



## PUBLIC SECTOR NEWSLETTER - VICTORIA

The past fortnight has seen the Government pass laws in relation to discrimination in Victorian schools and workplaces and the pandemic, with the Law Institute of Victoria welcoming amendments to the Pandemic Management Bill.

Legislation in relation to spent convictions and the ability for the Magistrates' Court to resolve disputes involving an interstate party that VCAT cannot has also come into effect.

The Government has also announced a review into the State's police oversight system, which IBAC has welcomed.

In the Courts, a number of Practice Directions and Notes have been issued relating to our emergence from Covid. The Supreme Court has also considered the issue of what questions experts should be asked when briefed.

We hope you enjoy this edition of our fortnightly Victorian Government Newsletter, the last for 2021. We take this opportunity to wish all readers a happy and safe holiday season and a 2022 filled with excitement and prosperity.

### IN THE MEDIA

#### State Court to take on Federal cases

Attorney-General, Jaclyn Symes said the Victorian Civil and Administrative Tribunal and Other Acts Amendment (Federal Jurisdiction and Other Matters) Act 2021 was now in effect and would make it easier for Victorians to resolve disputes involving an interstate party. <https://psnews.com.au/2021/12/02/state-court-to-take-on-federal-cases/?state=vic>

#### Victoria

#### Laws Pass to Stop Discrimination against Victorians

The Government has sent a strong message that there is no place for discrimination in Victorian schools and workplaces, with landmark laws passed in Parliament

under the Equal Opportunity (Religious Exceptions) Amendment Bill 2021. <https://www.premier.vic.gov.au/laws-pass-stop-discrimination-against-victorians>

#### Strengthening Police Oversight for a Fairer Victoria

Victorians will be able to shape improvements to the state's police oversight system to ensure it is strong, transparent and meets the needs of our diverse communities. <https://www.premier.vic.gov.au/strengthening-police-oversight-fairer-victoria>

#### IBAC welcomes the Government's review of Victoria's police oversight system

The Independent Broad-based Anti-corruption Commission (IBAC) welcomes the release of the Government's consultation paper for the review of Victoria's police oversight system. <https://www.ibac.vic.gov.au/media-releases/article/ibac-welcomes-the-government-s-review-of-victoria-s-police-oversight-system>

#### New Laws Giving Victorians a Chance to Move Forward

Victorians with historical convictions who have demonstrated rehabilitation will be able to move on with their lives without the fear of past mistakes ruining their future. The Spent Convictions Act 2021 has come into effect and allows eligible convictions to become 'spent' if the person has not reoffended after a five-year period for young people, or 10 years for adults. <https://www.premier.vic.gov.au/new-laws-giving-victorians-chance-move-forward>

#### New Pathway for Resolving Interstate Disputes

The Victorian Civil and Administrative Tribunal and Other Acts Amendment (Federal Jurisdiction and Other Matters) Act 2021, passed earlier this year and now in effect, improves access to justice by allowing the Magistrates' Court to hear federal jurisdiction matters that VCAT cannot hear. <https://www.premier.vic.gov.au/new-pathway-resolving-interstate-disputes>

## LIV supports the further amendments to the Pandemic Management Bill

The Law Institute of Victoria (LIV) supports the proposed amendments tabled to the Public Health and Wellbeing (Pandemic Management) Bill 2021, which improve transparency and accountability and provide a strengthened level of oversight. <https://www.premier.vic.gov.au/new-pathway-resolving-interstate-disputes>

## Legal Aid: What the spent convictions scheme means for lawyers

Victoria's spent convictions scheme will start on 1 December, bringing the state in line with all other Australian states and territories. Convictions that are spent will no longer show up on a police record check but with some exemptions for checks conducted for particular types of employment, such as working with children. <https://www.legalaid.vic.gov.au/about-us/news/what-spent-convictions-scheme-means-for-lawyers>

## IN PRACTICE AND COURTS

### Victoria

#### [VLF report - Smarter data: the use and utility of administrative data in Victorian courts and tribunals](#)

We are very pleased to announce the release of our report: [Smarter Data: The use and utility of administrative data in Victorian Courts and Tribunals](#).

