



PUBLIC SECTOR NEWSLETTER - VICTORIA

Issues around COVID-19 and integrity remain central to the public discourse and our newsletter this week.

The health department has been ordered to release the details of confidential lockdown briefings in a ruling from the Office of the Victorian Information Commissioner. In the Courts, there have been several decisions over the COVID-19 restrictions, most recently the decision of Baker v Department of Health and Human Services.

In integrity matters, a New Office of the Special Investigator was established to examine potential criminal conduct and disciplinary matters raised by the Royal Commission into the Management of Police Informants. Further recommendations have also arisen from the Crown Casino Royal Commission.

In positive news, a new Victorian Bar Pro Bono Court Referral Scheme has been established to facilitate the provision of pro bono assistance from barristers to unrepresented litigants in family law proceedings.

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

IN THE MEDIA

Call for feedback on gender equality

The WGEA said it was inviting input from employers, workers, the women's sector and non-Government organisations, academics and Government Departments of all levels, to identify areas of future focus for the WGEA over the next 10 years in order to achieve gender equality and support the Respect@Work Council. <https://psnews.com.au/2021/10/21/call-for-feedback-on-gender-equality/?state=aps>

Long arm of police reaches round the world

The Australian Federal Police's (AFP) 2020-21 Annual Report declares that operational successes, including world-leading arrests and disruptions, had helped the Force develop trusted and unparalleled relationships with law enforcement Agencies around the world. <https://psnews.com.au/2021/10/21/long-arm-of-police-reaches-round-the-world/?state=aps>

More illegal gambling sites blocked

The ACMA has requested that Australian internet service providers (ISPs) block more illegal offshore gambling websites. Following numerous complaints about these services, the ACMA investigated and found them to be operating in breach of the Interactive Gambling Act 2001. <https://www.acma.gov.au/articles/2021-10/more-illegal-gambling-sites-blocked>

ACMA penalises financial services telemarketer \$100,000 for unlawful calls

Information Support Australia Pty Ltd (trading as Super Information Team) has paid an infringement notice of \$102,120 and will be subject to an independent review after the Australian Communications and Media Authority (ACMA) found it breached telemarketing rules. It was responsible for 880 calls to phone numbers on the Do Not Call Register in October 2020. <https://www.acma.gov.au/articles/2021-10/acma-penalises-financial-services-telemarketer-100000-unlawful-calls>

Telco complaints down but customers wait longer for help

New figures released today by the ACMA show telcos received just over one million complaints in the 2020-21 financial year. Industry Ombudsman (TIO) have increased from 7.8 per cent to 10.7 per cent in two years. This suggests that some telcos are not handling complaints at all well, and other smaller telcos are in fact not recording complaints at all. <https://www.acma.gov.au/articles/2021-10/telco-complaints-down-customers-wait-longer-help>

Laws unlock more rights for renters

The Department of Communities, Housing and Digital Economy has developed legislation to make renting fairer. Minister for Communities and Housing, Leeanne Enoch said the new laws, which had passed Parliament, would end 'without grounds' evictions and make it easier for Queensland renters to keep a pet. <https://psnews.com.au/2021/10/19/laws-unlock-more-rights-for-renters/?state=qld>

Australians on board with vaccine passport

Senator Reynolds said Services Australia's Visible Digital Seal technology within the new document was world-leading, as secure as an Australian passport and was authenticated in the same way. The Minister said the international certificate met the new global standard specified by the International Civil Aviation Organization and conformed with World Health Organization guidance. <https://psnews.com.au/2021/10/18/australians-on-board-with-vaccine-passport/?state=aps>

ABC review to finetune public complaints

The Australian Broadcasting Corporation's (ABC) complaints handling process is to be put to the test by a former Commonwealth Ombudsman as part of a new independent review. Chair of ABC, Ita Buttrose said the Review would examine how well the ABC managed external complaints and feedback about compliance with its editorial standards. <https://psnews.com.au/2021/10/18/abc-review-to-finetune-public-complaints/?state=aps>

