



## PUBLIC SECTOR NEWSLETTER - VICTORIA

The human rights and privacy ramifications of COVID-19 measures have featured prominently in this fortnight's discourse, with a dramatic increase in support for a Commonwealth Charter of Human Rights and privacy concerns expressed over vaccination passports/certificates. The High Court's decision in *Fairfax Media Publications Pty Ltd v Voller* has coincided with the Human Rights Law Centre's call for a human rights charter to better protect press freedom and public debate in Australia. Meanwhile, the appointment of the Human Rights Commissioner has also prompted debate.

The Commonwealth Government has passed the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021*, which is designed to prevent and address sexual harassment in Australian workplaces.

In the Courts, the Supreme Court has determined the appeal of a two VCAT decisions arising out of domestic building disputes and an application for leave to appeal a sentence for contempt of VCAT. Meanwhile, VCAT has determined the review of decisions made pursuant to the *Freedom of Information Act 1982* and an application for a grant of an Extended Litigation Restraint Order pursuant to the *Vexatious Proceedings Act 2014*.

We hope you enjoy this edition of our Victorian public sector newsletter.

### IN THE MEDIA

#### Privacy concerns cast shadow over vaccination passports

The lack of a clear blueprint for vaccination 'passports' that addresses public concerns around safety and security risks is undermining the implementation of vaccine mandates, warns the Australia Institute's Centre for Responsible Technology. (10 September 2021) <https://australiainstitute.org.au/post/privacy-concerns-cast-shadow-over-vaccination-passports/>

#### Human rights charter needed to protect press freedom and public debate in Australia

Australia's journalists and whistleblowers are under increasing threat and urgently need better legal protections, the Human Rights Law Centre has advised in a submission to a Senate inquiry examining free speech and press freedom. (09 September 2021) <https://www.hrlc.org.au/news/2021/9/6/human-rights-charter-needed-to-protect-press-freedom-and-public-debate-in-australia>

#### COVID-19 sees huge increase in support for a Charter of Human Rights: poll

There has been a dramatic increase in support for a Charter of Human Rights compared to before the COVID-19 pandemic, new data reveals. (09 September 2021) <https://www.hrlc.org.au/news/2021/9/7/covid-19-sees-huge-increase-in-support-for-a-charter-of-human-rights-poll>

#### Need to get Australia's digital vaccine certificates right first time

In its current format, Australia's COVID-19 vaccination certificate system is alarmingly vulnerable. Far from being effective, secure and tamper-proof, it is wide open to the risks posed by fakes and forgeries. (06 September 2021) <https://www.innovationaus.com/we-need-to-get-australias-digital-vaccine-certificates-right-first-time/>

#### Morrison government must commit to an open, merit-based selection process for Australian Human Rights Commission appointments

The Human Rights Law Centre criticised the lack of an open, merit-based process for the appointment of Australia's newest Human Rights Commissioner. (06 September 2021) <https://www.hrlc.org.au/news/2021/9/6/morrison-government-must-commit-to-an-open-merit-based-selection-process-for-australian-human-rights-commission-appointments>

### Appointment of Human Rights Commissioner

The Australian Human Rights Commission welcomes the Government's decision to fill the role of Human Rights Commissioner, a role which is a foundational one to the Commission. (05 September 2021) <https://humanrights.gov.au/about/news/commission-welcomes-appointment-human-rights-commissioner>

### Statement on passage of Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021

The AHRC welcomes the passage of the Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021. The Bill contains important reforms to address sexual harassment in Australian workplaces which were recommended by the AHRC following its world-leading National Inquiry into Sexual Harassment in Australian Workplaces, Respect@Work. (03 September 2021) <https://humanrights.gov.au/about/news/statement-passage-sex-discrimination-and-fair-work-respect-work-amendment-bill-2021>

### Government passes legislation to prevent and address sexual harassment in Australian workplaces

The Morrison Government has taken important action to strengthen and simplify national laws to better protect Australians against sexual harassment in the workplace. (02 September 2021) <https://www.attorneygeneral.gov.au/media/media-releases/government-passes-legislation-prevent-and-address-sexual-harassment-australian-workplaces-2-september-2021>

