

# SPECTRUM SPEAKS

The company  
newsletter for  
Spectrum Coach  
& Spectrum  
Lawyers



Although 2023 seems to be flying by, there is unfortunately still some pain being felt across the construction industry due to the after effects of COVID. We are hopeful that most participants will start to see an uplift after riding the wave of 2023.

Spectrum Group have had a busy start to 2023, settling into our new office in the heart of Williamstown and welcoming our newest team member, Rosemary to the Spectrum Family. You can read more about Rosemary on page 3.

Spectrum Lawyers is also proud to be the very first law firm in Australia to have completed the Sensory Inclusive Certification Program. This means that all our staff have undertaken training focusing on sensory needs that our clients may have and learned ways to make them comfortable in our office.

Over the past six months, we have seen some very interesting VCAT decisions which no doubt will impact the landscape of jurisdiction for VCAT. Watch this space for changes to the Wrongs Act which will overcome the shortcomings of this legislation to include a Tribunal in the definition of the jurisdiction of this Act.

And finally, we are excited to invite our clients to our first Spectrum Discussion Night where you will hear from Fred (Sales & Operations), Donna (Building Contractual Disputes) and Catie (HR Issues). We hope you can join us for an informative discussion around industry issues in a group setting with other Spectrum clients.

## *In this month's issue:*

**VCAT JURISDICTION - 2**

**MEET THE TEAM,  
ROSEMARY - 3**

**IS VCAT A COURT? - 4**

**SPECTRUM COACH,  
SUCESS STORY - 5**

**SPECTRUM GROUP  
DISCUSSION PANEL - 6**

**MAKING THE NEVERS  
POSSIBLE - 7**

**ABOUT SPECTRUM  
LAWYERS & SPECTRUM  
COACH - 8 & 9**

# Does VCAT have jurisdiction to hear matters under federal statute?

BY HANNAH SMITH

The Victorian Civil and Administrative Tribunal ('VCAT') has primary jurisdiction to deal with domestic building disputes in Victoria. The question of VCAT's jurisdiction, and particularly whether the Tribunal has jurisdiction to hear disputes involving Commonwealth Legislation, was raised and answered in the recent Victorian Court of Appeal decision in the matter of *Thurin v Krongold Constructions* [2022] VSCA 226.

By way of summary background, Thurin engaged Krongold to demolish an existing dwelling and construct a new home on their land in Toorak in or about 2006 with a contract price of approximately \$10,000,000.

A dispute arose with respect to the building works, most notably, allegations that:

- defective pipes were used for internal plumbing works,
- internal plumbing works were not properly carried out; and
- the irrigation system was not installed correctly and/or fit for purpose.

The Owner's expert determined the Owner had suffered loss and damage in excess of \$3,500,000, which Krongold declined to pay.

The dispute was initially heard in VCAT in 2018 where Thurin sought the return of the deposit together with loss and damage from Krongold in accordance with their expert's determination. Krongold's defence included that the delays to the building works and the alleged defects were due to Thurin's requests for variations to the design and materials which caused additional time and cost to the project.

Krongold also joined an additional 7 parties to the proceeding, including the supplier of the plumbing pipes, the plumber and the architect, as concurrent wrongdoers under the Wrongs Acts 1958 (Vic). As part of this joinder, Krongold's apportionment claim as against the pipe supplier included alleged contraventions of the Australian Consumer Law, namely that they had breached the implied warranty of fitness for purpose. There was ultimately a multiplicity of

proceedings commenced by the parties including proceedings in both the Supreme Court and VCAT.

At first instance, VCAT determined the matter in favour of Thurin awarding the Owner damages and the return of the deposit. The Tribunal held that Krongold had breached the building contract by failing to complete the works within the agreed time and to the relevant standards and the Owner was therefore entitled to compensation for the resulting loss and damage.

The matter was then referred to the Court of Appeal on a question of law – the question being; did VCAT have jurisdiction to hear the matter given it involved a claim under federal statute (the Australian Consumer Law)? The Court of Appeal determined that VCAT does not have jurisdiction to hear matters arising under federal statute and the matter was therefore required to be referred to another Court. The Court's reasoning included that pursuant to the Constitution, only Federal and State "Courts" have jurisdiction to hear federal matters, and VCAT is a Tribunal (and not a Court) and is therefore precluded from determining cases concerning federal legislation. The Court further reasoned that where a party raises a claim or defence which relies on federal legislation (in this case, the Australian Consumer Law), the entire dispute becomes a federal matter.

