



## Spotlight on Peter Stewart, Victorian Government Solicitor

As the new Victorian Government Solicitor, Peter Stewart brings over 30 years experience in both the private and public sectors. Many know he is a former Partner specialising in Corporate and Commercial law at Allens Arthur Robinson. But he began his career at the Australian Law Reform Commission in Sydney and then as a policy advisor at the Department of Premier and Cabinet, before going into private practice.



Government projects are in Peter's blood. Some of the major highlights of his career include advising the Victorian Government on projects that have changed the economic, social and physical face of Melbourne, such as the franchising of Victoria's public transport system; the redevelopment of Southern Cross Station; the sale of the State Bank of Victoria; and the first Victorian electricity privatisation.

Peter has also played a key role in many changes to the Victorian sporting landscape, including advising the Victorian Government on the float of TABCORP, the VRC on the restructuring of the Victorian Racing Club and the consortium that built and operated what is now Etihad Stadium.

His involvement in a range of large, complex corporate and commercial projects spans the aviation, banking, pharmaceutical, mining, energy and property industries. It is this wide-ranging commercial focus, coupled with undoubted leadership skills and sound understanding of Government, that make him the ideal choice for the role of VGS.

"What I hope to bring to the role of VGS is a passion for Government law", he says. "Rather than reinventing the wheel, I want to build on the foundations laid by my predecessors, and inspire the many talented lawyers who work at VGSO. Ultimately, we only succeed if we are perceived as the trusted advisors of choice for Government. Our role is unique and my job is to ensure we continue to play our part to the very best of our ability."

## Branch Focus: Land Acquisition and Compensation

Managing Principal Solicitor Domenic Cristiano and his team in the Administrative Law Branch focus primarily on land acquisition and compensation claims and work closely with the VGSO's Commercial & Property Branch. Over the last 12 months, they have acted for a range of government clients, including DOT, DSE, DPCD, DEECD, DBI and DHS. They have also recently acted for the Valuer-General in a number of complex land valuation proceedings.

The team advises on complex planning and compensation matters, including potential compensation issues arising from the proposed expansion of the Urban Growth Boundary. Some of the significant matters the team has handled include the recent Supreme Court case of Challenger Property Asset Management Ltd v Stonnington City Council and the Valuer-General [2011] VSC 184 which related to the assessment of site value and capital improved value of the Jam Factory

(an iconic retail property on Chapel St, South Yarra), the acquisition of dozens of residential blocks at Summerland Estate Phillip Island for the protection of the Penguin Parade, and the Supreme Court decision in Minister for Planning v SB Partitions Pty Ltd [2009] VSC 333 relating to land compensation under Part 5 of the Planning and Environment Act .

Says Domenic: "It's very satisfying to play a role in helping the State deliver important public infrastructure projects."



## Historic Native Title Agreement



The Federal Court of Australia held a Native Title Consent Determination Hearing on Wednesday 27 July 2011 at Eumaralla (Yambuk) Coastal Reserve on Victoria's south-west coast.

The Consent Determination recognises the co-existent native title rights of the Gunditjmarra People and the Eastern Maar People. The VGSO has been working on this claim from the onset in 1996. The first part of the claim was settled on 30 March 2007.

In July, the second part of the claim was settled, amended to include the Eastern Maar People.

The Gunditjmarra People have established the Gunditj Mirring Traditional Owners Aboriginal Corporation and the Eastern Maar People have set up the Eastern Maar Aboriginal Corporation. These two corporations have agreed to work together in the future to deal with matters relating to native title and cultural heritage protection. This arrangement is a first for Victoria and reflects the inter-relationship between the two groups.

The Federal Court of Australia held a special sitting under a marquee at Yambuk, with possum skins draped over the court bench and traditional smoking ceremonies, attended by about 200 people, including VGSO representatives Managing Principal Solicitor Mary Scalzo,

Senior Solicitor James Stephens and Solicitor Zoe Jones. This spot was chosen by the Gunditjmarra and the Eastern Maar because Deen Maar (or Lady Julia Percy Island) is visible from there, a place of great cultural significance to both groups.

*Standing (Left to Right): Zoe Jones, Solicitor, VGSO; James Stephens, Senior Solicitor, VGSO; and Mary Scalzo, Managing Principal Solicitor, VGSO. Solicitors representing the State of Victoria.*

*Sitting (Left to Right): Robert Blowes, SC - Counsel for the Applicant; Dean Cowie, Manager, Native Title Unit, Department of Justice; Annie Keely - Counsel for the Applicant; Ben Wurm - Senior Project Officer, Native Title Unit, Department of Justice; and AC Neal, SC - Counsel for the State of Victoria.*



## VGSO Government Law Conference

The VGSO held its first ever Government Law Conference in April. With international speakers such as The Hon. Sir Anthony Mason AC KBE, Professor Emeritus David Mullan as well as the Victorian Attorney-General Robert Clark, the Hon Jerrold Cripps QC and VGSO Special Counsel, Joanna Davidson, the two day conference was attended by a cross section of clients and staff and provided topical discussion and commentary on Australian and international case law and legislation.



*Pictured: Sir Anthony Mason at the conference*



## Case Note: POWERCOR

In February 2009, a fire occurred to the north-west of Coleraine causing damage and injury. Powercor Australia Ltd (Powercor) is the distributor of electricity to western Victoria and the operator of an electricity network through which it delivers electricity to consumers, including in and around Coleraine.

