



PUBLIC SECTOR NEWSLETTER - VICTORIA

Privacy and pandemics have featured prominently over the past fortnight.

On the privacy front, Australian Public Service Agencies are to have their security strengthened, OAIC has warned videoconferencing services' privacy standards have failed to keep pace and the Federal Government has introduced legislation to better protect privacy and is considering powers to block malicious SMS scams.

The Federal Government has also introduced legislation to reform litigation funding. However, the Federal Government's voter ID laws have been criticised.

Locally, the Victorian Government's legislation to respond to pandemics has been introduced, along with legislation to protect against discrimination. Moreover, the Victorian Government is to introduce measures to implement recommendations following the Royal Commissions into police informants and Crown Casino.

Finally, and somewhat indulgently, we highlight a new report released articulating the contribution lawyers make to the community!

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

IN THE MEDIA

Report corrects perception of lawyers

Australia's legal profession prides itself on providing a voice for people in need, but it has rarely spoken up on its own behalf. A new report released articulates the contribution lawyers make to the community and addresses misconceptions regarding the profession. <https://www.lawcouncil.asn.au/media/media-releases/report-corrects-perception-of-lawyers>

Joint project to boost PS cyber security

Australian Public Service Agencies using ITC gateways are to have their security strengthened in a joint project involving the Digital Transformation Agency (DTA), the Australian Signals Directorate (ASD), and the Australian Cyber Security Centre (ACSC). <https://psnews.com.au/2021/11/04/joint-project-to-boost-ps-cyber-security/?state=aps>

Teleconference firms zoomed in on privacy

The Office of the Australian Information Commissioner (OAIC) has joined other international jurisdictions to warn video teleconferencing companies (VTC) that their privacy safeguards have not kept pace with the expansion of their services during the COVID-19 pandemic. <https://psnews.com.au/2021/11/04/teleconference-firms-zoomed-in-on-privacy/?state=aps>

OAIC: Observations following the joint statement on global privacy expectations of video teleconferencing companies

Moving forward, the joint signatories highlight this model of engagement as valuable and replicable in circumstances where emerging issues would benefit from open dialogue to help set out regulatory expectations, clarify understanding, identify good practice, and foster public trust in innovative technologies. <https://www.oaic.gov.au/updates/news-and-media/oaic-and-ico-conclude-joint-investigation-into-clearview-ai>

Clearview AI breached Australians' privacy

Australian Information Commissioner and Privacy Commissioner Angelene Falk has found that Clearview AI, Inc. breached Australians' privacy by scraping their biometric information from the web and disclosing it through a facial recognition tool. <https://www.oaic.gov.au/updates/news-and-media/clearview-ai-breached-australians-privacy>

Australian company directors now required to create digital ID

Company directors will now be required to create an identification number through myGovID that stays with them for life as the government moves to crack down on illegal phoenixing. <https://www.itnews.com.au/news/australian-company-directors-now-required-to-create-digital-id-572029>

HRLC: Discriminatory voter ID laws an attack on voting rights and must not proceed

The Federal Government's proposed laws requiring people provide identification when voting will create new and unnecessary barriers that undermine the right to vote for Aboriginal and Torres Strait Islander people and people experiencing homelessness. <https://www.hrlc.org.au/news/2021/10/28/discriminatory-voter-id-laws-an-attack-on-voting-rights-and-must-not-proceed>

Child-friendly guide to help understand child sexual abuse

The Australian Human Rights Commission has worked with the National Office for Child Safety to develop a guide to help children and young people understand child sexual abuse, and how to seek help. The guide was launched to support Australia's first ever National Strategy to Prevent and Respond to Child Sexual Abuse. <https://humanrights.gov.au/about/news/child-friendly-guide-help-understand-child-sexual-abuse-0>

Gov considers new powers for telcos to block malicious SMS scams

The Federal Government is weighing whether it needs additional legislation to give telcos the power to block malicious text messages en masse. <https://www.itnews.com.au/news/gov-considers-new-powers-for-telcos-to-block-malicious-sms-scams-571773>

