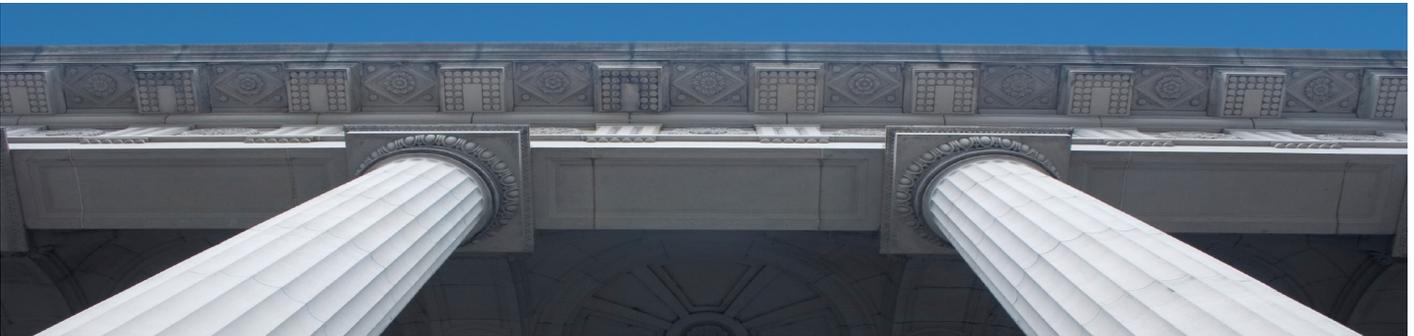


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## PUBLIC SECTOR NEWSLETTER - VICTORIA

The past fortnight saw the handing down of the State Budget, with significant investments in the Victorian justice system being welcomed by all. One such investment was the appointment of Judicial Registrars to the Children’s Court and the appointment of Justices Richard Attiwell QC and Stephen O’Meara QC to the Supreme Court. Congratulations to all new appointees.

A new fine has been implemented for businesses flouting the Chief Health Officer’s directives in relation to QR codes, which serves as a timely reminder to us all to stay Covid-Safe.

With apologies now such a big part of litigation, particularly personal injuries litigation, the Commonwealth Ombudsman has released a fact sheet on how to deliver an effective apology. Virtual trials are also now a big part of litigation, and in this edition we have included a link to a Bar News story on how to assess credibility in a virtual courtroom.

In the Courts and Tribunals, this fortnight has seen the delivery of numerous judgments in response to applications for judicial review and in relation to *Freedom of Information Act 1982* determinations.

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

### IN THE MEDIA

#### Putting The Safety Of Victorian Women And Children First

Victoria’s nation-leading efforts to end family violence and build a more equal future for women will continue, with new investments from the Government to help Victorians from diverse backgrounds and more practical support for victim survivors. (20 May 2021) <https://www.premier.vic.gov.au/putting-safety-victorian-women-and-children-first>

#### Fairer, More Responsive Justice For All Victorians

Reducing court delays, more support for victims and

restoring community confidence in the criminal justice system lead the Government’s investments to build a safer and fairer Victoria. The Victorian 2021/22 Budget will invest more than \$700 million to strengthen our justice, legal and court systems. (20 May 2021) <https://www.premier.vic.gov.au/fairer-more-responsive-justice-all-victorians>

#### New Court Appointments Bring Wealth Of Expertise

The state’s court system has been further strengthened with the Government appointing the first-ever judicial registrars to the Children’s Court, as well as two new judges of the Supreme Court. (18 May 2021) <https://www.premier.vic.gov.au/new-court-appointments-bring-wealth-expertise>

#### Supporting Our Courts To Drive Down COVID-19 Backlogs

The Government is providing a funding boost for Victoria’s legal system to help drive down COVID-19 court backlogs and bolster resources in courts across the state. (13 May 2021) <https://www.premier.vic.gov.au/supporting-our-courts-drive-down-covid-19-backlogs>

#### Legal Aid Vic: New investment to improve access to justice

The Government has announced \$210 million in funding, including investment to expand online court services, successful case management programs and additional court staff and systems to help meet demand across Victoria’s courts and tribunals caused by the COVID-19 backlog. (13 May 2021) <https://www.legalaid.vic.gov.au/about-us/news/new-investment-to-improve-access-to-justice>

#### New Fine For Businesses Flouting QR Code Requirements

Victorian businesses found intentionally flouting the Chief Health Officer’s rules – such as the requirement to use QR Code systems – will be slapped with a new \$1,652 on-the-spot fine. (13 May 2021) <https://www.premier.vic.gov.au/new-fine-businesses-flouting-qr-code-requirements>

## IN PRACTICE AND COURTS

### [VIC Bar: 2021-2022 Victorian Budget - Measures announced in respect of Victorian Courts and Tribunals](#)

The Treasurer of the State of Victoria announced the 2021-22 Budget recently. It contains funding for several initiatives of importance to the Victorian Bar, as Victorian barristers, Courts, and Tribunals continue to grapple with the prior and ongoing effects of the COVID-19 pandemic. (21 May 2021)

### [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, 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.

## PUBLISHED - ARTICLES, PAPERS, REPORTS

### [The factsheet – How to deliver an effective apology](#)

The Ombudsman's Office advised entities to avoid apologies that were inaccurate; misguided; generalised; avoidant; conditional; or partial.

