



## PUBLIC SECTOR NEWSLETTER - VICTORIA

Welcome to the latest issue of our Victorian Public Sector Newsletter.

In this edition, new rules have come into place for electronic gaming machines at the Melbourne's Crown casino to help reduce harmful gambling. The changes mean the rules for EGMs at the casino will better align with the responsible gambling objectives in the Gambling Regulation Act 2003 (GR Act) and the Casino Control Act 1991 (CC Act).

And Australia and New Zealand are aiming to strengthen joint efforts to combat unlawful spam and scams. The Australian Communications and Media Authority (ACMA) and New Zealand's Department of Internal Affairs (DIA) have signed an agreement to further promote strategic engagement, facilitate information sharing and enhance compliance and enforcement outcomes.

The newsletter also includes our usual round-up of practice notes, cases and legislation.

### IN THE MEDIA

#### New rules for electronic gaming machines at Melbourne casino

The Victorian Gambling and Casino Control Commission (VGCCC) has changed the rules for electronic gaming machines (EGMs) at the Melbourne casino to help reduce harm. <https://www.vgccc.vic.gov.au/media-release/new-rules-electronic-gaming-machines-melbourne-casino>

#### IBAC calls on public sector employees to speak up to stop improper influence

Victoria's Independent Broad-based Anti-corruption Commission (IBAC) has launched a new campaign encouraging Victorian public sector employees to speak up to stop improper influence. <https://www.ibac.vic.gov.au/media-releases/article/ibac-calls-on-public-sector-employees-to-speak-up-to-stop-improper-influence>

#### The Victorian Attorney-General has appointed a new Chairperson and panel member to our Independent Review Panel.

The Victorian Attorney-General has appointed Janine Hebiton as the new Chairperson of the Panel of Independent Reviewers for a 3-year term. In addition to the appointment of the new chairperson, Emily Latif has been appointed to a 3-year term as Panel member. <https://www.legalaid.vic.gov.au/new-chairperson-and-member-independent-review-panel>

#### Building on the successes of Help Before Court

A comprehensive evaluation of Help Before Court (HB4C) has backed the pre-court service to continue and grow, saying it has provided a better experience for many clients and can often lead to better outcomes. <https://www.legalaid.vic.gov.au/building-successes-help-court>

#### Fast-tracking Family Dispute Resolution Service conferences

Victoria Legal Aid has provided some tips to fast-track Family Dispute Resolution Service conferences for clients. <https://www.legalaid.vic.gov.au/fast-tracking-family-dispute-resolution-service-conferences>

#### Youth Diversion Statement released

The Victorian Government released the Youth Diversion Statement. It is a guiding document that outlines the continued transformation of the Youth Justice system and investment in crime prevention and diversion. <https://www.justice.vic.gov.au/youth-diversion-statement-released>

### IN PRACTICE AND COURTS

#### ACMA

#### [Australia and New Zealand collaborate in fight against spam and scam messages](#)

Australia and New Zealand will look to further enhance ongoing joint efforts to combat unlawful spam and scams under an agreement signed by the communications regulator of each country.

## [Victorian Law Library Bulletin](#)

### AAT Bulletin

Issue No. 12/2022, 14 June 2022

<https://www.aat.gov.au/AAT/media/AAT/Files/AAT%20Bulletins/12-22.pdf>

### Victorian Magistrates Court

#### [MCV pending caseload as at the end of May 2022](#)

The number of pending cases at the Magistrates' Court of Victoria increased during 2020 as a result of the COVID-19 pandemic.

## **PUBLISHED - ARTICLES, PAPERS & REPORTS**

### Victorian Auditor General

#### [Annual Plan 2022–23](#)

The Victorian Auditor-General's Annual Plan 2022–23 was prepared pursuant to the requirements of section 73 of the Audit Act 1994 and tabled in the Parliament of Victoria on 9 June 2022.

#### [Managing Body-Worn Cameras](#)

Is Victoria Police's use of body-worn cameras underpinned by policies, training, governance and technology that are fit for purpose and support improved public safety?