Litigation funding reforms introduced into Parliament

The Federal Government has introduced legislation into Parliament to improve outcomes for litigation funding participants by promoting a fair and reasonable distribution of class action proceeds. <https://www.attorneygeneral.gov.au/media/media-releases/litigation-funding-reforms-introduced-parliament-27-october-2021>

Laws To Enshrine Safe And Clear Pandemic Responses

The Victorian Government will introduce new laws that provide a clear and streamlined framework for managing volatile and long pandemics such as COVID-19 – while putting the safety of all Victorians first. <https://www.premier.vic.gov.au/laws-enshrine-safe-and-clear-pandemic-responses>

Anti-racism framework open for comments

The Australian Human Rights Commission is calling for submissions to inform the development of a National Anti-Racism Framework. The AHRC's Concept Paper outlined proposed principles, strategies and outcomes that were to be further developed through scoping consultations and the submissions process. <https://psnews.com.au/2021/10/25/anti-racism-framework-open-for-comments/?state=aps>

Information Office finds FOI popular in 2020-01

The Office of the Australian Information Commissioner (OAIC) received almost 40 per cent more Freedom of Information (FOI) complaints in 2020-21 than in the previous financial year, according to its annual report. <https://psnews.com.au/2021/10/25/information-office-finds-foi-popular-in-2020-01/?state=aps>

Higher penalties to help protect Australians' privacy

Higher penalties outlined in draft legislation released by the Australian Government will align privacy and consumer law penalties and help address serious privacy risks to the community, the Office of the Australian Information Commissioner (OAIC) said. Higher penalties to help protect Australians' privacy. <https://www.oaic.gov.au/updates/news-and-media/higher-penalties-to-help-protect-australians-privacy>

Landmark privacy reforms to better protect Australians online

The Federal Government has announced landmark privacy legislation to protect Australians online and ensure that Australia's privacy laws remain fit for purpose in the digital age. Attorney-General Michaelia Cash said this legislation would ensure Australians' privacy would be treated more carefully and transparently by online platforms such as social media companies. <https://www.attorneygeneral.gov.au/media/media-releases/landmark-privacy-reforms-better-protect-australians-online-25-october-2021>

Victoria

IBAC corruption prevention work reaches more Victorians with transition to online forums and events

Victoria's independent anti-corruption agency, IBAC, continued to prevent and expose public sector corruption and police misconduct this year with a shift to online forums and events, making them more accessible to all Victorians. <https://www.ibac.vic.gov.au/media-releases/article/ibac-corruption-prevention-work-reaches-more-victorians-with-transition-to-online-forums-and-events>

Stronger Protections Against Discrimination Introduced

The Victorian Government is continuing to protect LGBTIQ+ Victorians against discrimination, with landmark reforms now in effect and further new laws introduced to Parliament. <https://www.premier.vic.gov.au/stronger-protections-against-discrimination-introduced>

IBAC special report highlights corruption and police misconduct risks related to social media use

In a special report tabled to Parliament the Independent Broad-based Anti-corruption Commission (IBAC) has highlighted corruption and police misconduct risks associated with inappropriate social media use and online commentary by a senior police officer. <https://www.ibac.vic.gov.au/media-releases/article/ibac-special-report-highlights-corruption-and-police-misconduct-risks-related-to-social-media-use>

Royal Commission: Reforms For Crown

The Victorian Government is taking immediate action to introduce tough new measures and strict oversight of Melbourne's casino operator – ensuring the issues reported during the Royal Commission can never happen again. <https://www.premier.vic.gov.au/royal-commission-sweeping-reforms-needed-crown>

Strengthening The Justice System And Protecting Victims

The Victorian Government is forging ahead with a raft of reforms to strengthen the justice system following the recommendations of the Royal Commission into the Management of Police Informants. <https://www.premier.vic.gov.au/strengthening-justice-system-and-protecting-victims>

CASES

[Patton v Mareangareu \[2021\] VSCA 295](#)

ADMINISTRATIVE LAW – Judicial Review – Appeal – Chief Commissioner of Police declined to reappoint police officer pursuant to Victoria Police Act 2013 s 136(3) – Officer dismissed on basis of convictions – Convictions quashed on appeal – Whether Chief Commissioner erred by considering subject matter of convictions in declining to reappoint – No error shown – Character and reputation of officer seeking reappointment relevant to exercise of power – Public Service Board v Morris [1985] HCA 9; (1985) 156 CLR 397, considered – Victoria Police Act 2013 ss 8, 16, 27, 28, 30, 135, 136, 137 – Victoria Police Regulations 2014 r 5.