A representative action was issued against Powercor claiming damages for breaches of statutory duties and general duties of care in relation to loss and damage to property as a result of the bushfire. The plaintiffs alleged that a faulty Powercor power line started the bushfire and Powercor was negligent in its maintenance of the power line.

In the proceeding, Powercor discovered several reports on the cause of the fire at Coleraine. Powercor claimed legal privilege for these reports claiming that its dominant purpose in obtaining these reports was to allow its in-house solicitor to provide it with legal advice and to use the reports in anticipated legal proceedings against it. The plaintiffs sought an order for inspection of the reports, claiming that the reports were not protected by legal privilege.

Justice Robson noted that the High Court of Australia has held that legal privilege is indispensable to the proper functioning of the judicial system and affords a guarantee of fundamental, constitutional and human rights. The privilege may be availed of by a person to resist the giving of information or the production of documents which would reveal communications by a client and his or her lawyer made for the dominant purpose of giving or obtaining legal advice or the provision of legal services, including representation in legal proceedings.

In Powercor, Justice Robson found that there were multiple purposes for which the information in the reports was to be used. Whilst the Judge accepted that an important one was to give legal advice to Powercor, the company had not proved that the privileged purpose was the dominant reason.

The lesson to be learnt from this case is that whilst Government commissions numerous reports, not all of those reports will be protected by legal privilege. However, those reports may be protected by other privileges.



## VGSO Lawyer Trains Environmental Officers in Vanuatu



Managing Principal Solicitor Raj Malhotra (*pictured above*) has just come back from Vanuatu, where he lectured on an intensive eight day course in Port Vila, aimed at teaching compliance with environmental legislation to government officers.

Most participants came from Vanuatu's Department of Environment Protection and Conservation and from the Department of Lands. There were also trainees from Palau, PNG and Kiribati.

Raj was previously an Environmental Prosecutor in the UK, with extensive knowledge of this subject. His fellow trainers included representatives from the Australian Centre for Environmental Compliance and the International

Union for the Conservation of Nature.

"It's important to give Environment Officers the skills they need to conduct investigations and achieve enforcement so they can do their job", said Raj. "We had excellent feedback from the participants, who will go back to work to protect conservation areas and ensure developments respect them."

Further training sessions will take place in the region.



## \$100 million Case against the State Dismissed

On 29 August 2011, Justice Emerton handed down her judgement in the proceeding *Candibon v Minister for Planning and the State of Victoria*. The proceeding was brought by the plaintiff in February 2006 and was heard between October and December 2010.

The claim related to the purchase by the then Minister for Planning of land known as 'Greenhills' in Pakenham in March 1998. The Minister purchased the land by private treaty, pursuant to his power under s 171(1)(b) of the Planning and Environment Act 1987 for \$2.1 million. In 1999, the Minister transferred Greenhills to the Cardinia Shire Council as part of a 'land exchange agreement' and in 2004 the land was rezoned to 'Industrial 1'. Today, Greenhills has been developed, in part, as an industrial estate. The plaintiff's claim against the defendants was for approximately \$100 million, which the plaintiff claimed was the present day value of Greenhills.

Claims in deceit, unconscionable conduct, negligence and breach of statutory duty were brought against the defendants. The claims in deceit, unconscionable conduct and negligence were made on the basis of statements allegedly made by the former Minister to a director of the plaintiff company in a series of meetings in 1996 and 1997 about the development potential of Greenhills.

The claim for breach of statutory duty was based on alleged breaches of the Land Acquisition and Compensation Act 1986, and was premised on the fact that the Minister purchased the land by private treaty and did not compulsorily acquire Greenhills.

Her Honour found, on the balance of probabilities, that the former Minister had not made the alleged statements to the plaintiff.

She also found that the Land Acquisition and Compensation Act 1986 did not apply to the transaction

and that the former Minister could purchase Greenhills pursuant to his power under s 171(1)(b) of the Planning and Environment Act 1987.

Further, Her Honour found that the plaintiff was barred from bringing its claims of unconscionable conduct and negligence pursuant to the Limitation of Actions Act 1958, as these were brought outside of the six year time limit imposed by that Act.

Senior Solicitor Penina Berkovic, (*pictured below*) has been the instructing solicitor since the inception of the matter.



## VGSO Workplace Relations Workshops

Run by Assistant Victorian Government Solicitor Hayley Petrony and her team of experts, the VGSO's Workplace Relations Workshops have been designed with Government in mind and lead you through the complexities of employment law and equal opportunity legislation with insight, clarity and common sense. There are still places available for the workshops below. Book by specifying which workshop you would like to attend and emailing your contact details to: [julie.jeremiah@vgso.vic.gov.au](mailto:julie.jeremiah@vgso.vic.gov.au) by Monday 3 October 2011.

Tuesday 4 & Thursday 6 October  
10:30am - 1:30pm

Unfair, Unlawful and Workplace rights—how much has really changed?

With the passage of time, we hope to generate passionate discussion about what, if any, changes have occurred.

Tuesday 29 November  
10:30am - 1:30pm

The new Equal Opportunity Act 2010 and its relationship with the Charter of Human Rights and Responsibilities

In this workshop we will provide an overview of the amendments introduced by the new and recently amended Equal Opportunity Act 2010, and how this new Act overlaps with the *Charter of Human Rights and Responsibilities*.

Friday 9 December  
5:00pm - 7:00pm

Reflections on 2011

Join us on a journey as we discuss key developments in 2011, and end the series with a toast to 2012.