Ransomware Initiative 2021

Australia has joined 31 countries from around the world to issue a joint statement recognising the escalating global threat of ransomware and agreeing to consider a range of actions in relation to resilience, countering illicit finance, disruption and other law enforcement efforts and diplomacy. <https://www.homeaffairs.gov.au/news-media/archive/article?itemId=700>

OAIC finds against 7-Eleven over facial recognition

Australian Information Commissioner and Privacy Commissioner Angelene Falk has determined that convenience store group 7-Eleven interfered with customers' privacy by collecting sensitive biometric information that was not reasonably necessary for its functions and without adequate notice or consent. <https://www.oaic.gov.au/updates/news-and-media/oaic-finds-against-7-eleven-over-facial-recognition>

Victoria

Research helps shape SVO scheme review

Latest research undertaken by the University of Melbourne and published by the Queensland Sentencing Advisory Council questions whether the serious violent offences (SVO) scheme is the most effective sentencing approach to achieve community safety. <https://www.sentencingcouncil.qld.gov.au/news-room/news/2021/research-helps-shape-svo-scheme-review>

Victoria's privacy commission orders release of secret COVID lockdown briefings

The health department is ordered to release the details of confidential lockdown briefings in a ruling from the Office of the Victorian Information Commissioner. <https://www.abc.net.au/news/2021-10-20/victorias-covid-lockdown-briefings-release-ordered/100552548>

New Office to investigate police in Victoria

The Office of the Special Investigator was formally established this week with powers to examine the potential criminal conduct and disciplinary matters raised by the Royal Commission into the Management of Police Informants. <https://psnews.com.au/2021/10/14/new-office-to-investigate-police/?state=vic>

Courts to open sentences for improvement

A performance audit into whether Court Services Victoria (CSV) provided the administrative services and facilities that Victorian courts need to effectively perform their functions has found that CSV could not show if it supported court services. <https://psnews.com.au/2021/10/14/courts-to-open-sentences-for-improvement/?state=vic>

Gambling watchdog probe urges ban on high-roller junkets, but critics say 'they've missed the point'

An independent probe into Victoria's under-fire gambling watchdog could not substantiate allegations that Crown exercised undue influence on inspectors, but recommends parliament ban junkets for overseas high rollers. <https://www.abc.net.au/news/2021-10-13/victoria-crown-investigation-junket-vcglr/100535234>

IN PRACTICE AND COURTS

Artificial Intelligence (AI)

The NSW Government believes that the NSW Government can use AI to benefit the community and is taking actions to ensure that AI is used safely, ethically and effectively. We have an AI Strategy that outlines our vision for the use of AI, and ensures transparency, fairness and accountability. Have your say to 31 December 2021 <https://www.nsw.gov.au/have-your-say/artificial-intelligence>

ICAC: Prosecution briefs with the DPP and outcomes

The tables on this page each provide information on prosecution briefs that are currently with the Director of Public Prosecutions (DPP), and the outcomes of DPP advice and prosecutions. Last updated 20 October 2021.

NSW ICAC: Further Operation Keppel public inquiry starts

The NSW ICAC Operation Keppel further public inquiry will started on 18 October 2021

The Commission is investigating whether, between 2012 and 2018, the Hon Gladys Berejiklian MP engaged in conduct that: constituted or involved a breach of public trust by exercising public functions in circumstances where she was in a position of conflict between her public duties and her private interest.

Victoria

[Victoria Legal Aid: Shaping a fairer, more effective criminal justice system](#)

We've shared our key focusses for reform with the [inquiry into Victoria's criminal justice system](#). The focus of our submission is on four key areas that reflect a person's journey into and through the criminal justice system.

[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.

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.

Commonwealth and Victorian Courts' COVID updates – 22 October 2021

For up-to-date information about the Courts' responses, please visit their websites: Supreme Court of Victoria – see [here](#). County Court of Victoria – see [here](#). Magistrates' Court of Victoria – see [here](#).