So, what does this mean for Builders and Owners? The decision in *Thurin and Krongold* is important as it will impact not only the current caseload before VCAT but also the forum in which Builders and Owners issue proceedings moving forward. It is common for building disputes to include claims/defences as set out in the Australian Consumer Law and the Insurance Contracts Act, both of which are federal pieces of legislation and which VCAT is now precluded to hear. It is important that you commence your matter in the current forum from the outset and that any issues or potential issues arising under federal legislation are considered early on. This will obviate the delays and costs of having the matter transferred out of VCAT and listed before another Court.

*If you would like to chat to us more about this topic, please do not hesitate to get in touch.*

## Meet the Team, Rosemary - Executive Assistant

Rosemary is the newest edition to the Spectrum Family, and she has seamlessly blended into our team as though she has been here from the start! Rosemary has taken a moment to reflect on her time so far at Spectrum Group, and here's her thoughts.

"I have now been at Spectrum Lawyers & Consultants 4 months; however, it only feels like yesterday that I joined. They say time flies when you're having fun, and this case it's certainly true! My days are busy, which makes my time go fast, but there is not a day that passes without having a laugh and catch up with my co-workers, which is often the highlight of my day.

I joined the Team just before the office move from Akuna Drive to Douglas Parade. The move was quite seamless, and I must say the new space is light, bright and white (I didn't mean to rhyme) and a real pleasure to come to work each day. Plus, the stroll down the Douglas Parade strip for lunch with window shopping in between is an added bonus and a true delight, as I love to shop!

Working alongside Donna and Maria in the office has been nothing short of wonderful. They have both shown me a tremendous amount of support and have provided help and guidance when needed. I am lucky to be working with these two dedicated, driven and committed Lawyers who offer their clients the best, and most professional service I have ever witnessed.

In the new office I have had the pleasure of meeting clients old and new and its true what they say, it's always so nice to be able to put a face to a name. I look forward to meeting many more clients throughout the year. As Easter fast approaches, I would like to take this opportunity to wish you all a wonderful Easter break."

-Rosemary



# Is the Victorian Civil Administrative Tribunal ("VCAT") a court?

BY MARIA FOKIANOS

This has always been a hot topic of conversation and a complex issue considered in many different statutory contexts. The decision in *Vaughan Constructions Pty Ltd v Melbourne Water Corporation (Building and Property)* [2023] VCAT 233 is going to have a significant impact on the Building and Property List in VCAT.

VCAT has proceeded on the basis that it has always had the jurisdiction to determine contribution claims. However, in *Vaughan Constructions Pty Ltd v Melbourne Water Corporation (Building and Property)* [2023] VCAT 233 the Honourable Justice Delaney of the Supreme Court of Victoria was asked to consider whether VCAT has the jurisdiction to determine claims for contribution under Part IV of the Wrongs Act 1958 (Vic) ('Wrongs Act') and simply held 'no,' VCAT does not have jurisdiction to hear a contribution claim pursuant to Part IV of the Wrongs Act. This effectively means that a party to a VCAT proceeding who wishes to claim contribution will need to initiate freestanding contribution proceedings in a Court.

The decision has left many confused and has spurred ongoing debates amongst the legal professionals. By requiring parties to initiate separate proceedings in court, the process of seeking contribution will no doubt further complicate the legal process. It will become more complex and time-consuming, leading to increased costs and delays.

**"The fact that VCAT does not have the jurisdiction to determine claims for contribution under Part IV of the Wrongs Act will have significant ramifications "**

As part of his reasoning, His Honour referred to observations that the Tribunal does not have the characteristics of a court as observed by Kyrou AJA in *Subway Systems Australia Pty Ltd v Ireland* [2014] VSCA 142. This is where a distinction was drawn between 'court' and 'tribunal.' For example, references to judgments are references to judgments of 'courts', 'courts' give judgments and issue writs. VCAT does neither. VCAT makes orders in proceedings, it does not enter judgement and its initiating process is an 'application' and not a writ.

His Honour also reasoned that if Parliament had intended that VCAT be treated as a court for the purposes of Part IV of the Wrongs Act, it could have easily said so. Therefore, VCAT's longstanding practice of hearing and determining contribution is inconsistent with the statute pursuant to which the Tribunal has purported to determine such claims.

