCAT). (22 April 2021)

[Inquiry into Victoria's Criminal Justice System - Have your say](#)

The Legislative Council Legal and Social Issues Committee is accepting submissions to its Inquiry into Victoria's criminal justice system. Submissions close on 1 September 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.

PUBLISHED - ARTICLES, PAPERS, REPORTS[Indigenous Business Australia's Business Support and Investment Activities](#)

The objective of this audit was to assess the effectiveness and efficiency of Indigenous Business Australia's (IBA's) management of its business support and investment activities.

CASES[Dring v Telstra Corporation Ltd \[2021\] FCAFC 50](#)

COMPENSATION – claimant falls on wet floor – whether injury arising in course of employment – injury suffered during period of stay at hotel – place at which injury occurred – injury not connected to employment

ADMINISTRATIVE LAW – appeal from Administrative Appeals Tribunal – question of law

Administrative Appeals Tribunal Act 1975 (Cth) s 44

Safety, Rehabilitation and Compensation Act 1988 (Cth) ss 5A, 14

Workers Compensation Act 1987 (NSW) s 4

[Wojcik v General Carrying Pty Ltd \[2021\] VSC 233](#)

ADMINISTRATIVE LAW – Application for extension of time under r 56.02(3) of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) – Whether special circumstances exist – Garrett v Legal Services Commissioner [2015] VSC 465, referred to – Application by a worker to quash the opinion of a medical panel concerning the medical condition of the worker – Whether the panel identified an evidentiary basis upon which it could be positively satisfied of its conclusion – Alcoa Holdings Ltd v Lowthian [2011] VSC 245, referred to – Wilson v Liquorland Australia Pty Ltd [2014] VSC 545 and Bazouni v State of Victoria [2019] VSC 407, distinguished – Leemark Fire Protection Pty Ltd v Malios [2014] VSC 654, applied – Whether the panel failed to take into account relevant considerations – Whether the panel took account of irrelevant considerations – Adequacy of reasons – Whether the panel failed to disclose a path of reasoning to its conclusion – Dundar v Bas [2019] VSCA 315, referred to – Wingfoot Australia Partners Pty Ltd & Anor v Kocak & Ors [2013] HCA 43; (2013) 252 CLR 480, referred to – Accident Compensation Act 1985 (Vic) ss 91(7)(c) and 98C – Application for judicial review dismissed.

[Gilhooley v Health Complaints Commissioner \[2021\] VSC 232](#)

JUDICIAL REVIEW – Decision of Health Complaints Commissioner to investigate letter of complaint about general health service provider – Interaction between complainant and myotherapist on social media – Whether Commissioner has power to investigate – Whether letter a 'complaint' as defined in the Health Complaints Act 2016 (Vic) – Construction of 'in providing or failing to provide a general health service' in s 5 –

Construction of 'health education services' in definition of 'health service' – Health Complaints Act 2016 (Vic), ss 3, 4, 5, 45.

[Latchford v Gibbons & Ors \[2021\] VSC 229](#)

ADMINISTRATIVE LAW – Judicial Review – Medical Panel - Referral of question to medical panel – Wrongs Act 1958, Part VBA - Jurisdictional error – Error arising from irregularities and deficiencies in the process of referral to panel – Failure to consider all relevant injuries identified by the plaintiff - Whether panel properly applied American Medical Association Guides to the Evaluation of Permanent Impairment – Opinion of panel not attended by error - Proceeding dismissed - Chua v Newman-Morris [2009] VSC 582 - Melbourne Health v Lloyd [2009] VSC 370 – Saddington v Kotzman [2013] VSC 196 – HJ Heinz Co Australia Ltd v Kotzman [2009] VSC 311.

[Gianacopoulos v DJJ Promotions P/L \[2021\] VSC 203](#)

