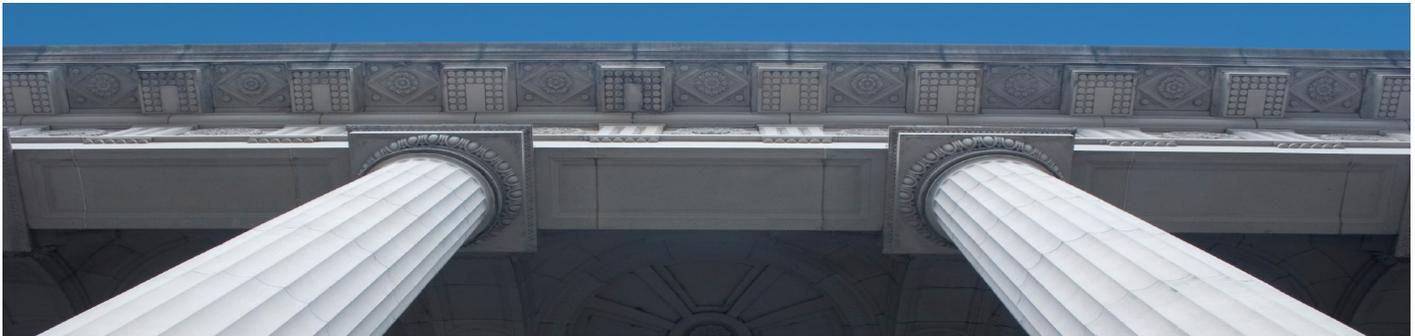


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PUBLIC SECTOR NEWSLETTER - VICTORIA

An extraordinary meeting of Commonwealth, State and Territory Attorneys-General has progressed a number of key reforms focused on the Respect@Work report, the day before the Australian Human Rights Commission released a report offering guidance to corporate brands and investors on preventing and responding to workplace sexual harassment.

Earlier this month, Commonwealth, State and Territory Treasurers decided to prioritise working together towards a common approach to document execution, which the Law Council of Australia fully supported.

Meanwhile, the Victorian Government has commissioned an independent review into the culture of Victoria's prison system, partnered with the City of Melbourne to improve the safety of women and gender diverse people travelling into the city at night, extended the Royal Commission into Crown Melbourne and funded an integrated legal service for international students who experience exploitation and discrimination.

Finally, in the Courts, the Supreme Court has issued a new Practice Note containing COVID-19 information and, together with VCAT, delivered a myriad of decisions in relation to, amongst other things, the Judicial Review and Review of Medical Panel Determinations and decisions made pursuant to the Building, Crimes and Freedom of Information Acts.

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

IN THE MEDIA

New report offers corporate guidance on preventing workplace sexual harassment

The AHRC has released a new report offering guidance to corporate boards and investors on preventing and responding to workplace sexual harassment. (17 June 2021) <https://humanrights.gov.au/about/news/new-report-offers-corporate-guidance-preventing-workplace-sexual-harassment>

Extraordinary Meeting of Attorneys-General

An extraordinary Meeting of Attorneys-General progressed a number of key reforms focused on the Respect@Work report, coercive control and criminal justice response to sexual assault. (16 June 2021) <https://www.attorneygeneral.gov.au/media/media-releases/extraordinary-meeting-attorneys-general-16-june-2021>

Modernising document execution across the Federation

Commonwealth, state and territory Treasurers have made the decision to prioritise working together towards a common approach for document execution. (11 June 2021) <https://www.attorneygeneral.gov.au/media/media-releases/modernising-document-execution-across-federation-11-june-2021>

Governments to consider consistent electronic document execution

The Law Council of Australia is fully supportive of the decision by Commonwealth, state and territory Treasurers to work together towards a common approach for electronic document execution. The Law Council looks forward to working with the government to ensure that fidelity and veracity of the process for the execution of electronic documents is maintained. (11 June 2021). <https://www.lawcouncil.asn.au/media/media-statements/governments-to-consider-consistent-electronic-document-execution>

Improving Women's Safety at Night in the CBD

An innovative partnership in Melbourne to improve safety for women and gender diverse people travelling into the city at night will be supported by the Victorian Government. Minister for Crime Prevention Natalie Hutchins has announced a \$193,000 grant from the Crime Prevention Innovation Fund to support Melbourne City Council's Night Justice project. (18 June 2021) <https://www.premier.vic.gov.au/improving-womens-safety-night-cbd>

Supporting a Safer Corrections System

The Victorian Government has commissioned an independent review into the culture of Victoria's prison system to help drive a safer, more inclusive environment for all staff. (17 June 2021) <https://www.premier.vic.gov.au/supporting-safer-corrections-system>