### Commitment to stronger protections from hate speech

Victoria Legal Aid commends the Victorian Government's commitment to stronger laws, systems and services to prevent and address vilification and hate conduct in Victoria. 'The government's response to the inquiry into anti-vilification protection recognises the harm caused by vilification in the Victorian community. (03 September 2021) <https://www.legalaid.vic.gov.au/about-us/news/welcome-commitment-to-stronger-protections-from-hate-speech>

### Commissioner finds delays foiling FoI

The Victorian Information Commissioner has called for a wide-ranging review of the State's freedom of information laws, following an investigation into delay in the disclosure of Government documents. (02 September 2021) <https://ovic.vic.gov.au/wp-content/uploads/2021/09/Own-Motion-Investigation-Report-Impediments-to-timely-FoI-and-information-release.pdf>

### IBAC fears risks in human service payouts

New research conducted by the Independent Broad-based Anti-corruption Commission (IBAC) into the funding of community organisations to deliver human services has revealed the system is open to risks of corruption (02 September 2021). [https://www.ibac.vic.gov.au/docs/default-source/research-documents/research-report---corruption-risks-associated-with-government-funded-human-services-delivered-by-csos---september-2021.pdf?sfvrsn=a8b82d29\\_2](https://www.ibac.vic.gov.au/docs/default-source/research-documents/research-report---corruption-risks-associated-with-government-funded-human-services-delivered-by-csos---september-2021.pdf?sfvrsn=a8b82d29_2)

### IBAC research report highlights corruption risks for community service organisations funded by the Victorian government

A new IBAC research report alerts Victorian government departments and community service organisations to key corruption risks. These include procurement and contract management, conflicts of interest, cash handling, false/inaccurate reporting practices and misuse of sensitive information. (01 September 2021) <https://www.ibac.vic.gov.au/media-releases/article/ibac-research-report-highlights-corruption-risks-for-community-service-organisations-funded-by-the-victorian-government>

## IN PRACTICE AND COURTS

### [Commonwealth and Victorian Courts' COVID updates](#)

The Victorian Government has announced an extension plus additional restrictions for metropolitan Melbourne until Thursday, 2 September 2021. The Supreme Court of Victoria has published a joint jurisdictional statement from the Chief Justice on behalf of the Victorian courts and VCAT in response to the increased regional restrictions.

### 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 reporting template to show the information required.

## CASES

### [Fairfax Media Publications Pty Ltd v Voller; Nationwide News Pty Limited v Voller; Australian News Channel Pty Ltd v Voller \[2021\] HCA 27](#)

Appeal dismissed with costs. Defamation – Publication – Where appellants were media companies – Where each appellant created, operated and maintained public Facebook page – Where each appellant created posts on Facebook page hyperlinking to news stories referring to respondent – Where third-party Facebook users left "comments" on appellants' posts – Where comments alleged to be defamatory of respondent – Whether appellants "publishers" of comments – Whether intention to communicate defamatory matter necessary for appellants to be publishers.

### [Lucic v Henry \[2021\] VSC 548](#)

ADMINISTRATIVE LAW – Appeal from Victorian Civil and Administrative Tribunal – Domestic building disputes – First proceeding between owner and builder resolved by terms of settlement – Mutual release – Owner commenced second proceeding for defective work – Tribunal found claimed defects not covered by release

given in terms of settlement of first proceeding – Leave to appeal – Where party seeks to raise a point on appeal not argued below – Whether Tribunal misconstrued release – Whether Tribunal failed to consider that owners ought to have known of claimed defects when terms of settlement signed – Adequacy of reasons – Domestic Building Contracts Act 1995 (Vic), ss 8, 10 – Victorian Civil and Administrative Tribunal Act 1998 (Vic), ss 117, 148.

