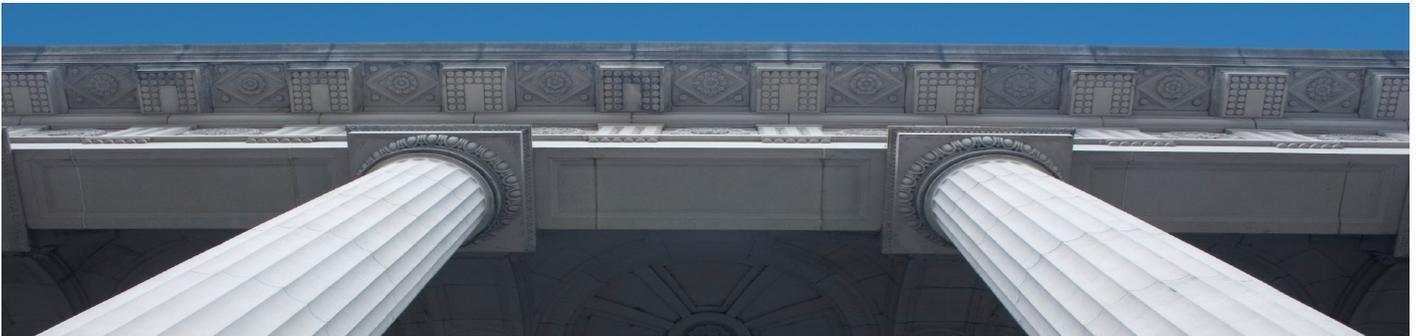


8 OCTOBER 2021

ISSUE 113



## PUBLIC SECTOR NEWSLETTER - VICTORIA

In this issue transparency in government is in focus with articles on various government agencies and the release and access to information.

Human rights is also in focus, with a new report from the Australian Human Rights Commission calling on the Australian Government, businesses and institutional investors to take more action to prevent business-related human rights harm.

We would also like to draw your attention to the Occupational Health and Safety and Other Legislation Amendment Act 2021 which has received Royal Assent and places greater health and safety obligations on public sector employees to ensure they consult, cooperate and coordinate with labour hire agencies on health and safety matters. These changes mean public sector employees may need to review labour hire contracts and the processes they have in place to engage with labour hire businesses.

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

### IN THE MEDIA

#### Some concerns remain for the Law Council over ATO draft privilege protocol

The Law Council of Australia remains concerned about aspects of the Australia Taxation Office's draft legal professional privilege (LLP) protocol which was released this week for further consultation. The draft protocol in places overreaches in the extent of detail of communications that the ATO recommends taxpayers and their lawyers provide in order to maintain a claim of privilege. <https://www.lawcouncil.asn.au/media/media-releases/some-concerns-remain-for-the-law-council-over-ato-draft-privilege-protocol>

#### Information access commissioners and ombudsmen make recommendations to support Open by Design Principles

Australian information access commissioners and ombudsmen have released Open by Design Principles

to be used by government agencies to encourage and authorise the proactive release of information and promote open government. <https://www.oaic.gov.au/updates/news-and-media/information-access-commissioners-and-ombudsmen-make-recommendations-to-support-open-by-design-principles/>

#### New report recommends more action to prevent human rights harms in business sector

The Australian Government, businesses and institutional investors have been called on to take more action to prevent business-related human rights harm, with a new report which examines the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs) in Australia. <https://humanrights.gov.au/about/news/new-report-recommends-more-action-prevent-human-rights-harms-business-sector>

#### Australia's human rights reputation undermined by lack of transparency in Commissioner appointment

Australia's international human rights reputation is undermined by processes that lack transparency and result in hand-picked appointments to critical positions within the Human Rights Commission, says the Australian Lawyers Alliance (ALA). <https://www.lawyersalliance.com.au/news/australias-human-rights-reputation-undermined-by-lack-of-transparency-in-commissioner-appointment>

#### Use of technology for corporate meetings

The Law Council acknowledges the Australian Government's ongoing commitment to consulting on engagement with digital technology and communications, with invited businesses and individuals to have their say on how technology can be used to streamline the way statutory declarations and deeds are executed (14 September 2021) <https://www.lawcouncil.asn.au/media/media-releases/use-of-technology-for-corporate-meetings>

## Victoria

### Non-legal child protection support should be expanded statewide – evaluation

An innovative service offering early access to information and support in the child protection system creates cost-savings and helps Victorian families to avoid going to court. <https://www.legalaid.vic.gov.au/about-us/news/non-legal-child-protection-support-should-be-expanded-statewide-evaluation>