STATUTORY CONSTRUCTION – Whether Victoria Police Act 2013 s 136(3) provides right to reappointment on conviction being set aside – No right to reappointment – Provision confers discretionary power on Chief Commissioner – Whether s 136(3) a distinct power of reappointment or informs general power of appointment – Distinct power conferred – Saraswati v The Queen [1991] HCA 21; (1991) 172 CLR 1, explained – Whether s 136(3) requires Chief Commissioner to disregard subject matter of conviction set aside – No such requirement – Characterising provision as beneficial unhelpful to interpretative task – NSW Aboriginal Land Council v Minister Administering the Crown Land (2016) 260 CLR 232, applied – Presumption that statutory consequences of conviction cease when conviction set aside inapplicable – Commissioner for Railways (NSW) v Cavanough [1935] HCA 45; (1935) 53 CLR 220, Rimanic v Business Licensing Authority [2002] VSCA 64; (2002) 129 A Crim R 356, distinguished – Appeal allowed.

[Greater Shepparton City Council v Hamilton \(Review and Regulation\) \[2021\] VCAT 1316](#)

Review and Regulation List – Freedom of Information Act 1982 section 33(1) – review of decision by Information Commissioner – information relating to the personal affairs of non-executive staff of agency

– factors to be considered in determining whether disclosure unreasonable, including consideration of section 51A responses - decision set aside and substituted decision for grant of access after deleting irrelevant material and material exempt from release under section 33(1) of the Act.

[Cayford v Let Danny Do It Pty Ltd \[2021\] VSC 707](#)

ADMINISTRATIVE LAW – Appeal of decision of Magistrates' Court of Victoria – Extension of time to appeal – Workplace injury – Whether Magistrate wrongly drew Jones v Dunkel inference – Whether Jones v Dunkel inference may be drawn in rejecting direct evidence of a witness – Where lack of contemporaneous evidence of injury – Criteria for establishing whether co-worker in employer's camp or worker's camp – Error of law established – Appeal allowed.

[Holey Moley v Chief Commissioner of Police \[2021\] VSC 709](#)

JUDICIAL REVIEW – Consent orders sought – Police Commissioner sought variation of plaintiffs' licences – Licences contained approval for minors to be on licensed premises – Whether Chief Commissioner's application was an application seeking variations under s 29 of the Liquor Control Reform Act 1998 – Appropriate to make declarations sought – Liquor Control Reform Act 1998 ss 29(1), (2), 120(2)(e).

[Moorabool Shire Council v Minister for Planning \[2021\] VSC 701](#)

ADMINISTRATIVE LAW – Judicial review – Amendment to Moorabool Planning Scheme to facilitate use and development of site to receive tunnel spoil from construction of West Gate Tunnel – Minister's decision under s 20(4) of the Planning and Environment Act 1987 (Vic) to exempt himself from statutory notice requirements – Minister's Reasons for exemption decision referred to EPA's approval of environment management plan (EMP) for site – EPA subsequently acknowledged approval of EMP not valid – Whether reference to EPA's approval of EMP involved an error of law – Reference to EPA approval of EMP a finding of fact open on the material before the Minister – Whether approval material to exemption decision – Whether Minister's conclusion that views of Council were reasonably well known so further consultation not required involved an error of law or jurisdictional error – Conclusion reasonably open to Minister – No error of law – Exemption decision not affected by jurisdictional error – Planning and Environment Act 1987 (Vic) ss 17, 18, 19, 20(4), 20(5) – Environment Protection (Management of Tunnel Boring Machine Spoil) Regulations 2020 (Vic), regs 4, 6.

