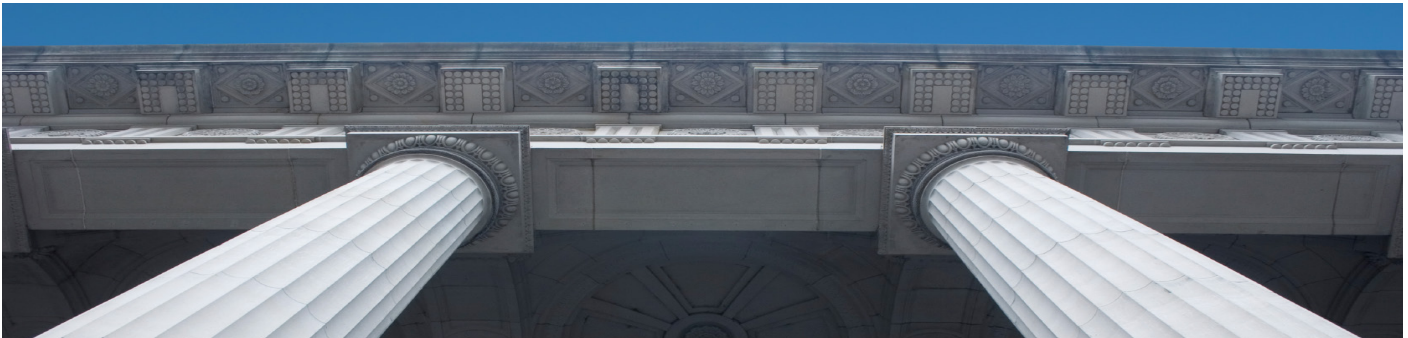


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## PUBLIC SECTOR NEWSLETTER - VICTORIA

The Federal Court has found an artificial intelligence system is capable of being an “inventor” under Australian patent law in a decision that looks to have wide ranging implications.

The first official report has been released into the operation of the COVIDSafe app, which indicates the app has been rarely used because of low community transmission and strong manual contact tracing.

In the Courts, a former senior education department official has been sentenced to jail following an IBAC investigation and guilty pleas to charges of conspiracy to defraud and conspiracy to attempt to pervert the course of justice.

In other Court decisions, the Supreme Court of Victoria has considered when an injury manifests under the *Transport Accident Act 1986*.

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

### IN THE MEDIA

#### Government concedes COVIDSafe app ‘rarely used

The Federal Government has finally released its first official report into the COVIDSafe app, conceding the app is “rarely” used but attributing that to low community transmission rates and strong manual contact tracing. (30 July 2021) <https://www.itnews.com.au/news/govt-concedes-covidsafe-app-rarely-used-in-overdue-report-568030>

#### Federal Court will not release details of ABC’s defence in Christian Porter defamation case

The ABC’s defence from the now-settled case brought by former Federal Attorney-General Christian Porter will not be made public after a Federal Court ruling. [The order] is made on the grounds that it is necessary to prevent prejudice to the proper administration of justice,” Justice Jagot told the court. (30 July 2021) <https://www.abc.net.au/news/2021-07-30/court-rules-on-abc-defence-christian-porter-defamation-case/100336388>

#### Australian court finds AI systems can be recognised under patent law

An artificial intelligence system is capable of being an “inventor” under Australian patent law, the Federal Court has ruled, in a decision that could have wider intellectual property implications. (30 July 2021) <https://www.theguardian.com/technology/2021/jul/30/im-sorry-dave-im-afraid-i-invented-that-australian-court-finds-ai-systems-can-be-recognised-under-patent-law>

#### Countdown to commencement of new Federal Circuit and Family Court of Australia

The new Federal Circuit and Family Court of Australia will officially commence operations on 1 September 2021 following the passing of legislation to amalgamate the Federal Circuit Court of Australia and the Family Court of Australia. (30 July 2021) <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/mr300721>

#### Gender studies to drive Public Sector equality

The Commission for Gender Equality in the Public Sector has published a collection of case studies on gender impact assessments. In a statement, the Commission said “(The Act) requires defined entities to do gender impact assessments of all new policies, programs and services that directly and significantly impact the public, as well as those up for review.” (29 July 2021) <https://www.genderequalitycommission.vic.gov.au/gender-impact-assessment-case-studies>

#### Why Australian needs a Federal independent commission against corruption – with teeth

Over the past 20 years, governments have eroded many of the conventions that were part of the fabric of Australian government. Those conventions generally existed for good reason, and so governance got worse. And poor governance is leading to the failure to adopt good policy. (28 July 2021) <https://grattan.edu.au/news/why-australian-needs-a-federal-independent-commission-against-corruption/>

### Crackdown on illegal financial services marketing continues with formal warnings

The ACMA is continuing its clampdown on illegal marketing in the financial services sector with formal warnings issued to five companies for breaches of spam and telemarketing laws. (28 July 2021) <https://www.acma.gov.au/articles/2021-07/crackdown-illegal-financial-services-marketing-continues-formal-warnings>

### HRLC: Children continue to be jailed in year since Attorneys-General failed to raise the age

It is one year since Australia's top legal officers failed to raise the age of criminal responsibility from 10 to 14, despite being handed an expert report overwhelmingly recommending that all states and territories and the Federal Government change laws to keep children out of prison. (27 July 2021) <https://www.hrlc.org.au/news/2021/7/26/children-continue-to-be-jailed-in-year-since-attorneys-general-failed-to-raise-the-age>