#### [160 Leicester Pty Ltd v Melbourne City Council \[2021\] VSCA 250](#)

CRIMINAL LAW – Sentence – Applications for leave to appeal against sentence – Company and its directors found guilty of contempt of VCAT – Contempts constituted by wilful and deliberately defiant breach of VCAT orders – Company fined \$150,000 – Directors ordered to be imprisoned for 1 month – Contemnors ordered to pay costs fixed at \$250,000 – Whether Tribunal erred in assessing gravity of contemnors' conduct – Manifest excess – Whether punishment manifestly excessive – New evidence – Evidence of compliance with orders after sentencing – New evidence not throwing light on matters which underpinned Tribunal's orders – Proposed grounds of appeal not reasonably arguable – Applications for leave to appeal refused. 1 On 15 October 2016, the building at 154–160 Leicester Street, Carlton, known as the Corkman Hotel, was demolished. As no planning permit had been obtained for its demolition, the demolition was unlawful

#### [Akers v Victoria Police \(Review and Regulation\) \[2021\] VCAT 1060](#)

Review and Regulation List – Freedom of Information Act 1982 (Vic), ss 25, 25A(5), 27(2)(b), 31(1)(a), 31(1)(d), 55 – Freedom of information request relating to police surveillance of property – Existence of documents neither confirmed nor denied – Whether documents, if they exist, would be wholly exempt.

#### [Wilson v Kyle \[2021\] VSC 537](#)

ADMINISTRATIVE LAW – Appeal from a decision of the Victorian Civil and Administrative Tribunal – Domestic building dispute – Whether builder lawfully terminated contract – Whether builder in substantial breach of the contract – Evidence of capacity to pay contract price – Leave to appeal granted on one ground – Appeal dismissed. In my view, the outcome of the case below depended essentially on the factual findings made by the Tribunal, which cannot be challenged in this application.

#### [Tofler v Kitson \(Human Rights\) \[2021\] VCAT 994](#)

Human Rights List – Leave granted – Grant of an Extended Litigation Restraint Order – Vexatious Proceedings Act 2014 (Vic) ss 16, 17, 25 and 27 – Where litigant acted repeatedly in defiance of Tribunal orders – Where party sent intimidating correspondence – Where litigant commenced an unreasonable amount of applications and proceedings and sent an unreasonable amount of correspondence – Extended Litigation

Restraint Order applied to associated parties subjected to abusive and vexatious conduct of the litigant – Extended Litigation Restraint Order applied indefinitely.

#### [Williams v University of Melbourne \(Review and Regulation\) \(Corrected\) \[2021\] VCAT 971](#)

Freedom of Information Act 1982 ss 8, 12, 50(2)—review of decision in response to notice given by the applicant contending that certain documents are required to be included in materials made available to the public for inspection or purchase, namely, 'score sheets' used for assessment of applicants to particular undergraduate courses.

## LEGISLATION

### Bills

#### [Assisted Reproductive Treatment Amendment Bill 2021](#)

Makes changes to the Assisted Reproductive Treatment Act 2008 on a range of matters including artificial insemination procedures, surrogacy arrangements, counselling requirements, the prohibition on the use of donated gametes to create more than 10 families, and various matters relating to the consent and counselling requirements.

#### [Essential Services Commission \(Compliance and Enforcement Powers\) Amendment Bill 2021](#)

Makes changes to the Essential Services Commission's information-gathering and inspection powers, civil penalty framework and court injunctions, and to the Commission's funding arrangements

#### [Firearms and Other Acts Amendment Bill 2021](#)

Make changes to the regulation and storage of firearms and makes a range of other changes to justice legislation, including to the rank structure for PSOs, and the use of audiovisual technology for hearings.

### Statutes

No 113 [Children's Court \(Personal Safety Intervention Orders\) Rules 2021 31/08/2021](#)

No 114 [Victorian Civil and Administrative Tribunal \(Residential Tenancies and Other Acts Amendment\) Rules 2021](#)

No 115 [Courts \(Case Transfer\) Rules 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](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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