The fact that VCAT does not have the jurisdiction to determine claims for contribution under Part IV of the Wrongs Act will have significant ramifications for parties to proceedings in VCAT that involve claims for contribution. This decision means that parties will effectively need to seek contribution in a separate court proceeding, whilst the primary claim remains in VCAT. This will result in different courts making different determinations as to the respective contributions of each party to the loss or damage suffered.

This case will have significant implications for future cases, however the extent of such implications is currently unknown.

*If you would like to chat to us more about this topic, please do not hesitate to get in touch.*

# Spectrum Coach - Sucess Story

Recently we sat down with Alex Horn, Sales Consultant at Hotondo Homes for some feedback on how training with Spectrum Coach has enriched his career. Here's what he had to say.

## 1. Where Have You Worked Previously?

Previous to starting work at Hotondo, I'd only ever worked in retail. I was working at Aldi as a manager and was seeking a career change.

## 2. Why The Change Into New Home Sales?

I was eager to do something that utilised my brain more and offered career development. I felt limited in my previous management role and wanted to try something that challenged me.

## 3. What Did Your Training Look Like?

I started as a sales cadet, so my role day-to-day was to open the display centre, handle all new enquiries and book in clients to meet with a Sales Consultant. I had one-on-one training with the Sales Consultant in our display centre until I learned the basics. Within 9 months I stepped into a Sales Consultant role and Fred (from Spectrum Coach) was engaged to oversee my development. We had weekly coaching sessions to explore challenges and ways of handling different clients. I learnt a lot of the technical side as I went along, but Fred was the reason I developed my technique for closing, which is simply to "always close for the next stage".

## 4. What Was Your Turning Point In Your Sales Journey?

In March 2020, I became the only Sales Consultant (and assistant) in the display centre and found I was thrown in the deep end. It was the best way for me to learn. However, it wasn't until 2021 when we had the building boom that I felt I'd found my rhythm. I prepared for all my meetings to allow me to be efficient and the above technique of "always closing for the next stage" became second nature. I found my groove and moving from stage to stage with clients felt natural. In fact, they were typically closing themselves and asking me how to pay money and move forward.

## 5. How Do You Overcome Challenges?

I've learned that sales has a lot of ups and downs. Managing my emotional response to both has been a great learning curve. Anytime I need support with particular challenges I reach out to Fred for guidance. He can then talk me through the best way to manage the client, and how to manage my reaction to it.

## 6. What Awards Have You Won?

In 2020 – 2022 I was ranked top 3 Sales Consultant. In July 2021 – July 2022 I was ranked top 2 Sales Consultant, and I am proud to say that I currently hold the highest achiever nationally.

*If you would like to chat to us about how to take your sales game to the next level, get in touch!*

## *Spectrum Group Discussion Panel*

We are excited to launch our new Spectrum Group Discussion Panel nights. Kicking off at the end of May, we'll be inviting our clients to attend a seminar where our team will discuss some of the industry's current challenges and tips on how to ensure you're ahead of the curve.

Discussion topics will include:

- Fred – Moving a sale through the funnel from an enquiry to a job
- Donna - Common trends we are seeing relating to contract disputes
- Catie Paterson – HR issues and how to stay proactive

We will be hosting the panel discussion in person at our office in Williamstown to provide our clients an opportunity to meet with other likeminded people who share similar experiences and interests. It is also a great opportunity for our clients to ask the panel questions and gain a more in-depth understanding around industry issues and common trends.

Invitations to come – we hope to see many of you there!



# Making the Nevers Possible

BY DONNA ABU-ELIAS

Did you know that 1 in 6 individuals have a sensory need or an invisible disability? These are individuals with PTSD, autism, dementia, strokes just to name a few. Sensory needs are a common medical condition in which the brain has trouble receiving and responding to information that comes in through the senses.

One of our values at Spectrum Lawyers & Consultants is to encourage inclusion and embrace individuality. Which is why we are proud to announce that we are the first law firm in Australia to be certified by KultureCity as having completed the Sensory Inclusive Certification Program.

The Aim of KultureCity Australia is to be the number one leading non-profit organisation in Australia focused on Sensory Inclusion and invisible disabilities so everyone feels like they belong – inclusion for all.

