



PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

IN THE MEDIA

'Massive hike' in speeding fines to plug GST hole in SA

The South Australian Government announces increases to a raft of fees, fines and charges ahead of next month's state budget.

<https://www.abc.net.au/news/2019-05-23/sa-government-announces-fee-and-fine-increases/11142818>

Alleged SA bomb maker refused bail after Supreme Court review

Alleged Adelaide bomb maker Aaron Ellis will not be released on home detention bail after the Supreme Court overruled a decision by a magistrate.

<https://www.abc.net.au/news/2019-05-20/accused-adelaide-bomb-maker-aaron-ellis-bail-revoked/11129900>

Cyber Security NSW

A new office, Cyber Security NSW, has been established within the Department of Customer Service to cement the leadership and coordination role to enhance cyber security and decision-making across the NSW Government. Mr Chapman said Cyber Security NSW will strengthen ties across other NSW Government departments, other states and territories and the federal government, identifying and harnessing best practice in cyber security.

<https://www.finance.nsw.gov.au/about-us/media-releases/cyber-security-nsw>

State Government strengthens its commitment to providing accessible digital services for all South Australians

The State Government is launching a new online accessibility policy, and online toolkit, to assist all South Australian organisations to create more accessible, digital platforms.

<https://www.miragenews.com/state-government-strengthens-its-commitment-to-providing-accessible-digital-services-for-all-south-australians/>

Emergency services assaults Bill receives further boost

The State Government will move to toughen up aspects of its proposed changes to the laws around assaults against emergency services workers, ahead of debate on the Bill in Parliament. Attorney-General, Vickie Chapman said the offences would better protect police and other emergency services workers, while complementing existing laws capturing offences and broader assault laws.

<https://www.agd.sa.gov.au/newsroom/emergency-services-assaults-bill-receives-further-boost>

ICAC SA: A Twelve Month Review of the PCDA report tabled

The Commissioner's report 'A Twelve Month Review of the Police Complaints and Discipline Act 2016' was tabled in Parliament recently. The Commissioner said 'In my opinion minor amendments should be made to the PCDA to make it work better'.

<https://icac.sa.gov.au/icac-news/16May2019>

Domestic Violence Disclosure Scheme identifies new people at risk

The new South Australian initiative aimed at protecting people at risk of domestic violence is showing strong results, including identifying potential victims. The disclosure of information by South Australia Police allows them to make an informed decision about their safety and the safety of their children, seek assistance, undertake safety planning, and decide whether or not to remain in the relationship.

<https://www.agd.sa.gov.au/newsroom/domestic-violence-disclosure-scheme-identifies-new-people-risk>

IN PRACTICE AND COURTS

AAT Bulletins

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions.

[Issue No 20/2019](#), 20 May 2019

PUBLISHED - ARTICLES, PAPERS, REPORTS[The Impacts of Self-Represented Litigants on Civil and Administrative Justice: Environmental Scan of Research, Policy and Practice](#)

by Dr Liz Richardson, Dr Genevieve Grant and Dr Jani-Na Boughey

CASES[Spence v Queensland \[2019\] HCA 15](#)

Is section 302CA of the Commonwealth Electoral Act 1918 (Cth) invalid (in whole or in part and, if in part, to what extent) because it is beyond the Commonwealth's legislative power?

Answer: The section is wholly invalid.

Constitutional law (Cth) – Powers of Commonwealth Parliament – Federal elections – Severance – Where s 51(xxxvi) in application to ss 10 and 31 of Constitution conferred legislative power on Commonwealth Parliament with respect to federal elections – Where Commonwealth Parliament enacted s 302CA within Div 3A of Pt XX of Commonwealth Electoral Act 1918 (Cth) – Where s 302CA relevantly conferred authority on person to make, and on "political entity" to receive and retain, gift not prohibited by Div 3A provided that gift or part of it was "required to be, or may be" used for certain purposes relating to federal elections – Where s 302CA provided for displacement of such authority in circumstances including where State or Territory electoral law required gift or part of it to be kept or identified separately to be used only for purpose of State, Territory or local government election – Whether Commonwealth legislative power with respect to federal elections exclusive or concurrent – Whether s 302CA within scope of Commonwealth legislative power with respect to federal elections – Whether possible to sever s 302CA to preserve part of its operation within scope of Commonwealth legislative power.

Constitutional law (Cth) – Inconsistency between Commonwealth and State laws – Gifts to political parties – Where Queensland Parliament passed amendments to Electoral Act 1992 (Qld) and Local Government Electoral Act 2011 (Qld) prohibiting property developers from making gifts to political parties that endorse and promote candidates for election to Legislative Assembly and local government councils – Whether Queensland amendments inconsistent with s 302CA or framework of Pt XX of Commonwealth Electoral Act – Whether s 302CA invalid for infringing principle in *University of Wollongong v Metwally* (1984) 158 CLR 447; [1984] HCA 74.

Constitutional law (Cth) – Implied freedom of communication about governmental and political matters – Where amendments to Electoral Act 1992 (Qld) substantially replicated provisions in Election Funding, Expenditure and Disclosures Act 1981 (NSW) upheld in *McCloy v New South Wales* (2015) 257 CLR 178; [2015] HCA 34 – Whether amendments invalid for infringing implied freedom.