ADMINISTRATIVE LAW – Application for leave to appeal on questions of law from VCAT order – Major domestic building contract to build two units – Builder purported to terminate contract at completion of frame stage – VCAT found owners breached contract and awarded builder \$227,738 – Whether owners in breach of contract – Whether owners failed to provide reasonable evidence to builder of financial capacity to pay contract price – Meaning of price "as may be adjusted and payable under this [contract]" – Whether increased contract price found by VCAT was relevantly "adjusted and payable" – Whether increased price may be based on estimated prices of prime cost items sourced from information other than that provided by owners pursuant to request by builder – Whether any evidence of increased cost of particular prime cost item at relevant time – Whether owners failed to provide necessary directions to builder regarding prime cost items – Whether owners remedied alleged breach – Where VCAT erred in finding owners provided prime cost information to another builder at relevant time – Whether factual error rendered nugatory in light of other evidence that owners in contact with another builder – Whether special condition of contract qualified requirement of owners to furnish builder with prime cost item information – Whether partial provision of prime cost information and promise of more amounted to provision of "necessary" information or sufficiently remedied alleged breach – Whether unreasonable for builder to terminate contract – Whether builder's claim for frame stage payment warranted – Whether builder's claim for concreting warranted – Whether builder in substantial breach of contract – Application granted – Appeal allowed – Order and impugned findings set aside – Declarations made as to appropriate findings – Further submissions invited on whether to remit to VCAT for rehearing or make final orders in this Court – Domestic Building Contracts Act 1995 (Vic), ss 4(a), 8(c), 21 & 40(2); Victorian Civil and Administrative Tribunal Act 1998 (Vic), s 148.

[ARF \(a pseudonym\) v Director of Housing \[2021\] VSC 199](#)

ADMINISTRATIVE LAW – Application under s 8(4) of the Administrative Law Act 1978 (Vic) (ALA) requiring the defendant to furnish a statement of reasons of its decision to seek, by application to the Victorian Civil and Administrative Tribunal (Tribunal), orders terminating the plaintiff's tenancy under s 549(1) of the Residential Tenancies Act 1997 (Vic) (RTA) and a possession order under s 549(4) of the RTA in respect of the rented premises occupied by the plaintiff – Whether decision of the Director of Housing to make the application to the Tribunal under the provisions of the RTA introduced by the COVID-19 Omnibus (Emergency Measures) Act 2020 (Vic) is a decision for the purposes of s 2 of the ALA – Whether the Director is a tribunal under the ALA – The decision to apply to the Tribunal in this case was not a decision under the ALA – The Director was not a tribunal under the ALA – R v Collins; Ex parte ACTU-Solo Enterprises Pty Ltd (1976) 8 ALR 691; AB v Lewis [1980] VicRp 18; [1980] VR 151; Nicol v Attorney-General for the State of Victoria [1982] VicRp 33; [1982] VR 353; State Electricity Commission v Commissioner for Equal Opportunity [1992] VicRp 6; [1992] 1 VR 79; Ainsworth v Criminal Justice Commission [1992] HCA 10; (1992) 175 CLR 564; Masters v McCubbery [1995] VICSC 209; [1996] 1 VR 635; Hot Holdings Pty Ltd v Creasy [1996] HCA 44; (1996) 185 CLR 149; Byrne v Marles [2008] VSCA 78; (2008) 19 VR 612; Burgess & Anor v Director of Housing & Anor [2014] VSC 648 referred

[Jender Pty Ltd v Flood Emergency Services Group Pty Ltd \[2021\] VSC 212](#)

JUDICIAL REVIEW – Application pursuant to Order 56 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) to quash a magistrate's decision to dismiss an application for rehearing and to set aside default judgment – Whether there was an error on the face of the record – Whether the decision was unreasonable – Minister for Immigration and Citizenship v Li [2014] FCAFC 1; (2013) 249 CLR 332 referred to and applied; Minister for Immigration and Border Protection v Stretton [2016] FCAFC 11; (2016) 237 FCR 1 referred to; Gunns Finance Pty Ltd (R & M Appntd) (In Liq) v Storey [2014] VSC 260 referred to – Whether the magistrate failed to provide adequate reasons – Makeham v Sheppard [2020] VSCA 242 referred to – Application for judicial review granted.

[Marshall v Emergency Services Superannuation Board & Anor \[2021\] VSC 225](#)

ADMINISTRATIVE LAW – Application for leave to appeal from decision of Victorian Civil and Administrative Tribunal ('VCAT') relating to public sector superannuation – Application argued in Court without reference to any question about VCAT's jurisdiction – Court later perceiving reason to doubt VCAT's jurisdiction – Matter to be relisted for further argument – Emergency Services Superannuation Act 1986 (Vic) s 23 – Victorian Civil and Administrative Tribunal Act (1998) (Vic) ss 45, 46, 148.

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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.

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- (b) Emailing legalhelpdesk@tglaw.com.au

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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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