This week saw the establishment of a referral scheme for pro bono assistance to help unrepresented litigants involved in family law proceedings. It is a joint initiative of the Federal Circuit and Family Court of Australia and the Victorian Bar. More information is available on the Courts' website [here](#).

PUBLISHED – ARTICLES, PAPERS, REPORTS

[Grattan on Friday: Morrison government faces battle over integrity commission it doesn't really want](#)

Centre for Public Integrity: 20 October 2021
Those critiquing the dramatic fall of Gladys Berejiklian, who resigned when the Independent Commission Against Corruption announced it was investigating the probity of her conduct, have divided into two camps.

[Administration of Victorian Law Courts](#)

Auditor-General Victoria: 14 October 2021
Is Court Services Victoria (CSV) providing the administrative services and facilities that Victorian courts need to efficiently and effectively perform their

functions? After seven years of operation, CSV cannot yet demonstrate if or how well its services support courts to perform their functions efficiently and effectively. The report makes 13 recommendations to CSV across five key areas.

[Investigation into allegations of collusion with property developers at Kingston City Council](#)

Victorian Ombudsman: 12 Oct 2021

This investigation makes no findings about the legality of Council's decisions, some of which are subject to review by VCAT; or criticism of the developer, who will inevitably seek to maximise its return to shareholders. It falls to public officers to ensure this does not happen to the detriment of the public interest.

[Justice John Logan RFD, 'The efficient disposal of cases after COVID-19' \(2021\)](#)

Delivered at the Commonwealth Magistrates' and Judges' Association - Virtual conference, on 13 September 2021.

CASES

[Palmer v Western Australia \[2021\] HCA 31](#)

Constitutional law – State Parliament – Legislative power – Where State of Western Australia entered into agreement concerning mining projects in Pilbara region with Mineralogy Pty Ltd and other parties ("co-proponents") including International Minerals Pty Ltd – Where plaintiff controller and beneficial owner of Mineralogy Pty Ltd and director of both Mineralogy Pty Ltd and International Minerals Pty Ltd – Where agreement and 2008 variation set out in schedules to, and thereby formed part of, Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act 2002 (WA) ("State Act") – Where agreement provided that Mineralogy Pty Ltd, alone or with co-proponent, could submit proposals to relevant Minister regarding projects – Where Mineralogy Pty Ltd and International Minerals Pty Ltd submitted proposals to Minister in 2012 and 2013 – Where disputes in relation to 2012 proposal referred to arbitration, resulting in arbitral awards in favour of Mineralogy Pty Ltd and International Minerals Pty Ltd in 2014 and 2019 – Where in August 2020 Parliament of Western Australia passed Iron Ore Processing (Mineralogy Pty Ltd) Agreement Amendment Act 2020 (WA) ("Amending Act") – Where Amending Act purported to insert new Pt 3 into State Act, including provisions which would deprive 2012 and 2013 proposals of legal effect (s 9) and deprive 2014 and 2019 arbitral awards of legal effect (s 10) – Where plaintiff named in Pt 3 – Where plaintiff commenced proceedings in High Court's original jurisdiction seeking declarations that Amending Act wholly or partly invalid – Whether Amending Act singled out plaintiff for "disability" or "discrimination" in manner forbidden by s 117 of Constitution – Whether ss 9(1), 9(2) and 10(4)-(7) of State Act invalid on basis they amounted to

exercise of adjudicative authority regarding controversy within scope of s 75(iv) of Constitution – Whether ss 9(1), 9(2) and 10(4)-(7) of State Act invalid on basis they constituted bill of pains and penalties – Whether Amending Act exceeded limitation on legislative power of Parliament of Western Australia arising from rule of law.

Words and phrases – “adjudicative authority”, “bill of pains and penalties”, “disability”, “discrimination”, “exercise of judicial power”, “legislative power”, “rule of law”, “text and structure of the Constitution”.