Royal Commission into Crown Melbourne Extended

The Victorian Government has granted a request from the Royal Commission into the Casino Operator and Licence to allow additional time and funding to complete its important work. (10 June 2021) <https://www.premier.vic.gov.au/royal-commission-crown-melbourne-extended>

Integrated legal service for international students experiencing exploitation or discrimination

Funded by the Department of Jobs, Precincts and Regions and is the amalgamation of two previous programs, ISEALS provides access to justice through free and confidential legal assistance for international students experiencing or at risk of exploitation or discrimination in work and or relating to their accommodation. (07 June 2021) <https://www.legalaid.vic.gov.au/about-us/news/integrated-legal-service-for-international-students-experiencing-exploitation-or-discrimination>

IN PRACTICE AND COURTS

Supreme Court

[Coronavirus information](#)

10 June 2021 - The Supreme Court of Victoria is following State and Commonwealth government advice regarding coronavirus (COVID-19).

CASES

[Devaney v Crown Melbourne Ltd & Ors \[2021\] VSCA 168](#)

ADMINISTRATIVE LAW – Judicial review – Medical panel – Applicant sought judicial review of medical panel opinion with respect to injuries to his neck, shoulders and hips allegedly incurred in the course of employment – Whether judge erred in construction of panel's reasons – Whether panel's conclusions not open on the evidence before it – Whether panel's conclusions irrational or illogical – Whether panel failed to apply correct meaning of 'injury' as defined in the Workplace Injury Rehabilitation and Compensation Act 2013 – Whether panel's reasons failed to adequately disclose reasoning – Leave to appeal refused – *Wingfoot Australia Pty Ltd v Kocak* [2013] HCA 43; (2013) 252 CLR 480 considered – Workplace Injury Rehabilitation and Compensation Act 2013 ss 3, 303.

[Defteros v Google LLC \[2021\] VSCA 167](#)

DEFAMATION – Appeal – Publication – Whether internet search engine provider published search results and webpage reached by clicking on hyperlink within search results once provider on notice of defamatory material – Whether search result incorporated webpage

reached by clicking on hyperlink – Whether search result enticed searcher to click on hyperlink – *Google Inc v Duffy* (2017) 129 SASR 304 considered.

DEFAMATION – Appeal – Imputations – Whether pleaded imputations conveyed by matter complained of – *Trkulja v Google LLC* [2018] HCA 25; (2018) 263 CLR 149 referred to.

DEFAMATION – Appeal – Innocent dissemination – Innocent dissemination at common law – Statutory defence of innocent dissemination – Whether internet search engine provider a secondary publisher of defamatory material – Where internet search engine provider has notice of defamatory material on webpage hyperlinked to search result – Notice given to search engine provider containing untrue assertions – Whether grossly inaccurate notice given by plaintiff sufficient to put internet search engine provider on notice or risk – Defamation Act 2005, s 32.

DEFAMATION – Appeal – Qualified privilege – Common law qualified privilege – Statutory qualified privilege – Whether internet search engine provider had relevant duty or interest to make statement and whether search engine user had corresponding duty or interest to receive statement – Mere curiosity or idle interest not recognised as being a legitimate interest or as giving rise to a legitimate duty – Whether search engine users had an interest or apparent interest in receiving information – Defamation Act 2005, s 30.

DEFAMATION – Appeal – Triviality – Whether circumstances of publication were such that the plaintiff was unlikely to sustain any harm – Defamation Act 2005, s 33.

[Lendlease Engineering Pty Ltd v Owners Corporation No.1 & Ors \[2021\] VSC 338](#)

JUDICIAL REVIEW – Building actions - Building Act 1993 (Vic), s 134 – Limitation of actions period – Commencement date of limitation period – Occupancy permit – Staged development – When limitation period begins when multiple occupancy permits issued – Victorian Civil and Administrative Tribunal Act 1998 (Vic), s 60 – Application for joinder – Whether circumstances permitted joinder after the expiry of the limitation period –

[Daidai Mama Pty Ltd v Wang & Anor \[2021\] VSC 330](#)

JUDICIAL REVIEW – Appeal against a VCAT decision – Contract for the sale of goods – Vendor claimed price of the goods – Vendor failed at VCAT – Vendor sought to raise a new ground on appeal that property passed on inspection and approval of the goods and the price was thus payable – Held that it would not be in the interests of justice to raise the new ground on appeal, as the purchaser was not informed of this ground at the hearing and was denied the opportunity to raise possible defences and counterclaims to the new ground – Appeal dismissed.