ADMINISTRATIVE LAW – Judicial review – Minister's decision to amend Moorabool Planning Scheme to insert an Incorporated Document – Whether decision invalid because Incorporated Document requires Council to enter into an agreement under s 173 of the

Planning and Environment Act 1987 (Vic) regarding road works and improvements – Council not compelled to enter into s 173 agreement – Approved use and development conditional on site owner entering into agreement with Council – Planning and Environment Act 1987 (Vic) ss 6(1), 6(2), 173.

[Melton City Council v Minister for Planning \[2021\] VSC 700](#)

ADMINISTRATIVE LAW – Judicial review – Amendment to Melton Planning Scheme to facilitate use and development of site to receive tunnel spoil from construction of West Gate Tunnel – Minister’s decision under s 20(4) of the Planning and Environment Act 1987 (Vic) to exempt himself from statutory notice requirements – Minister’s Reasons for exemption decision referred to EPA’s approval of environment management plan (EMP) for site – EPA subsequently acknowledged approval of EMP not valid – Whether reference to EPA’s approval of EMP involved an error of law – Reference to EPA approval a finding of fact open on the material before the Minister – Whether approval material to decision – No error of law – Exemption decision not affected by jurisdictional error – Planning and Environment Act 1987 (Vic) ss 17, 18, 19, 20(4) – Environment Protection (Management of Tunnel Boring Machine Spoil) Regulations 2020 (Vic), regs 4, 6.

[Cathcart v Wang \[2021\] VSC 685](#)

ADMINISTRATIVE LAW – Residential tenancy – Applications for leave to appeal from orders of VCAT made at separate hearings – Landlord applied for order terminating residential tenancy on basis of unpaid rent – Telephone hearing – Tenant’s line dropped out within minute of commencement of hearing – Unknowingly at first, but later believing tenant had hung up on him, member continued hearing without tenant, but with landlord’s agent still participating, and made termination order – Tenant rang VCAT back, twice, but did not get through in time to participate – Whether denial of procedural fairness – At subsequent hearing, deputy president made order for possession of rental premises – Whether possession order contingent upon termination order validly made under applicable provision – Whether proposed appeals futile in view of, inter alia, tenant’s continuing unjustified failure to pay rent – Whether Court should affirm VCAT’s orders; set them aside and make orders VCAT could have made; or set them aside and remit landlord’s applications to VCAT for rehearing – Applications granted – Appeals allowed – Orders for termination and possession set aside – Landlord’s applications for such orders remitted to VCAT for rehearing – Victorian Civil and Administrative Tribunal Act 1998 (Vic), ss 97, 98, 100, 102, 120 & 148.

[Jolin Nominees Pty Ltd v Daniel Investments \(Aust\) Pty Ltd \[2021\] VSC 705](#)

JUDICIAL REVIEW AND APPEALS – Application for leave to appeal from VCAT under s 148 of the Victorian Civil and Administrative Tribunal Act 1998 (Vic) – Principles of statutory construction – Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355, referred to – Whether Senior Member erred in applying the test pursuant to s 38(6)(b) of the Domestic Building Contracts Act 1995 (Vic) – Mann v Paterson [2019] HCA 32, referred to – Pratley Constructions v Racine [2004] VCAT 2035, referred to – Whether Senior Member took into account irrelevant considerations or failed to take into account relevant considerations – Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24, referred to – Construction of contract – Whether builder entitled to extension of time – Whether builder alternatively entitled to extension of time under s 39 of the Domestic Building Contracts Act 1995 (Vic) – Whether Senior Member provided adequate reasons – Leave to appeal granted in part – Appeal dismissed.