This is the second in our [Data Mapping Project](#), which maps and analyses the administrative data in three areas: legal assistance, courts and tribunals, and dispute resolution bodies.

#### [COVID Recovery - Practice Direction No. 5 of 2021](#)

The Magistrates' Court of Victoria have published a new Practice Direction regarding COVID Recovery.

This Practice Direction, No. 5 of 2021 - COVID Recovery, applies from 6 December 2021.

It revokes Practice Direction 'X' and Practice Direction 1 of 2021, effective 6 December 2021.

#### [Department of Justice and Community Safety: Systemic review of police oversight](#)

The Government is conducting a systemic review of police oversight in Victoria. The review is a key recommendation of the Royal Commission into the Management of Police Informants. Consultation closes on 1 February 2022.

#### [County Court of Victoria: eCase and Section 198B application form](#)

The County Court of Victoria has launched its eCase portal, an electronic platform for the subpoena process, and is the Court's preferred method for the submission of subpoena responses, objections, objection withdrawals, inspection requests and inspection itself amongst other things. For more information on eCase, refer to the Court's eCase: electronic subpoenas practice note.

Section 198B application form - The Court has developed a s 198B application form which should be used by parties when seeking to file a s 198B application. The template form is [here](#) and will be available on the Court's website.

#### [Coronavirus information](#)

The Supreme Court of Victoria is following State and Commonwealth Government advice regarding coronavirus (COVID-19).

#### Supreme Court Practice Directions

December 2021 [Notice to the Profession - In Person Hearings](#) - This Notice to the Profession outlines changes to in person hearings.

November 2021 [Notice to the Profession - Role of Junior Counsel](#) - The Court encourages the active participation of junior counsel in cases where two or more counsel are briefed for a party.

#### [Supreme Court Victoria: Review related to the Scale of Costs in Victoria](#)

The Council of Judges of the Supreme Court of Victoria approved a proposal from the Legal Costs Committee of the Court for a prompt and limited review concerning the use and utility of the Scale of Costs in Victorian courts.

#### [Review of Victoria's birth, death and marriage certificate fee](#)

Have your say on proposed changes to the Victorian fee for legal certificates, including birth, death and marriage certificates. The increase in fees would bring Victoria's fees more in line with the corresponding fees in other jurisdictions. Consultation closes 17 December 2021.

#### [Guardianship and Administration \(Fees\) Regulations 2022](#)

Have your say on the updated Victorian Civil and Administrative Tribunal (VCAT) fee for estates subject to administration orders. This consultation seeks your feedback on the update of the annual fee for estates subject to an administration order made by VCAT. Submissions close 5pm Monday 10 January 2022.

## CASES

#### [Harding v Sutton \(No 2\) \[2021\] VSC 789](#)

PRACTICE AND PROCEDURE – Case management – Expert evidence – Directions made under s 65H, Civil Procedure Act 2010 (Vic) as to assumptions on which expert evidence to be based, and questions to be addressed by expert evidence – Whether power in s 65H(1) to make directions permits Court to determine questions for expert witnesses – Limited scope for expert evidence in judicial review proceeding – Assumptions on which experts' opinions are to be based – Questions for experts – Civil Procedure Act 2010 (Vic), ss 7, 8, 9, 10, 16, 19, 20, 23, 25, 65F, 65G, 65H.

EVIDENCE – Opinion evidence – Ultimate issue rule – Whether experts should be asked general questions about proportionality of directions under review – Whether evidence of an opinion as to proportionality probative of a fact in issue in the proceeding – Role of expert witness – Evidence Act 2008 (Vic), s 80(a). In this proceeding, Simon Harding and 128 other plaintiffs seek judicial review remedies in relation to a number of directions given by the defendants in the exercise of their emergency powers under s 200(1)(d) of the Public Health and Wellbeing Act 2008 (Vic). The directions all concern mandatory vaccination against the COVID-19 virus (Vaccination Directions).

