



PUBLIC SECTOR NEWSLETTER - VICTORIA

This fortnight saw the introduction of legislation into parliament that allows survivors of sexual assault and their families to tell their stories, which the Law Institute of Victoria has welcomed. Meanwhile, more non-government schools have signed up to the Government's respectful relationships program, which is aimed at, amongst other things, the embedding of attitudes that will reduce instances of sexual assault. Victoria Police have also outlined their timelines for the training of officers and prosecutors in digitally recorded evidence in chief to support the expansion of a trial allowing the use of evidence taken from body-worn cameras in family violence matters.

The Government has proposed legislation to streamline the regulation of social services whilst enhancing enforcement powers to protect the vulnerable from harm.

The Government has also appointed six new Judges to the County Court of Victoria. We congratulate Their Honours on their appointments.

The Victorian Ombudsman has released a Casebook containing a snapshot of the thousands of matters involving human rights, as we celebrate the contribution of former Victorian Ombudsman Chas Baragwanath, who sadly passed away this month.

Finally, in the Courts, the Supreme Court has, amongst other things, undertaken the judicial review of Medical Panel Determinations and considered a self-represented litigant's entitlement to an order for costs.

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

IN THE MEDIA

Empowering and Protecting Victim-Survivors and Families

The Government is continuing to support victim-survivors of sexual offences and their families to tell their stories, while allowing surviving relatives their privacy, with the Judicial Proceedings Reports Amendment Bill

2021 will be introduced to Parliament. (03 August 2021) <https://www.premier.vic.gov.au/empowering-and-protecting-victim-survivors-and-families>

LIV welcomes the ability for families, partners and close friends of deceased sexual assault victims to speak out
Law Institute of Victoria (LIV) welcomes changes to the Judicial Proceedings Reports Act 1958 proposed by the Victorian Government last week, which will allow families of sexual assault victims to speak out. (09 August 2021) <https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/August-2021/LIV-welcomes-the-ability-for-families--partner-1>

Respectful Relationships Reaches More Schools

More non-government schools have now signed up to the Government's Respectful Relationships program – to embed respect and gender equality in their school communities. (13 August 2021) <https://www.premier.vic.gov.au/respectful-relationships-reaches-more-schools>

New Watchdog to Boost Social Services Protections

The proposed Social Services Regulation Act will streamline and simplify the existing regulation of social services, reducing red tape for the community sector while bolstering enforcement powers to protect people from harm. (04 August 2021) <https://www.premier.vic.gov.au/new-watchdog-boost-social-services-protections>

Six New Judges Appointed To the County Court

The Victorian Government has announced six new appointments to the County Court of Victoria, bringing a wealth of expertise and diverse experience to the justice system.

These appointments include early replacements of four Judges as part of the Government's \$210 million investment to speed up the resolution of court matters and drive down backlogs. (10 August 2021) <https://www.premier.vic.gov.au/six-new-judges-appointed-county-court>

IN PRACTICE AND COURTS

[Body-worn camera evidence trial rolling out](#)

Victoria Legal Aid is preparing for the state-wide expansion of a trial allowing digitally recorded evidence-in-chief, taken from body-worn cameras, to be used in family violence matters. Victoria Police have outlined their timelines for rolling out digitally recorded evidence in chief (DREC) training to officers and prosecutors to support the expansion of the trial. (02 August 2021)

PUBLISHED - ARTICLES, PAPERS, REPORTS

[The Ombudsman for Human Rights: A Casebook](#)

This casebook presents a snapshot of the thousands of matters involving people's human rights that we see each year. They illustrate the rights of children and families, kinship carers, injured workers, activists and prisoners, of everyday Victorians.

CASES

[Parnaby v Director of Housing \[2021\] VSC 456](#)

ADMINISTRATIVE LAW – Judicial Review – Determination of Medical Panel – Whether the Panel made errors of fact alleged to constitute jurisdictional error – Whether failure of Panel to 'properly' assess and determine the plaintiff's injuries and apply the AMA Guides – Craig v South Australia [1995] HCA 58; (1990) 184 CLR 163 – Chang v Neill (2019) 62 VR 174 – Proceeding dismissed.

[Di Lorenzo v The Magistrates' Court of Victoria \[2021\] VSC 475](#)

ADMINISTRATIVE LAW – Judicial review – Whether Magistrate erred when awarding costs in favour of self-represented litigant – Whether costs thrown away are costs in the proceeding – Whether exceptional circumstances – Whether to remit matter to Magistrates' Court – Cachia v Hines (1994) 179 CLR 403 – Application allowed.

[Niederle v McIntosh \[2021\] VSC 462](#)

ADMINISTRATIVE LAW – Judicial review – Where Magistrate set aside subpoena for release of medical records in intervention order proceeding – Where Magistrate erroneously relied on Health Records Act (Vic) s 26 – Application successful.