### APO

#### [The '80 per cent rule': the Serious Violent Offences Scheme in the Penalties and Sentences Act 1992 \(Qld\): final report](#)

This report presents the Queensland Sentencing Advisory Council's findings and recommendations on its review into the operation and efficacy of the serious violent offences ('SVO') scheme under Part 9A of the Penalties and Sentences Act 1992 (Qld) ('PSA').

#### [Enhancing the coordination of housing supports for individuals leaving institutional settings](#)

This research developed policy recommendations for enhancing housing assistance for individuals leaving institutional settings of residential treatment for mental health and/or substance use problems, the criminal justice system and out-of-home care. The inquiry also offers recommendations for enhancing the ways Specialist Homelessness Services address the unique support needs of diverse cohorts moving between these institutional settings.

#### [Safer by design: how can collaboration help design safer gambling?](#)

This briefing paper outlines tools for education policy-makers to assess their confidence in a certain policy, program or initiative, and decide on next steps.

#### [Evidence decision-making tool for policymakers](#)

A new study by La Trobe University and the Summer Foundation investigates the most important design features to make homes more accessible. It provides evidence to support national implementation of accessibility standards in the National Construction Code (NCC). It provides results from a survey of 145 people with mobility impairments revealing the most essential features, as well as why they are important.

#### [Tax knowledge and tax manipulation: a unifying model](#)

The authors provide a unified analysis of taxation and taxpayer education when individuals have an incomplete understanding of a complex tax system. The analysis is independent of whether income is earned legitimately, or by avoiding or evading taxes. In this sense, learning about tax minimisation strategies (tax manipulation) is isomorphic to learning about tax rates. The government in this model balances a trade-off - a better understanding of the tax system potentially allows taxpayers to optimise more effectively, but also affects government revenue. Optimal taxpayer education and the optimal amount of redistribution can both be characterised by aggregate sufficient statistics, which do not require information about how biases or behavioural responses vary across the decision margins. The authors provide similarly simple rules for how tax rates on different income-generating activities should be set relative to each other.

## **CASES**

#### [Mt Wills Gold Mines Pty Limited v Minister for Resources \[2022\] VSC 312 \(14 June 2022\)](#)

JUDICIAL REVIEW – Application for exploration licence – Variation of existing licence – Approval of variation to existing licence after application for other exploration licence given highest ranking – Application for exploration licence refused – Whether decisions beyond Minister's power – Effect of ranking – Procedural fairness – Decision made out of time – Jurisdiction of mining warden – Mineral Resources (Sustainable Development) Act 1990 (Vic) ss 4(1) (definition of 'dispute'), 13, 15, 23, 24, 25(1)(d), 25(2), 34, 120, pt 12; Interpretation of Legislation Act 1984 (Vic) ss 42(1), 42A(1)(c).

#### [Minogue v Falkingham \[2022\] VSCA 111 \(14 June 2022\)](#)

PRACTICE AND PROCEDURE – Apprehension of bias – Where bias said to arise from communications with judge's associate not copied to applicant – Whether subsequent disclosure before the decision is made addresses any apprehension – Whether fair-minded lay observer might reasonably apprehend that trial judge might not bring impartial mind to decision – No reasonable apprehension of bias.

HUMAN RIGHTS – Whether applicant abandoned claim to relief in respect of earlier decision – Whether judge erred in failing to consider that the decision to refuse the applicant a laptop computer infringed s 38(1) of Charter of Human Rights and Responsibilities Act 2006

[Hatzigiakov v Cooney & Ors \[2022\] VSC 308 \(10 June 2022\)](#)

ADMINISTRATIVE LAW – Judicial review – Opinion of medical panel – Extension of time – ‘Special circumstances’ – Circumstances including changes in counsel’s advice concerning whether to commence proceeding seeking judicial review – Re Norman (1886) 16 QBD 637, Mann v The Medical Practitioners Board of Victoria [2004] VSCA 148 and Re Greco [2018] VSC 175 considered – Whether panel committed jurisdictional error – Whether panel’s reasoning legally inadequate – Whether panel ignored, overlooked or did not ‘engage with’ elements of history, medical and radiological opinion – Wingfoot Australia Partners Pty Ltd v Kocak [2013] HCA 43; (2013) 252 CLR 480 and Sidiqi v Kotsios [2021] VSCA 187 considered – Proceeding dismissed.