### [Assessing credibility in the virtual court room](#)

This growing body of research shows that while most people think they are good at detecting deceit they are not. It also raises a question about how well we perform the task of determining whether someone is lying in a profession that assumes that seeing and hearing a witness in person is crucial to fair judicial decision making.

### [Investigation into how local councils respond to ratepayers in financial hardship](#)

In recent years, the Victorian Ombudsman has heard concerns from ratepayers, financial counsellors and community lawyers about the way local councils treat people who cannot afford their council rates. This investigation focused on council hardship relief for homeowners.

## CASES

### [Holt v Director of Housing \[2021\] VSC 270](#)

JUDICIAL REVIEW AND APPEALS – Application to dismiss an application for an extension of time within which to apply for leave to appeal, and for leave to appeal, from the Victorian Civil and Administrative Tribunal under s 148 of the Victorian Civil and Administrative Tribunal Act 1998 (Vic) – Whether question of law identified – Whether appellant does not, or would not, have an arguable case on appeal or to refuse leave would impose no substantial injustice – Whether appeal or application is frivolous, vexatious or otherwise an abuse of the process of the Court – Application to dismiss granted.

### [Altona Properties Pty Ltd v Environment Protection Authority \[2021\] VSC 262](#)

JUDICIAL REVIEW – Consent orders sought – Procedural fairness – Decision of EPA to refuse to determine that clean-up of polluted groundwater to the extent practicable had been achieved at the plaintiff's site – Defendant taking into account information material to its decision not brought to the plaintiff's attention – Plaintiff not given an opportunity to respond to the information – Decision quashed – Environment Protection Act 1970.

### [Auslong v Morey \[2021\] VSC 250](#)

ADMINISTRATIVE LAW – Applications for leave to appeal on questions of law from VCAT orders of separate members – Joint venture agreement ("JVA") to develop land co-owned by applicant company and respondent individual – First member refused application to stay or strike out (and refer to County Court) respondent's proceeding seeking order for sale or division of land – Whether failure to give sufficient weight to existence of applicant's extant County Court proceeding raising same issues and seeking specific performance, which relief VCAT lacked power to grant – Second (senior) member ordered sale of land and made other facilitative orders – Whether failure to give sufficient weight to contractual rights in JVA inconsistent with orders – Whether grounds truly questions of law or just complaints about weight given to relevant matters – Grounds treated as if were complaints that impugned orders not open – No real prospects of success on appeal – One extension of time granted; other refused – One application for leave to appeal refused; other granted but appeal dismissed – Property Law Act 1958 (Vic), Part IV; Partnership Act 1958 (Vic), s 6; Victorian Civil and Administrative Tribunal Act 1998 (Vic), ss 77 & 148.

### [Bailey v Victoria Police \(Review and Regulation\) \[2021\] VCAT 495](#)

Review and Regulation List – Freedom of Information Act 1982 (Vic), ss 33(1), 35(1)(a) – Freedom of information request relating to complaints made by third parties to applicant's employer, Victoria Police – Whether exemptions for personal affairs information or documents provided in confidence apply to the notes and videos taken and statements made by the complainants – Relevance of applicant being shown the videos as part of the investigation of the complaints.

### [Davis v Department of Transport \(Review and Regulation\) \[2021\] VCAT 484](#)

Review and Regulation List – Freedom of Information Act 1982; Application for review following deemed decision of Respondent, ss 50(1)(ea) and 53; subsequent decisions releasing some documents in part; whether documents exempt under ss 29, 30, 33, 34(1) and/or 34(4); Exemptions claimed by the Respondent confirmed; Contrary to public interest to release documents in dispute; Respondent's decisions to deny access to disputed documents affirmed. The Respondent's decisions to refuse the release to the Applicant of Documents or part thereof, as identified, is affirmed.

### [Country Fire Authority v Rennie \(Review and Regulation\) \[2021\] VCAT 492](#)

Review and Regulation List – Freedom of Information Act 1982 – whether material fell outside the parameters of request and was irrelevant under section 25; whether material exempt under sections 30 (internal working documents), 33 (document affecting personal privacy) or 35(1)(b) (documents containing material obtained in confidence).

## LEGISLATION

### Acts

#### [Industrial Relations Legislation Amendment Act \(Vic\)](#)

Act Number: 14/2021 Date of assent: 11 May 2021

#### [Workplace Injury Rehabilitation and Compensation Amendment \(Arbitration\) Act 2021 \(Vic\)](#)

Act Number: 15/2021 Date of assent: 11 May 2021

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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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