[The Australian Sawmilling Co Pty Ltd \(in liq\) v Environment Protection Authority \[2021\] VSCA 294](#)

CONSTITUTIONAL LAW – Inconsistency of federal and state legislation – Commonwealth Constitution s 109 – Whether direct inconsistency between Environment Protection Act 1970 s 62 and Corporations Act 2001 (Cth) s 545 – Whether recovery of clean up costs makes liquidator ‘liable to incur any expense’ – No inconsistency arises where Corporations Act 2001 (Cth) s 545 not engaged – Scope of Corporations Act 2001 (Cth) s 5G(11) unnecessary to determine.

[Didani v Downes-Brydon \[2021\] VSCA 281](#)

ADMINISTRATIVE LAW – Application for leave to appeal – Judicial review – Applicant sought judicial review of opinion of medical panel convened under Workplace Injury Rehabilitation and Compensation Act 2013 – Whether medical panel bound by description of injury in referral documents – Whether judge erred in finding as to whether medical panel accepted applicant’s complaints of present pain – Whether reasons adequate – Leave to appeal refused – Military Rehabilitation and Compensation Commission v May [2016] HCA 19; (2016) 257 CLR 468 – Calleja v Franet Pty Ltd [2000] VSC 339 – Workplace Injury Rehabilitation and Compensation Act 2013.

[Moorabool Shire Council v Environment Protection Authority \(Review and Regulation\) \[2021\] VCAT 1261](#)

Review and Regulation List – Freedom of Information – statutory interpretation – whether applicant council is a ‘person’ for the purposes of making a request under s 17 – ‘person’ not defined in FOI Act – defined in Interpretation of Legislation Act 1984 to include body politic and body corporate unless contrary intention established – whether excluded because it is also an agency – contrary intention not established – applicant council’s request is valid – Freedom of Information Act 1982 s 17 – Interpretation of Legislation Act 1984 s 38.

[Nichols v Department of Education and Training \(Review and Regulation\) \[2021\] VCAT 1244](#)

Review and Regulation List – Freedom of Information – access to letter from acting principal referring the applicant for a medical assessment – agency released referral letter in part – medical assessment provided to applicant – document exempt – Freedom of Information Act 1982 ss 30(1), 35(1)(b).

[Ranalli v Timetrex Pty Ltd \(Building and Property\) \[2021\] VCAT 1223](#)

Section 78 Victorian Civil and Administrative Tribunal Act 1998, determination of proceedings against a respondent for conduct of proceedings that unnecessarily disadvantages the applicant.

LEGISLATION

Victoria

Bills

Date of second reading speech: 28 October 2021
[Equal Opportunity \(Religious Exceptions\) Amendment Bill 2021 \(Vic\)](#)

Date of second reading speech: 27 October 2021
[Casino and Gambling Legislation Amendment Bill 2021 \(Vic\)](#)

Date of second reading speech: 27 October 2021
[Constitution Amendment \(State of Emergency and State of Disaster\) Bill 2021 \(Vic\)](#)

Date of second reading speech: 27 October 2021
[Justice Legislation Amendment \(Criminal Procedure Disclosure and Other Matters\) Bill 2021 \(Vic\)](#)

Acts Assented

Date of assent: 3 November 2021
[Terrorism \(Community Protection\) Amendment Act 2021 \(Vic\)](#)
Act Number: 47/2021

Acts

Date of commencement: 26 October 2021
[Change or Suppression \(Conversion\) Practices Prohibition Act 2021\(Vic\)](#)
Sections 1, 2, Part 5 (sections 59-61) of this Act came into operation on 26 October 2021 (SG580 19.10.2021)
Act Number: 3/2021

Date of commencement: 26 October 2021
[Victorian Civil and Administrative Tribunal and Other Acts Amendment \(Federal Jurisdiction and Other Matters\) Act 2021 \(Vic\)](#) Part 3 (sections 12-23) of this Act came into operation on 26 October 2021 (SG596 26.10.2021)
Act Number: 31/2021

Date of commencement: 25 October 2021
[Energy Legislation Amendment \(Energy Fairness\) Act 2021 \(Vic\)](#)
Division 4 (sections 27-29) of this Act came into operation on 25 October 2021 (SG579 19.10.2021)
Act Number: 28/2021

Victorian legislation can be accessed here www.legislation.vic.gov.au

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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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