#### [Chief Municipal Inspector - Local Government v Mohamud \[2021\] VSC 787](#)

STATUTORY INTERPRETATION – The ‘golden rule’ – Purposive approach to statutory construction – Question of law referred from VCAT to the Supreme Court under s 96(1) Victorian Civil and Administrative Tribunal Act 1998 (Vic) – Whether VCAT has jurisdiction to hear application brought by Chief Municipal Inspector to suspend Councillor – Councillor charged with serious offences – Whether s 224 Local Government Act 2020 (Vic) requires compliance as precondition to VCAT’s jurisdiction to suspend a Councillor under s 229 – Whether to import words into s 224 Local Government Act 2020 (Vic) – Whether obvious drafting error – Where applying the literal meaning of legislation leads to an absurd or unintended result – Whether clear identification of words omitted or to be added to meet legislative intent identified – Taylor v The Owners - Strata Plan No 11564 (2014) 253 CLR 531 applied – Wentworth Securities Ltd v Jones [1980] AC 74 [105] applied – Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355 applied – Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue [2009] HCA 41; (2009) 239 CLR 27 applied.

#### [Hunter, Byron & Co Pty Ltd & Anor v AC Home Design Pty Ltd & Anor \[2021\] VSC 777](#)

ADMINISTRATIVE LAW – Judicial review of an order by Victorian Civil and Administrative Tribunal – Applicants did not attend or have representation at the Tribunal hearing – Whether applicants had notice of the hearing – Notice of hearing served – Natural justice – Appeal from an order of the Tribunal dismissing application to revoke primary order – Whether applicants had a reasonable excuse for not attending the hearing – Victorian Civil and Administrative Tribunal Rules 2018 (Vic) rr 4.10, 4.18 – Supreme Court (General Civil Procedure) Rules 2015 (Vic) r 56.02 – Wright v VCAT [2001] VSC 35 – Knight v Mackay [2008] VSC 602 – National Companies and Securities Commission v News Corporation [1984] HCA 29; (1984) 156 CLR 296. In April 2019, Hunter and Ms Kodsi (‘applicants’) applied successfully to the Victorian Civil and Administrative Tribunal (‘Tribunal’) for an interim order restraining Home Design from re-entering the premises relying on a notice to rectify default under the lease.

## LEGISLATION

### Victoria

#### Statutory Rules

No 141 [Victorian Civil and Administrative Tribunal \(Federal Jurisdiction Matters\) Regulations 2021](#)

No 142 [Child Wellbeing and Safety \(Child Link\) Amendment Regulations 2021](#)

No 143 [Magistrates’ Court Chapter II and Judicial Registrars Amendment \(Federal Jurisdiction Matters\) Rules 2021](#)

No 144 [Supreme Court \(Chapter I Appendices A and B\) Amendment Rules 2021](#)

#### Acts

Date of commencement: 1 December 2021

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

Parts 2 to 9 and Part 12 of this Act came into operation on 1 December 2021 (SG 673 30.11.2021)

Act Number: 41/2021

Date of commencement: 1 December 2021

[Special Investigator Act 2021 \(Vic\)](#)

Parts 1 to 7 of this Act came in by forced commencement on 1 December 2021 s.2

Act Number: 50/2021

Date of assent: 30 November 2021

Date of commencement: 1 December 2021

[Spent Convictions Act 2021 \(Vic\)](#)

Sections 1-10 and 20-29 of this Act came in by forced commencement on 1 December 2021 s.2(2)

Act Number: 3/2021

Date of commencement: 29 November 2021

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

Parts 2 and 5 of this Act came into operation on 29 November 2021 (SG 432 10.08.2021)

Act Number: 31/2021

#### Bills

Date of second reading speech: 2 December 2021

[Livestock Management Amendment \(Animal Activism\) Bill 2021 \(Vic\)](#)

Date of second reading speech: 1 December 2021

[Regulatory Legislation Amendment \(Reform\) Bill 2021 \(Vic\)](#)

Local Government Act 2021; Electoral Act 2002; Electoral Boundaries Commission Act 1982

Victorian legislation can be accessed here [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)

## 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.