[Schneider v Warrnambool City Council \[2021\] VSC 337](#)

CONTRACT – Chief Executive Officer ('CEO') appointed pursuant to s 94 Local Government Act 1989 and required to perform prescribed statutory functions

ADMINISTRATIVE LAW – Exercise of statutory power of termination subject to compliance with rules of natural justice – Plaintiff denied natural justice – No notice of reasons for termination – No opportunity to respond to allegations of poor performance – Decision to terminate affected by bias by reason of pre-judgment – Decision to terminate invalid and of no legal effect – Certiorari available to quash purported termination of plaintiff's appointment as CEO – Plaintiff entitled to declaration that termination of his appointment and employment as CEO was made in breach of the rules of natural justice – Plaintiff entitled to resume appointment and employment as CEO forthwith.

[The Queen v The Herald & Weekly Times Pty Ltd \[2021\] VSC 253](#)

CONTEMPT OF COURT – Breach of suppression order contempt – High profile accused faced two trials – Suppression order made to protect accused's right to fair second trial – Suppression order prohibited publication of 'information derived from the trials' – Overseas news media organisations published information identifying accused and details of charges after jury's verdict in first trial – Multiple Australian news media outlets published information derived from the trial and encouraged searches to locate overseas publications identifying accused.

CONTEMPT OF COURT – Penalty – Applicable principles – Where pleas of guilty entered at trial – Where privilege maintained over legal advice – Where content, tone and subject matter of publications conveyed intention to frustrate purpose or efficacy of suppression order – Where respondents consent to costs order in favour of applicant – Where natural persons employed by respondents said to be were impacted by separate charges that were discontinued at trial.

On 22 March 2019, the Director of Public Prosecutions commenced this proceeding, seeking that various media organisations, editors, journalists and television/radio presenters be adjudged guilty of contempt of court. Those charges arose from the following reports published in the media between 12–14 December 2018, following a jury's verdict that Cardinal George Pell ('Pell') was guilty of child sex offences.

[Grooters v Chief Commissioner of Police \[2021\] VSC 329](#)

JUDICIAL REVIEW – Statutory interpretation – Whether s 464ZFAC of the Crimes Act 1958 empowers a senior police officer to authorise the taking of a DNA profile sample – Whether requiring the plaintiff to provide a DNA sample constituted a breach of human rights under the Charter of Human Rights and Responsibilities

– Whether the power to authorise the taking of a DNA sample is discretionary – Right to enjoy human rights without discrimination – Right not to have privacy unlawfully or arbitrarily interfered with – Crimes Act 1958 ss 464ZFAC, 464ZF, 464SE, 464T – Charter of Human Rights and Responsibilities ss 7, 8, 13, 32, 38

[Cargill Australia Ltd v Viterra Malt Pty Ltd \(No 27\) \[2021\] VSC 321](#)

EVIDENCE – Confidentiality – Existing agreed confidentiality regime – Access to confidential documents – Defendants' application for removal of confidentiality order – Principle of open justice – Whether circumstances exist to justify continuation of confidentiality – Confidentiality not pressed for certain documents – Confidentiality not pressed upon offer being made only to use tendered documents for the purposes of the proceeding – Confidentiality regime removed in relation to remaining documents pressed on this application

– Remaining issues not established to be real issues necessary of determination at this time – Co-operative approach to refining issues – Remainder of summons dismissed – Costs ordered to be costs in the proceeding

[Bainbridge v Westside Meats Pty Ltd \[2021\] VSC 320](#)

ADMINISTRATIVE LAW – Judicial review – Opinion of Medical Panel – Where worker suffered subsequent unrelated injury – Whether Panel considered worker's ability to return to work as a settled or established member of the workforce – Whether Panel's findings supported by evidence – Adequacy of Panel's reasons – Application dismissed

[Huang v Frankston City Council \(Review and Regulation\) \[2021\] VCAT 634](#)

Review and Regulation List – Freedom of Information Act 1982 sections 25, 32(1), 33(1) and 35(1)(b) – review of decision made by the Victorian Information Commissioner – applicant seeking review in relation to documents and information including documents and information that were not subject to review by the Commissioner – no jurisdiction to review in relation to those matters – consideration of claims that documents contain information that would reasonably be regarded as irrelevant and claims that documents are exempt – decision of Commissioner affirmed.

[Davis v Suburban Rail Loop Authority \(Review and Regulation\) \[2021\] VCAT 627](#)

Review and Regulation List – requests for access refused under section 25A(1)(a) of the Freedom of Information Act 1982 (Vic) – whether processing the requests would substantially and unreasonably divert the resources of the agency from its other operations.

LEGISLATION

Statutory Rules

No 52 [Magistrates' Court Authentication and Electronic Transmission Rules 2021](#)

(1) These Rules come into operation on 6 July 2021.

No 53 [Victoria Police Amendment Regulations 2021](#)
08/06/2021

No 54 [Victorian Civil and Administrative Tribunal \(Schedule 1 Amendments\) Rules 2021](#)

10/06/2021 - These Rules come into operation on 11 June 2021.

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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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