



## PUBLIC SECTOR NEWSLETTER - VICTORIA

IBAC has concluded its investigation into Victoria Police's apprehension of a mentally ill person in Epping in September 2020, with the findings drawing media criticism from one Plaintiff lawyer who specialises in Police Tort claims. Meanwhile, the Government has appointed two new Deputy Commissioners to IBAC.

A reminder to all Briefing Entities that have adopted the Law Council's Equitable Briefing Policy, annual reports are due by 30 September 2021.

The Supreme Court has issued Practice Notes for the Employment and Industrial List and in relation to Transcript in Civil Proceedings, which is becoming increasingly difficult to obtain.

There have been calls for submissions in relation to the Criminal Justice System, the Use of Cannabis in Victoria and the Management of Child Sex Offender Information.

The Victorian Wage Inspectorate has released a kit to communicate new laws making it a crime for a Victorian employer to dishonestly withhold wages and other entitlements.

Finally, in the Courts and Tribunals, the Supreme Court has reviewed a Medical Panel Determination made under the *Wrongs Act 1958* (Vic), the Court of Appeal has considered the issue of who has standing to bring a claim in relation to alleged unlawful logging operations and VCAT has considered, amongst other things, its jurisdiction to hear an application for review of a decision that involves the interplay between the *Freedom of Information Act 1982* (Vic) and the Commonwealth privacy legislation.

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

### IN THE MEDIA

#### Outcome of IBAC's investigation into the conduct of Victoria Police officers in Epping in September 2020

Victoria's independent police oversight body, the Independent Broad-based Anti-corruption Commission

(IBAC), has concluded its investigation into the conduct of Victoria Police officers in their apprehension of a person in Epping late last year. (16 July 2021) <https://www.ibac.vic.gov.au/media-releases/article/outcome-of-ibac-s-investigation-into-the-conduct-of-victoria-police-officers-in-the-apprehension-of-a-person-in-epping-in-september-2020>

#### HRLC: Lack of oversight and transparency in prison disciplinary processes: Ombudsman finds

Aboriginal and Torres Strait Islander, legal, human rights and civil liberties organisations have called on the Government to take urgent steps to increase transparency and prevent mistreatment behind bars after a new report has highlighted serious weaknesses in disciplinary processes in Victorian prisons. (07 July 2021) <https://www.hrlc.org.au/news/2021/7/7/lack-of-oversight-and-transparency-in-prison-disciplinary-processes>

#### New Appointments To Anti-Corruption Watchdog

The Government has appointed two new Deputy Commissioners to the Independent Broad-based Anti-Corruption Commission (IBAC) – further strengthening the agency's vital oversight role. (07 July 2021) <https://www.premier.vic.gov.au/new-appointments-anti-corruption-watchdog>

### IN PRACTICE AND COURTS

#### Equitable briefing policy reporting 2020-2021

The 2020-2021 financial year has recently ended, and annual reports of Briefing Entities who have adopted the Law Council's Equitable Briefing Policy are due by 30 September 2021. If you have adopted the policy as counsel, please provide your annual report for the 2020-2021 financial year using the [portal](#). The Equitable Briefing Policy Reporting Template and Guidelines provides detailed information on how to make a report and includes a template to show the information required.

## Supreme Court Practice Notes

### [SC CL 11 Employment and Industrial List \(Second revision\)](#)

The purpose of this Practice Note is to provide guidance on the operation of the Employment and Industrial List, a case management list within the Common Law Division of the Court. This Practice Note (the second revision) commences on 19 July 2021 and applies to all proceedings in the List whenever commenced.

### [SC GEN 7 Transcript in Civil Proceedings \(second revision\)](#)

This Practice Note (the First revision) commences on 1 July 2021 and, as revised, applies to all civil proceedings in the Trial Division and Court of Appeal of the Supreme Court of Victoria whether heard in Melbourne or on circuit. It replaces the previous version, which commenced on 1 July 2018.

## Consultations

### [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 05 August 2021.

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

The reporting date for this inquiry has been extended to 30 August 2021.

## PUBLISHED - ARTICLES, PAPERS, REPORTS

### [Working better](#)

From July 2021, it becomes a crime for an employer in Victoria to dishonestly withhold wages or other employee entitlements. This kit provides a suite of resources in a variety of formats to communicate these new laws.

## CASES

### [Edwards v State of Victoria \[2021\] VSC 423](#)

ADMINISTRATIVE LAW – Judicial review – Determination by a Medical Panel of a medical question referred under Part VBA of the Wrongs Act 1958 (Vic) – Panel's determination that plaintiff's degree of impairment resulting from the claimed psychiatric injury did not satisfy the threshold level for a 'significant injury' – Panel concluded that plaintiff's psychiatric conditions were in remission – Where Panel formed its conclusions on the basis that the plaintiff had last self-harmed in early 2017 and without obtaining up to date medical records – Whether Panel made a mistake on a central fact – Whether Panel failed to take into account an accurate history of the plaintiff's self-harm – Powers of a Medical Panel to inform itself – Whether Panel failed to make

an obvious inquiry, by not obtaining plaintiff's up to date medical records – Materiality of failure to obtain records – Whether Panel failed to apply AMA Guides and GEPIC – Whether Panel's conclusion that plaintiff's conditions were in remission was procedurally unfair – Jurisdictional error established – Whether question should be reconsidered by differently constituted Medical Panel – Wrongs Act 1958 (Vic), ss 28LZ, 28LZA, 28LZC, 28LZE.

### [Palios v Glen Eira CC \[2021\] VCAT 726](#)

Heritage Overlay; Discretion; Amenity; Relevance of policy; Clause 22.08 of the Glen Eira Planning Scheme.

The details set out in the Tribunal's initiating order are confirmed. The proceeding is listed for a compulsory conference and a hearing as detailed - application of rules of statutory interpretation will properly involve the identification of a statutory purpose.

### [VicForests v Kinglake Friends of the Forest \[2021\] VSCA 195](#)

PRACTICE AND PROCEDURE – Standing – Proposed logging – Whether respondent has standing to bring claim in relation to alleged unlawful logging operations – Whether respondent has interest in the subject matter of the action such as to support standing – Australian Conservation Foundation v Commonwealth (1980) 146 CLR 493; [1980] HCA 53, applied – Standing established – Leave to appeal granted – Appeal dismissed.

where the jurisdiction is the supervisory jurisdiction of a court, which in Australia has a constitutional dimension,<sup>[23]</sup> attention needs to be given to the relief that is sought. The constitutional writs have particular rules as to standing.

### [Foster v Department of Health \(Review and Regulation\) \[2021\] VCAT 742](#)

Review and Regulation List – Australian Constitution, s 109 – Privacy Act 1998 (Cth) – Freedom of Information Act 1982 (Vic) – Jurisdiction of Tribunal to hear application for review – Whether exemption from disclosure under Victorian freedom of information legislation is inconsistent with right of access to information under the Commonwealth privacy legislation.

## LEGISLATION

### [Justice Legislation Amendment \(Criminal Appeals\) Act 2019 \(Vic\)](#)

Part 2 Division 1 (sections 3 and 4), Part 2 Division 2 (sections 5 to 17), Part 3 Division 1 (sections 19 to 32) of this Act came in by forced commencement on 3 July 2021 s.2(3). Act Number: 44/2019

## Statutory Rules

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

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

## KEY CONTACTS

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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](mailto: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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