



## PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

We are pleased to introduce the inaugural edition of Thomson Geer's Public Sector Newsletter for South Australia. The purpose of this Newsletter is to provide a digestible and relevant snapshot of current news, case law and legislation. We intend it to be a useful resource for government lawyers and those interested in legal matters.

### IN THE MEDIA

**No sliding scale speeding fines despite calls to end 'unfair revenue raising'**

The introduction of speeding fines based on the offender's income has been ruled out for this year's South Australian budget, as motorists brace for an expected hike in fees, fines and charges

<https://www.abc.net.au/news/2019-04-24/sa-government-urged-to-adopt-european-sliding-scale-for-fines/11029572>

**Privacy Authorities Australia statement in support of complaint and enforcement cooperation**

PAA was established in 2008 to be a forum for the sharing of ideas, developments, resources and knowledge to improve the collective information privacy capability of Privacy Authorities across Australia. Following the success of the Policy Group, PAA has commenced a new initiative directed at improving cooperation in respect of their complaint handling and enforcement work

<https://www.oaic.gov.au/media-and-speeches/statements/statement-in-support-of-complaint-and-enforcement-cooperation>

### IN PRACTICE AND COURTS

**Review of the mandatory data retention regime**

The Parliamentary Joint Committee (Cth) on Intelligence and Security is reviewing the mandatory data retention regime prescribed by Part 5-1A of the Telecommunications (Interception and Access) Act 1979 (TIA Act). Section 187N of the TIA Act provides for the review and requires the committee to report by 13 April 2020. Access the [terms of reference](#) and the [inquiry page](#) for further information. Please provide your feedback before COB 31 May 2019

### Current Consultations

[Review of the Telecommunication and Other Legislation Amendment \(Assistance and Access\) Act 2018](#), Parliamentary Joint Committee (Cth) on Intelligence and Security. This review is in addition to two separate statutory reviews, amendments to include a review due to commence by April 2019

### Law Council of Australia - Fortnightly Update

The LCA have published their fortnightly newsletter. A full copy is available [here](#).

### Parliamentary Scrutiny of Delegated Legislation

On 3 April 2019, the Senate granted an extension of time for reporting until 3 June 2019.

### Review of Model Defamation Provisions: Discussion paper

The purpose of defamation law is to balance protection from reputational damage with freedom of speech, and the release of information that's considered public interest. Each state and territory enacted legislation to implement the provisions to ensure greater national consistency.

### Attorney General's Department: Have your say on Commonwealth model defamation provisions

The Defamation Working Party is seeking feedback on defamation law in Australia, to identify areas for national reform. The purpose of defamation law is to balance protection from reputational damage with freedom of speech and the release of information that is considered public interest. Submissions close on 30 April 2019. See the [Review of Model Defamation Provisions Discussion Paper](#)

### CAA Community Consultations

The CAA is undertaking state-wide consultations with communities that may be affected by potential budget cuts. The consultations will help the CAA understand the effect of service reductions and allow the community and CAA staff to provide feedback.

NOTE: The State Budget will be delivered in June 2019. This is when CAA will know the quantity of savings required and be able to consider options, taking into consideration community feedback

**PUBLISHED - ARTICLES, PAPERS, REPORTS**[Commonwealth Orange Book 2019: policy priorities for the federal government](#)

John Daley, Stephen Duckett, Peter Goss, Andrew Norton, Marion Terrill, Danielle Wood, Tony Wood, Brendan Coates; Grattan Institute: 16 April 2019

This report rates Australia's performance against similar countries and proposes policy reforms for schools and universities, hospitals and housing, roads and railways, cities and regions, budgets and taxes, retirement incomes, and climate change

**CASES****AAT Bulletins 2019**

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

[Issue No. 16/2019](#), 23 April 2019

[Issue No. 15/2019](#), 15 April 2019

[State of Queensland \(Department of Agriculture and Fisheries\) v Humane Society International \(Australia\) Inc \[2019\] FCA 534](#)

ADMINISTRATIVE LAW – application for an interim stay of a decision of the Administrative Appeals Tribunal – where Tribunal imposed conditions on licence issued to the applicant – Administrative Appeals Tribunal Act 1975 (Cth) s 44A – relevant considerations – whether stay is necessary for securing the effectiveness of the hearing and determination of the statutory appeal – whether the applicant has an arguable case – whether “special circumstances” need to be demonstrated – balance of convenience – where Tribunal decision will impose substantial compliance costs – risk of environmental harm if stay not granted

Administrative Appeals Tribunal Act 1975 (Cth) ss 43, 44, 44A

[Beckett v Tax Practitioners Board \[2019\] FCA 353](#)

ADMINISTRATIVE LAW – appeal on a question of law from a decision of the Administrative Appeals Tribunal (AAT) – where the AAT affirmed a decision by the Tax Practitioners Board to terminate the applicant's registration as a tax agent – whether the AAT complied with the rules of procedural fairness in making and relying on findings of professional misconduct in relation to behaviour that was not raised in the Tax Practitioners Board's decision without putting the applicant on notice that the AAT was considering making those findings – whether the AAT made findings that the applicant failed to meet her notification obligations under s 30-35 of the Tax Agent Services Act 2009 (Cth) – whether the AAT failed to have regard to the applicant's self-incrimination privilege in consideration of the nature and extent of her disclosures to the Tax Practitioners Board – where the AAT rejected unchallenged evidence from the applicant's referees on the basis that the references provided by customers represented a small proportion of the applicant's overall client base – whether it was legally unreasonable to reject the unchallenged evidence of the applicant's referees on that basis – appeal allowed