[O’Connor v Comensoli \[2022\] VSC 313 \(9 June 2022\)](#)

INSTITUTIONAL LIABILITY – Personal injury – Historical abuse of a child by a priest – Liability of the Archdiocese for the unlawful conduct of an assistant priest – Breach of duty of care – Foreseeability of risk of harm – Vicarious liability – Nature of relationship – Whether vicarious liability arises on the relationship between Archdiocese and priest – Whether Archdiocese vicariously liable – Structure of Catholic Archdiocese of Melbourne – Assessment of damages – Legal Identity of Defendants (Organisational Child Abuse) Act 2018 (Vic) – Trustees of the Roman Catholic Church v Ellis & Anor [2007] NSWCA 117 – Sweeney v Boylan Nominees Pty Ltd [2006] HCA 19; (2006) 226 CLR 161 – Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2022] HCA 1 – Prince Alfred College Incorporated v ADC [2016] HCA 37; (2006) 258 CLR 134 – DP (a pseudonym) v Bird [2021] VSC 850.

[Lendlease Engineering Pty Ltd v Owners Corporation No 1 \[2022\] VSCA 105 \(8 June 2022\)](#)

BUILDING ACTION – Limitation of actions – Commencement date of limitation period – Occupancy permits – When limitation period begins where multiple occupancy permits issued – Whether limitation period commences on the date an occupancy permit is first issued in respect of the defective building work, or on the date of the ‘final’ occupancy permit – Building Act 1993, s 134 – Leave to appeal granted – Appeal allowed.

PRACTICE AND PROCEDURE – Application for joinder – Whether joinder permitted after expiry of limitation period – Whether open to find Owners Corporations acted on behalf of private lot owners – Victorian Civil and Administrative Tribunal Act 1998, ss 60, 97, 98 – Birek Industries Pty Ltd v McKenzie Group Consulting (Vic) Pty Ltd [2014] VSCA 165; (2014) 48 VR 558, considered – Leave to cross-appeal refused. Planning and Local Infrastructure (2017) 55 VR 367 – R v A2 [2019] HCA 35; (2019) 269 CLR 507 – Medical Board of Australia v Sami [2022] VSC 90.

[Jeshing Property Management Pty Ltd & Anor v Yang & Ors \[2022\] VSC 306 \(8 June 2022\)](#)

REAL PROPERTY – Restrictive covenants – Application for a declaration that land not affected by any purported restriction in the covenants – Property Law Act 1958 (Vic), s 84(2) – Westfield Management Ltd v Perpetual Trustee Co Ltd [2007] HCA 45; (2007) 233 CLR 528 – Deguisa v Lynn (2020) 268 CLR 638 – Phoenix Commercial Enterprises v Canada Bay Council [2010] NSWCA 64.

REAL PROPERTY – Restrictive covenants – Application for modification of covenants – Property Law Act 1958 (Vic), s 84(1)(a) and (c) – Re Stani (Unreported, Full Court of the Supreme Court of Victoria, Young CJ, Barber and Nelson JJ, 7 December 1976) – Vrakas & Anor v Registrar of Titles & Ors [2008] VSC 281 – Prowse v Johnstone [2012] VSC 4 – Re Cook [1964] VicRp 106; [1964] VR 808.

**LEGISLATION (VICTORIA)****Acts (as made 2022)**[Victims of Crime \(Financial Assistance Scheme\) Act 2022](#)[Justice Legislation Amendment Act 2022](#)**Bills (in Parliament)**[Agriculture Legislation Amendment Bill 2022](#)

Passed both Houses

[Appropriation \(2022-2023\) Bill 2022](#)

Passed both Houses

[Appropriation \(Parliament 2022-2023\) Bill 2022](#)

Passed both Houses

## KEY CONTACTS

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



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## 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.