[Asmar v Albanese \(No 4\) \[2021\] VSC 672](#)

ASSOCIATIONS – Political parties – Australian Labor Party – National Executive – Intervention in Victorian Branch – Resolution taking over conduct of preselections for House of Representative seats – Challenge to National Executive’s resolutions by unions affiliated with the Victorian Branch – Whether National Executive validly exercised power to take over conduct of preselections – Whether power exercised irrationally, illogically, unreasonably or for improper purposes – Structure of ALP – Relationship between National Executive and Branch Rules – Whether issues justiciable. TRUSTS – Whether beneficiaries can bring claim for unlawful interference with the administration of trusts by third party – Whether special circumstances existed. PRACTICE AND PROCEDURE - Representative order – Whether need for a common grievance - Supreme Court (General Civil Procedure) Rules 2015 O 18 r2, 4.

[Kairouz v Bracks \(No 2\) \[2021\] VSC 671](#)

ASSOCIATIONS – Political Parties – Australian Labor Party – National Executive – Media allegations of Branch stacking – Intervention in Victorian Branch – Administrators appointed – Whether intervention valid – Powers of the National Executive - ALP structure – Relationship between the National Constitution and Branch Rules – Branch Rules – Amendment by Administrators – Whether amendments valid – Disciplinary charges brought in respect of alleged branch stacking – Whether charges valid – Whether issues raised justiciable. TRUSTS – Whether beneficiaries can bring claim for unlawful interference with the administration of trusts by third party – Whether special circumstances existed.

[Baker v Department of Health and Human Services \[2021\] VSC 673](#)

JUDICIAL REVIEW – COVID 19 pandemic – State of emergency – Border Crossing Permit Directions - Stay at Home Directions – Hotel quarantine – Whether less restrictive means reasonably available in the context of plaintiff’s medical condition – Public Health and Wellbeing Act 2008 ss 5, 6, 7, 8, 9, 10, 200, 200B, 200C, 200D – Cotterill v Romanes [2021] VSC 498.

[Bolitho v Banksia Securities Ltd \(No 18\) \(remitter\) \[2021\] VSC 666](#)

ADMINISTRATION OF JUSTICE – Paramount duty to court and overarching obligations – Group proceeding – Litigation funder, counsel, solicitor/law firm and expert witness – Fraudulent scheme to obtain grossly inflated legal costs and litigation funding commission from settlement payment – Repeated contraventions of duty and obligations – Where conduct corrupted the proper administration of justice – Content of paramount duty – Where solicitor on record played only a post-box role – Where targeted destruction of documents discovered – Civil Procedure Act 2010 (Vic) ss 10, 16–19, 21, 24.

ADMINISTRATION OF JUSTICE – When overarching obligations apply – Whether legal practitioner acting for or on behalf of a party – Whether a person exercising any direct control, indirect control or any influence over the conduct of the civil proceeding or of a party in respect of that civil proceeding – Civil Procedure Act 2010 (Vic) s 10.

ADMINISTRATION OF JUSTICE – Paramount duty to court – Whether breach of fiduciary duty to client is a breach of paramount duty to court – Whether solicitor and counsel for lead plaintiff in group proceedings have fiduciary duty to unrepresented group members when negotiating, documenting and seeking court approval of a settlement – Where solicitor on record played only a post-box role – Civil Procedure Act 2010 (Vic) s 16.

ADMINISTRATION OF JUSTICE – Overarching obligation to act honestly – Content of obligation – Civil Procedure Act 2010 (Vic) s 17.

ADMINISTRATION OF JUSTICE – Overarching obligations not to mislead or deceive – Content of obligation – Civil Procedure Act 2010 (Vic) s 21.

ADMINISTRATION OF JUSTICE – Overarching obligation to ensure costs are reasonable and proportionate – Extent to which obligation requires a person subject to overarching obligations to monitor costs of another person – Whether costs must be incurred – Civil Procedure Act 2010 (Vic) s 24.

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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

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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