[W Everton Park Pty Ltd v Minister for Planning \[2021\] VSC 465](#)

ADMINISTRATIVE LAW – Judicial review – Plaintiffs own private land extending into the Public Conservation and Resource Zone – Amendment VC115 to Victoria Planning Provisions and all planning schemes in Victoria, amending planning controls affecting private land in the Public Conservation and Resource Zone – Minister's decision under s 20(4) of the Planning and Environment Act 1987 (Vic) to exempt himself from notification requirements of ss 17, 18 and 19 – Minister's decision under s 4C to approve amendment – Plaintiffs claim declarations that Minister's decisions are invalid and of

no legal effect – Whether in making exemption decision Minister had regard to irrelevant considerations or failed to consider relevant matters – Whether Minister made decisions for improper purposes – Whether amendment complied with Ministerial direction under s 7(5) as to form and content of planning schemes – Whether amendment conferred absolute and unreviewable power on Secretary, repugnant to Planning and Environment Act 1987 (Vic) – Whether amendment amounted to acquisition by subterfuge – Minister's decisions not invalid – Proceeding dismissed – Planning and Environment Act 1987 (Vic), ss 4B, 4C, 4J, 6, 7, 8, 12, 20(4), 149.

[Mornington Peninsula Beach Box Association Inc & Anor v Mornington Peninsula Shire Council \[2021\] VSC 455](#)

STATUTORY INTERPRETATION – Local government – Local Government Act 1989 (Vic) providing for 'annual service charge' to be declared on rateable land for 'the collection and disposal of refuse' – Charge declared by defendant Council for 'the collection and disposal of municipal refuse' – Charge designed to finance broad range of waste services for local community and its members – Whether declaration valid – Declaration need not be confined to recovery of costs of direct or 'kerbside' refuse collection services only – Charge can validly apply to rateable land for which no direct or kerbside refuse collection service is available – Challenge to validity of charge dismissed – Constitution Act 1975 (Vic) Pt IIA –

[Mason v Fraser \[2021\] VSC 461](#)

ADMINISTRATIVE LAW – Appeal from a decision of the Victorian Civil and Administrative Tribunal – Building works carried out by owner builder – Sale of property – Action by purchaser for breach of warranties implied into contract of sale – Applicable limitation period – Whether alleged defects disclosed in pre-purchase report – Whether award for defects to work which was carried out – Denial of natural justice – Building Act 1993 (Vic) ss 129, 134, 137C, 137B – Victorian Civil and Administrative Tribunal Act 1998 (Vic) s 148(1) – Limitation of Actions Act 1958 (Vic)

[Melton v Metro Trains Pty Ltd & Ors \[2021\] VSC 450](#)

JUDICIAL REVIEW – Review of a decision of a Medical Panel – Part VBA of the Wrongs Act 1958 (Vic) – AMA Guides to the Evaluation of Permanent Impairment – Whether medical panel disclosed a path of reasoning – Duty of a medical panel to make inquiries – Held the medical panel erred – Remittal to a differently constituted medical panel – Wingfoot Australia Partners Pty Ltd & Anor v Kocak & Ors [2013] HCA 43; (2013) 252 CLR 480 applied – Chang v Neill [2019] VSCA 151 applied – Minister for Immigration and Citizenship v SZIAI [2009] HCA 39 considered – Wei v Minister for Immigration and Border Protection [2015] HCA 51; (2015) 257 CLR 22 considered.

[Williams v University of Melbourne \(Review and Regulation\) \[2021\] VCAT 880](#)

Review and Regulation List – Freedom of Information Act 1982 sections 8 and 12 – applicant previously granted access to a ‘guidelines’ document following successful application to VCAT – whether document is provided by respondent for the use or guidance of the respondent or its officers in relevant activities – whether document is used by the respondent or its officers in relevant activities – whether document may be used by the respondent or its officers in relevant activities – evidence that respondent withdrew the document from use after it was released to applicant – no evidence of subsequent use of the document, but acknowledgement by respondent’s witnesses of that possibility - meaning of ‘may be used’ in section 8(1) – whether it involves the possibility that document is used by officers or, alternatively, whether it involves that officers have permission to use the document – findings that document not covered by section 8(1) – variation of decision (or deemed decision) accordingly.

LEGISLATION

Acts

[Victorian Civil and Administrative Tribunal and Other Acts Amendment \(Federal Jurisdiction and Other Matters\) Act 2021 \(Vic\)](#)

Act Number: 31/2021 Date of assent: 10 August 2021

[Energy Legislation Amendment \(Energy Fairness\) Act 2021 \(Vic\)](#)

Act Number: 28/2021 Date of assent: 10 August 2021
Consumer protections; Wrongful disconnection; Enforcement

[Commercial Tenancy Relief Scheme Act 2021 \(Vic\)](#)

Act Number: 27/2021 Date of assent: 10 August 2021
Functions and powers of the Small Business Commission under this Act

Act Commencements

[No 11 Justice Legislation Amendment \(System Enhancements and Other Matters\) Act 2021 \(Vic\)](#)

Date of commencement: 9 August 2021
Part 22 (sections 183-194) of this Act came into operation on 09 August 2021 (SG420 3.8.2021)

Bills

[Members of Parliament \(Standards\) Amendment Bill 2021 \(Vic\)](#)

Date of second reading speech: 4 August 2021

[Judicial Proceedings Reports Amendment Bill 2021 \(Vic\)](#)

Date of second reading speech: 2 August 2021

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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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