[OPENetworks Pty Ltd v Myport Pty Ltd \[2019\] FCA 486](#)

PRACTICE AND PROCEDURE – Where telecommunications carrier seeks temporary stay of Court proceedings for declaratory and injunctive relief pending outcome of objections referred to Telecommunications Industry Ombudsman – Whether appropriate to stay Court proceedings pending outcome of proceedings before an administrative body – Where Telecommunications Industry Ombudsman has deferred consideration of objections pending outcome of Court proceedings – Whether Telecommunications Industry Ombudsman is appropriate forum in which to determine issues raised in Court proceedings. Administrative Decisions (Judicial Review) Act 1977 (Cth) ss 5, 10(1), 10(2) (b); Federal Court of Australia Act 1976 (Cth) s 37M

[Triabunna Investments Pty Ltd v Minister for Environment and Energy \[2019\] FCAFC 60](#)

ENVIRONMENT LAW – application for judicial review of a referral decision made under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) – where the second respondent lodged a proposal with the Department of Environment and Energy to farm Atlantic salmon on an existing marine lease – where a delegate of the Minister for Environment and Energy decided under s 75 of the Act that the proposed action was not a “controlled action” if undertaken in a “particular manner” within the meaning of s 77A of the Act – where the delegate issued a written notice under s 77(1) of the Act and a statement of reasons under s 77(4) of the Act – where the delegate provided the statement of reasons to the appellants in accordance with s 13 of the Administrative Decisions (Judicial Review) Act 1977 (Cth)

ENVIRONMENT LAW – whether the primary judge erred in finding that the delegate, having made all the necessary findings, did not err in law by failing to include in the notice issued under s 77 of the Act the conclusion that the use of K-Grid and of bundled feed and servicing lines by the second respondent were “particular manner” requirements – whether the primary judge erred in confining the operation of s 77A(1) to matters additional to that which was contained in the second respondent's original proposal – whether the primary judge erred in finding that the delegate did not err by failing to take into account all “adverse impacts” of the proposed action as required by s 75(2) of the Act – where the primary judge inferred from the delegate's reasons that the delegate had considered the visual impact of two permanently moored barges – whether the primary judge erred in failing to deal with the appellants' contentions about how the delegate's decision addressed the use of bundled feed and servicing lines by the second respondent

ADMINISTRATIVE LAW – whether the primary judge erred in failing to give adequate reasons for rejecting certain contentions made by the appellants – whether the primary judge erred by mischaracterising and incorrectly describing certain arguments advanced by the appellants

[Commonwealth of Australia v Snell \[2019\] FCAFC 57](#)

ADMINISTRATIVE LAW – Administrative Appeals Tribunal – whether issue estoppel arises in respect of matters decided in earlier decision concerning the same parties – whether Tribunal able to not consider relevant and probative evidence because of existence of earlier decision – power to reconsider earlier decision under Seafarers Act negates any limitation on evidence which Tribunal should consider when reviewing a subsequent decision – appeal allowed. Administrative Appeals Tribunal Act 1975 (Cth)

[Attorney General for the State of South Australia v Seven Network \(Operations\) Ltd \[2019\] SASCFC 36](#)

Administrative law - freedom of information - exempt documents - documents subject to legal professional privilege

The questions of law arise from the decision of the Ombudsman to grant access under the Freedom of Information Act 1991 (SA) ('the Act') to Seven Network (Operations) Ltd to an advice prepared by the then Solicitor-General

[Stokes v Ragless \[2019\] SASCFC 31](#)

Defamation - actions for defamation - costs - indemnity costs

Appeal and new trial - appeal - general principles - interference with discretion of court below - in general - wrong principle - particular cases - decision as to costs

Appeal and new trial - appeal - practice and procedure - south australia - powers of court - further evidence

Held, per Lovell J (Blue and Parker JJ agreeing): The appellant was denied procedural fairness as he was denied an opportunity to contest a fundamental factual matter ultimately determined against him by the primary Judge.

[BC v The Public Advocate & Ors \(No 3\) \[2019\] SASC 51](#)

Procedure - costs - general rule - costs follow the event - costs of whole action

Procedure - costs - departing from the general rule - nature of proceedings - public duty involved

Procedure - costs - departing from the general rule - other cases - failure in portion of a case

The Court declined to make any orders on the application for judicial review as the South Australian Civil and Administrative Appeals Tribunal (SACAT) had yet to decide the application for review.

**LEGISLATION**

[Foreign Influence Transparency Scheme Amendment \(2019 Measures No. 1\) Rules 2019 \(Cth\)](#)

16/04/2019 - This instrument amends the Foreign Influence Transparency Scheme Rules 2018 to prescribe matters for the purposes of sections 30 and 43 of the Foreign Influence Transparency Scheme Act 2018.

**Regulations and Rules**

2019-30 [Criminal Law \(Clamping, Impounding and Forfeiture of Vehicles\) Variation Regulations 2019](#) - These regulations came into operation on 1 May 2019

2019-31 [Controlled Substances \(Poisons\) \(Packaging and Labelling\) Variation Regulations 2019](#) - published in Gazette 18.4.2019 p 1074

2019-32 [Fines Enforcement and Debt Recovery \(Treatment Programs\) Variation Regulations 2019](#) - published in Gazette 18.4.19 p 1076 - These regulations come into operation on 1 July 2019

2019-33 [Public Interest Disclosure Regulations 2019](#) - 18/04/2019 - Commencement 1.7.2019:r2

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