### Victoria embarks on govt cyber security uplift

The Victorian government has outlined a significant program of work under its new cyber security strategy to uplift cyber security resilience across the public sector and boost industry opportunities. <https://www.itnews.com.au/news/victoria-embarks-on-govt-cyber-security-uplift-570047>

### New Regulator to Strengthen Social Services Sector

Vulnerable Victorians will be better protected, with legislation to establish a new social services regulator passing the Victorian Parliament yesterday. <https://www.premier.vic.gov.au/new-regulator-strengthen-social-services-sector>

## IN PRACTICE AND COURTS

### Supreme Court Victoria Practice Notes – September 2021

[Notice to the Profession - Changes to file inspections and affidavits for proceedings in the Common Law Division and Commercial Court](#)

This Notice relates to changes to file inspections and affidavits for proceedings in the Common Law Division and Commercial Court.

[SC Gen 20 Inspection of civil court files by non-parties](#)

The purpose of this Practice Note is to explain the reliance that will be placed on details provided by the parties of evidential material to read and relied on, in the context of inspection of civil...

### Appointments – Magistrates' Court of Victoria

The Governor in Council has appointed five new Magistrates, including three members of our Bar, His Honour Magistrate Lawrence, Her Honour Magistrate Hollingworth and Her Honour Magistrate Lynch. The appointments are effective from 21 September 2021

### VGSO: OHS Update

Significant changes to Occupational Health and Safety (OHS) legislation passed the Parliament and received Royal Assent this week, introducing changes affecting all Victorian Public Sector employers.

### Commonwealth and Victorian Courts' COVID updates – 23 September 2021

For up-to-date information about the Courts' responses, please visit their websites:

Federal Court of Australia – see [here](#). Federal Circuit and Family Court of Australia – see [here](#).

Supreme Court of Victoria – see [here](#). County Court of Victoria – see [here](#). Magistrates' Court of Victoria – see [here](#).

### Changes to Supreme Court of Victoria file searches and affidavits

The Supreme Court of Victoria has new rules relating to court file searches and affidavits, which will come into effect on 1 October 2021, evidentiary documents filed in a proceeding, including affidavits, exhibits to affidavits, witness statements, expert reports, written submissions, outlines of argument and chronologies, may not be inspected by any non-party until the document has been read or relied on in open court or for an application determined without a hearing.

[Practice Note SC Gen 20 Inspection of Civil Court Files by Non-Parties](#) and [Notice to the Profession \(Changes to File Inspections and Affidavits\)](#) have been published on the Court's website, providing further details of the changes and how they apply in the Common Law Division and Commercial Court. Further information on these changes can be found in the [Supreme Court news story](#).

### [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.

### [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

### [Supreme Court of Australia Library Judgments Bulletin](#)

The Law Library of Victoria produces a fortnightly bulletin that summarises the latest legislation and cases for the Victorian jurisdiction, as well as High Court of Australia cases. Download the most recent Library Bulletin:

### Consultations

[Inquiry into Whether Victoria Should Participate in a National Electoral Roll Platform - Have your say](#)

The Electoral Matters Committee is accepting submissions to its Inquiry into whether Victoria should participate in a national electoral roll program. Submissions close on 22 October 2021.

### [Inquiry into Commonwealth support for Victoria - Have your say](#)

The Legislative Assembly Economy and Infrastructure Committee is accepting submissions to its Inquiry into Commonwealth support for Victoria. Submissions close on 29 October 2021.

### [Legal Aid Brief eNewsletter](#)

15 September 2021 - Legal Aid Brief is Victoria Legal Aid's fortnightly eNewsletter that keeps you up to date with legal aid matters.

## **PUBLISHED – ARTICLES, PAPERS, REPORTS**

### [Improving Immunisation Coverage](#)

ANAO Report No 5: 22 September 2021

The audit objective was to assess the effectiveness of the Department of Health's approach to improving and monitoring immunisation coverage.

Sentencing Older Offenders in Victoria

### [Sentencing Advisory Council: 23 September 2021](#)

The report studies 30,033 offenders sentenced when aged 60 and over in the ten years from 2010 to 2019 in Victoria, finding that the number of older offenders sentenced to imprisonment each year more than doubled between 2010 and 2019, partly explaining Victoria's aging prison population.