### Protect children from data surveillance

Parents who use pregnancy apps or share ultrasounds on social media can expect information about their children to be collected and sold to advertisers for profit. This data powers digital advertising that capitalises on information about peoples' lives, habits and interests. (27 July 2021) <https://humanrights.gov.au/about/news/opinions/protect-children-data-surveillance>

### Excellent appointments to the Federal Court and Federal Circuit Court of Australia

The Law Council of Australia congratulates Ms Kylie Elizabeth Downes QC on her appointment as a justice of the Federal Court of Australia and Ms Meredith Dickson QC, Ms Patricia Cope, Mr Jonathan Forbes and Ms Catherine Symons on their appointments as judges of the Federal Circuit Court of Australia. (25 July 2021) <https://www.lawcouncil.asn.au/media/media-releases/excellent-appointments-to-the-federal-court-and-federal-circuit-court-of-australia>

### HRLC: The Government won't meet Closing The Gap justice targets if it refuses to reform punitive bail laws

The Government must urgently reform its punitive bail laws if it is to meet the justice targets it signed on to in the new Closing the Gap Agreement last year. (29 July 2021) <https://www.hrlc.org.au/news/2021/7/29/the-andrews-government-wont-meet-closing-the-gap-justice-targets-if-it-refuses-to-reform-punitive-bail-laws>

### New Judges Appointed To Supreme Court Of Victoria

The Victorian Government has appointed Dr Catherine Button QC and Judge Mandy Fox as judges, and Ian Irving as an associate judge of the Supreme Court of Victoria. (27 July 2021) <https://www.premier.vic.gov.au/new-judges-appointed-supreme-court-victoria>

### Former senior education department official and relative sentenced to jail following IBAC's 'banker school' investigation

A former Department of Education and Training (DET) Director and his cousin were sentenced to jail at the County Court of Victoria last week following a major investigation by the IBAC. Both had entered guilty pleas to one charge each of conspiracy to defraud and conspiracy to attempt to pervert the course of justice. (19 July 2021) <https://www.ibac.vic.gov.au/media-releases/article/former-senior-education-department-official-and-relative-sentenced-to-jail-following-ibac-s-banker-school-investigation>

## IN PRACTICE AND COURTS

### Sentencing Advisory Council: Updated online sentencing statistics for over 250 offences

The Council has released new sentencing data for the higher courts (County and Supreme Courts) on SACStat, the Council's online statistical database. The new data covers sentencing outcomes in the five years to 30 June 2020 for over 250 offences dealt with in the higher courts. <https://www.sentencingcouncil.vic.gov.au/news-media/news/sacstat-sentencing-database-now-includes-statistics-for-over-250-higher-courts-offences>

### VICBAR: 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.

### 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.

#### [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**[Review of the parliamentary workplace: responding to serious incidents](#)

This review found that current procedures and processes are not designed or able to respond appropriately to serious incidents in the Australian parliamentary workplace, particularly with regard to sexual assault. The most significant gap is the absence of readily accessible, timely, independent, trauma-informed services.

[Gridlock: removing barriers to policy reform](#)

Australia's governance is going backwards. Without change, there is little prospect for many substantial policy reforms that would increase Australian prosperity.

[Independent Review into Commonwealth Parliamentary Workplaces: progress update 2021](#)

The Independent Review into Commonwealth Parliamentary Workplaces was established in March 2021. This progress update outlines the work of the review to date, including the methodology.

**CASES**[Commissioner Initiated Investigation into Uber Technologies, Inc. & Uber B.V. \(Privacy\) \[2021\] AICmr 34](#)

Privacy – Privacy Act 1988 (Cth) – Australian Privacy Principles – APP 11.1 – APP 11.2 – APP 1.2 – Extraterritorial jurisdiction – Unauthorised access to personal information by third party – Whether reasonable steps taken to protect personal information from unauthorised access – Whether reasonable steps taken to delete or de-identify personal information – Whether reasonable steps taken to implement practices, procedures and systems to ensure compliance with the APPs – Breaches substantiated – Requirement to prepare compliant Policies and Programs – Independent review of Policies and Programs.

[Moules v Transport Accident Commission \[2021\] VSC 436](#)

ADMINISTRATIVE LAW – Victorian Civil and Administrative Tribunal – Application for leave to appeal under s 148 of the Victorian Civil and Administrative Tribunal Act 1998 (Vic) and appeal if leave is granted – Transport Accident Act 1986 (Vic), ss 67 & 68 – 'Claim for compensation under this Act ... in a form approved by the Commission' – 'Injury manifested' – 'Injury first manifests itself' – Hyland v Transport Accident Commission [1999] VSC 425; (1999) 30 MVR 281 considered and discussed – Appeal allowed.

[Zachariadou v Downes-Brydon \[2021\] VSC 425](#)

JUDICIAL REVIEW – Medical Panel – Claimed injuries to bilateral hands and wrists – Whether Panel acted on an incorrect material finding of fact – Whether a jurisdictional error – Procedural fairness – Reliance on facts without formally notifying worker of their possible significance – Workplace Injury Rehabilitation and Compensation Act 2013 ss 3, 40(3)(c), 303.

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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](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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