All our staff at Spectrum Lawyers & Consultants have completed the Sensory Inclusive Certification Program. This program was developed by a team of professionals including physicians, board certified speech therapists, ABA (Applied Behavioural Analysis) therapists and occupational therapists and combines the following pillars to provide our team and clients with the best experience possible:

- Training – this is focused on sensory needs, awareness, behavioural modifications, tools available and additions to our office space. This has trained our staff to feel comfortable and equipped when interacting with someone that has special needs. This training is refreshed on an annual basis to ensure our staff have up-to-date knowledge.
- Social Story - The purpose of the social story is to prepare our clients for what they will experience and what to expect while visiting our office. This helps to decrease anxiety and allows for a smooth experience all around.
- Sensory Bag - Sensory bags are equipped with items that KultureCity experts have determined can help to prevent a sensory overload and help regulate someone during a sensory overload.
- Signage – we will have direct and informative signage at our office to inform our clients that we are KultureCity certified.

This means that our clients with autism, PTSD, Down Syndrome, anxiety, depression, ADHD and other sensory needs will feel included, safe and comfortable in our office.

We are also thrilled to announce that Donna will be joining Renae Ingles on the Australian Board of KultureCity to continue to grow KultureCity Programs in Australia.

To find out more about KultureCity, you can download their App or visit their website. This includes a list of locations that are KultureCity Sensory Inclusive Certified – which we hope will be growing soon to include more businesses, organisation and venues.

We are proud to support KultureCity who are making the nevers possible.



# SPECTRUM LAWYERS & CONSULTANTS

Spectrum Lawyers provide legal services with legal expertise across all areas of building & construction law.

## Building and construction law

- To assist builders and/or owners efficiently resolve building disputes
- Developing streamline procedures and training to manage the spectrum of challenges in today's market
- Advising consultants and contractors on their legal obligations under the Building Act and Building Regulations
- Advising building surveyors on compliance issues
- Debt recovery
- Dispute resolution at private mediations, DBDRV, Tribunal and Courts
- Reviewing building contracts and advising on rights and obligations

## Conveyancing

- Assisting clients with the purchase or sale of residential or commercial property

## General Counsel Services

- Reviewing and advising on procurement contracts and licenses
- Advising on general business law and day-to-day business operation issues
- Drafting policies
- Reviewing and drafting policies and terms and conditions
- Negotiating contractual documents
- Providing training (contract law, Australian Consumer Law, advertising, warranty, etc.)

## Probate, Wills and Powers of Attorney

- Administering estates
- Drafting Wills and Powers of Attorney to protect your family and assets

## CONTACT DONNA

E: [info@spectrumlaw.net.au](mailto:info@spectrumlaw.net.au)

T: (03) 7013 0970

W: [spectrumlaw.net.au](http://spectrumlaw.net.au)



@spectrum\_law



@spectrumlawyers



@spectrum-lawyers



**SPECTRUM**  
LAWYERS & CONSULTANTS



# SPECTRUM COACH

Spectrum Coach provides 5 core areas of service, Sales, Marketing, Operations, Home Designs and Business Coaching. They are designed to understand your business intimately, which allows us to provide the focused, dedicated support that we hold to high standards to all our clients. We understand that every business is different, and will have different needs. Choose one of our services or choose them all – whatever works for you and your business.

## Sales

Without sales, you don't have a business. Our training gives you guidance at a micro level, arming you with specific strategies that are proven to close sales.

## Operations

Your front end and back end operations are key to turning a profit. From taking the initial sale to getting to a site start, we have designed processes that are easily adopted to improve efficiencies, increase profits and help you to manage your jobs more effectively.

## Design & Drafting

Our extensive design library has a range of plans you can use to sell your new homes which are fully customisable. Our training will equip you with the tools you need to sell these plans based on their respective features and benefits. Need a custom design? We can do that too.

## Marketing

You're busy doing what you do best – building homes. Let our in-house team help you market your business so you can do more of what you love. We can guide you through marketing your brand, generating leads, and can even help you build a website. We can also manage your social media, including writing content and posting on your social media pages.

## Business Coaching

We get it - running a new homes business is complicated. As the business owner, you have to be across every aspect, and not all of them are going to be your specialty. Our general business coaching gives you a team that are skilled in all areas of business, from construction to finance.

## CONTACT FRED

E: [fred@spectrum.coach.com.au](mailto:fred@spectrum.coach.com.au)

M: 0447 062 996

W: [spectrumcoach.com.au](http://spectrumcoach.com.au)



@spectrum.coach



@spectrumcoach1



@spectrum-coach