## **CASES**

### [DPP v Lamb \[2021\] VSC 615](#)

JUDICIAL REVIEW – Whether charges of unauthorised disclosure of police information invalid – Whether charges contained essential elements of offence – Whether particulars of charges provided reasonable information as to nature of charges – Whether charges capable of amendment after expiration of limitation period – Whether charges sufficiently disclosed nature of offence – Whether amendment would amount to commencement of proceeding for new offence – *Alwer v McLean* [2000] VSC 396; (2000) 116 A Crim R 364; *Baiada Poultry Pty Ltd v Glenister* [2015] VSCA 344; (2015) 257 IR 204; *DPP v Kypri* [2011] VSCA 257; (2011) 33 VR 157; *DPP Reference No 2 of 2001* [2001] VSCA 114; (2001) 4 VR 55; *Glenister v Magistrates' Court of Victoria* [2014] VSC 265; *Smith v Van Maanen* (1991) 14 MVR 365; *Walters v Magistrates' Court of Victoria* [2015] VSC 88; *Wells v Stillman* [2020] VSC 51 – Criminal Procedure Act 2009 (Vic) ss 6, 7, 8 & 9, sch 1 cls 1–3; Victoria Police Act 2013 (Vic) ss 3, 7, 225 & 227.

### [Insurance Australia Ltd v Milonas \[2021\] VSC 602](#)

APPEAL – Application for leave to appeal from orders of Victorian Civil and Administrative Tribunal – Swimming pool constructed with incorrect dimensions – Pool had to be demolished and rebuilt – Whether applicant liable to indemnify respondent for cost of demolition and rebuilding pool – Whether incorrect dimensions of pool

constituted a latent defect – Whether respondent's loss occurred when she had actual knowledge of incorrect dimensions – Incorrect dimensions discoverable by exercise of reasonable diligence – Loss occurred when respondent took possession of pool with incorrect dimensions – Applicant liable to indemnify respondent for loss – Grounds of appeal relating to construction of insurance policy having no real prospect of success – Leave to appeal refused – Victorian Civil and Administrative Tribunal Act 1999 ss 148(1), (2A) ('VCAT Act').

INTEREST – Applicant ordered to pay interest on \$200,000 from the date the respondent filed amended particulars of loss and damage – No finding that it was unreasonable for applicant to have withheld payment of \$200,000 from date of filing of amended particulars of loss and damage – Not unreasonable for applicant to have withheld payment – Order for payment of interest set aside – Question of applicant's liability to pay interest remitted to Tribunal – Insurance Contracts Act 1984 (Cth) s 57.

COSTS – Applicant ordered to pay respondent's costs of proceeding in Tribunal on solicitor-client basis – Senior Member had regard to applicant's failure to comply with VCAT Act – No basis for finding applicant failed to comply with VCAT Act – Costs order set aside – Question of cost remitted to Tribunal for further hearing – VCAT Act s 109 .<http://www.austlii.edu.au/au/cases/vic/VSC/2021/602.html>

### [Majak v Rose & Anor \[2021\] VSC 599](#)

APPEAL – Property dispute – Minute of consent orders signed in 2017 – Appeal of decision of Associate Justice dismissing application for orders to be made in terms of minute – Where one party no longer consents to orders being made in terms of minute – Where it appears terms of minute not complied with – Where dispute as to extent, effect and responsibility for non-compliance – *Harvey v Phillips* [1956] HCA 27; (1956) 95 CLR 235.

### [Sangen v Sangen \[2021\] VSC 590](#)

PRACTICE AND PROCEDURE – Alleged lack of decision making capacity of defendant - proposed referral to VCAT – Section 179 of the Guardianship and Administration Act 2019 (Vic) – *Goddard Elliott v Fritsch* [2012] VSC 87. NATURAL JUSTICE – Application of fair hearing rule to determination of whether to refer to VCAT issue of appointment of administrator – *Bahonko v Moorfields Community & Ors* [2008] VSCA 6 – *Thompson v State of Victoria* [2021] VSC 181.

## KEY CONTACTS

### PANEL RELATIONSHIP CONTACTS

Your contacts responsible for navigating our firm, connecting you with appropriate expertise and achieving maximum efficiency and your Newsletter editors.



#### Cameron Roberts

Partner  
+61 3 9641 8696  
+61 438 510 885  
croberts@tglaw.com.au



#### Loretta Reynolds

Partner, Markets  
+61 3 8080 3705  
+61 403 069 819  
lreynolds@tglaw.com.au



#### Emma-Jane Stevens

Partner  
+61 3 8535 3510  
+61 414 371 361  
estevens@tglaw.com.au



#### Bruce Crosthwaite

Partner  
+61 3 9641 8618  
+61 408 372 104  
bcrosthwaite@tglaw.com.au

## 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.

This Alert is produced by Thomson Geer. It is intended to provide general information in summary form on legal topics, current at the time of publication. The contents do not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in particular matters. Liability limited by a scheme approved under Professional Standards Legislation.