Constitutional law (Cth) – Relationship between Commonwealth and States – Doctrine of inter-

governmental immunities – Whether implication expounded in *Melbourne Corporation v The Commonwealth* (1947) 74 CLR 31; [1947] HCA 26 operates reciprocally to protect States and Commonwealth from impermissible interference by law of one polity with operations of government in another – Whether s 302CA invalid for contravening *Melbourne Corporation* principle – Whether Queensland amendments invalid for contravening *Melbourne Corporation* principle.

[Rex Patrick and Department of Defence \(Freedom of Information\) \[2019\] AICmr 19](#)

Freedom of Information – Whether documents contain a copy or part of, or contains an extract from a Cabinet document – Whether document contains deliberative matter prepared for a deliberative process – (CTH) Freedom of Information Act 1982 ss 34 and 47C.

[Daniel Flitton and Department of Foreign Affairs and Trade \(Freedom of information\) \[2019\] AICmr 18](#)

Freedom of Information – Whether documents brought into existence for the dominant purpose of briefing a Minister on a Cabinet document – (CTH) Freedom of Information Act 1982 s 34(1)(c).

[Northern Land Council v Quall \[2019\] FCAFC 77](#)

ADMINISTRATIVE LAW – delegation of statutory functions and powers – distinction between authorisation and delegation – the *Carltona* principle – principles for determining whether a power or function is delegable – effect of delegation.

NATIVE TITLE – whether a representative body under the Native Title Act 1993 (Cth) is able to delegate its power and function to certify an application for an area Indigenous Land Use Agreement (ILUA) under s 201BE(1)(b) – the process and alternative pathways for registration of an area ILUA – position of representative bodies under the Native Title Act 1993 (Cth).

STATUTORY INTERPRETATION – interpretation of "necessary and convenient" powers such as s 201BK of the Native Title Act 1993 (Cth) – such powers strictly ancillary and supplementary to other functions conferred on the statutory repository – scope and operation of a "necessary and convenient" power in a particular context depends on the primary power or function being supplemented.

[Attorney-General for the State of South Australia v Seven Network \(Operations\) Ltd \(No 2\) \[2019\] SASCF 53](#)

APPEAL AND NEW TRIAL - PROCEDURE - SOUTH AUSTRALIA - OTHER MATTERS - CASE STATED AND RESERVATION OF QUESTION OF LAW

APPEAL AND NEW TRIAL - PROCEDURE - SOUTH AUSTRALIA - POWERS OF COURT - COSTS

Held, by the Court: Under s 72 of the SACAT Act, the Full Court does not have power to award costs on a question of law reserved pursuant to that section or to reserve the question of costs for determination by SACAT.

[Atkins v Hughes & Anor \[2019\] SASCFC 49](#)

ADMINISTRATIVE LAW - ADMINISTRATIVE TRIBUNALS - SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE LAW - ADMINISTRATIVE TRIBUNALS - STATUTORY APPEALS FROM ADMINISTRATIVE AUTHORITIES TO COURTS

ADMINISTRATIVE LAW - JUDICIAL REVIEW - GROUNDS OF REVIEW - PROCEDURAL FAIRNESS - HEARING - NATURE OF HEARING - OPPORTUNITY TO PRESENT CASE

Held by the Court, allowing the appeal: 1. The failure to allow the appellant an appropriate opportunity to put his case resulted in a clear denial of procedural fairness (at [33]-[37])

[Commissioner for Consumer Affairs v Built IT Pty Ltd & Zollo \[2019\] SADC 66](#)

ADMINISTRATIVE LAW Complaint against director of building work contractor which was in liquidation at time of trial - whether Commissioner may proceed against a director when Complaint stayed against building work contractor - whether there is proper cause for disciplinary action against the building work contractor for various alleged breaches of the Building Work Contractors Act 1995 - whether the Second Respondent was a director or de facto director at relevant times.

Held: The Commissioner may proceed against the Second Respondent in circumstances where the Complaint against the First Respondent is stayed.

[Cartwright & Anor v Steve Little Plumbing & Drainage & Anor \[2019\] SASC 76](#)

PROCEDURE - CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS - PLEADINGS - STRIKING OUT - EMBARRASSING, TENDENCY TO CAUSE PREJUDICE, SCANDALOUS, UNNECESSARY ETC OR CAUSING DELAY IN PROCEEDINGS

APPEAL AND NEW TRIAL - APPEAL - GENERAL PRINCIPLES - ADMISSION OF FRESH EVIDENCE

COURTS AND JUDGES - JUDGES - DISQUALIFICATION FOR INTEREST OR BIAS - REASONABLE APPREHENSION OF BIAS GENERALLY

This is an appeal against a decision of a Magistrate to strike out the appellants' further amended claim against the respondents, and to refuse the appellants' application for leave to file a proposed second further amended claim.

LEGISLATION

Acts

[No 11 Sentencing \(Suspended and Community Based Custodial Sentences\) Amendment Act 2019](#) Assented to 23 May 2019

Regulations and Rules

No 49 [Limitation of Actions \(Section 45A Notice\) Regulations 2019](#)

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