



PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

IN THE MEDIA

HRLC Federal Court rules that Medevac assessments by Australian doctors must be considered by Minister

The Federal Court of Australia has ruled that the Australian Government has to consider applications for refugees on Manus and Nauru made under the Medevac laws that are made in line with standard Australian medical practices <https://www.hrlc.org.au/news/2019/6/19/federal-court-rules-that-medevac-assessments-by-australian-doctors-must-be-considered-by-minister>

Courts South Australia: Budget Announcement

The State Budget has been released and confirmed that the budget of the Courts Administration Authority (SA) will be reduced annually accumulating to a \$7.7 million cut in the 2021/2022 financial year. However, the additional cuts foreshadowed earlier this year were not made <http://www.courts.sa.gov.au/Information/Pages/General-Media-Releases.aspx?IsDlg=1&Filter=107&IsDlg=1>

Gambling regulator to tacking barring breaches

South Australia's liquor and gambling regulator will begin an enforcement campaign targeting gambling venues to ensure barred people are refused entry to those venues <https://www.agd.sa.gov.au/newsroom/gambling-regulator-tackle-barring-breaches>

IN PRACTICE AND COURTS

Annual Federal Courts and Tribunals Fee increases from 1 July 2019

The fees payable in the Federal Courts and Tribunals will increase from 1 July 2019 to reflect changes to the consumer price index over the past financial year. This is an automatic increase provided by the relevant fees regulations. A copy of a notice published in the Government Notices Gazette on 4 June 2019 setting out the new fees payable can be found [here](#).

AAT New Reviewable Decisions List

The [AAT Reviewable Decisions List](#) provides a list of Acts and legislative instruments which state that certain decisions may be reviewed by the AAT. The List has been revised to assist parties and others to identify the laws that give the AAT jurisdiction to review decisions.

AAT Bulletin

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

[Issue No. 22/2019](#)

[Issue No. 24/2019](#)

High Court of Australia

[High Court of Australia Bulletin \[2019\] HCAB 4](#)

PUBLISHED - ARTICLES, PAPERS, REPORTS

[2019 Post election report of election commitments](#)

Parliamentary Budget Office (Australia): 19 June 2019

The 2019 Post-election report provides the budget impact of each of the election commitments made by the major parties in the 2019 general election, and the total combined impact of their policy platforms on the Commonwealth budget

CASES

[Burchell and National Disability Insurance Agency \[2019\] AATA 1256](#)

ADMINISTRATIVE LAW – statutory interpretation – Migration Act 1958 (Cth) s 198E(7), where statutory scheme provides for Minister's approval for the transfer to Australia for medical assessment or treatment of a transitory person located in a regional processing country – where access to scheme initiated by two or more "treating doctors" notifying the Secretary under s 198E(1) and thereupon Secretary notifying the Minister

– whether Secretary notified by two “treating doctors”
– where “treating doctor” is defined by s 198E(7) as being a medically qualified person who “has assessed the transitory person either remotely or in person” – meaning of “remotely” considered in the context of an assessment which involved no personal engagement between the assessor and the transitory person – whether in an assessment conducted “remotely”, personal engagement between the assessor and the transitory person is a necessary condition to engage the definition of “treating doctor” – whether such a construction involves the impermissible reading into s 198E(7)(b) of implied words – declaration made that two “treating doctors” had notified the Secretary under s 198E(1) – order made for Secretary to notify Minister

Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019 (Cth), Sch 6

Migration Act 1958 (Cth), ss 5, 198AD, 198E, 198E(1), 198E(2), 198E(2)(b), 198E(3), 198E(3A), 198E(4), 198E(5), 198E(7), 198E(7)(a), 198E(7)(b), 198F, 198F(1), 198F(2), 198F(2)(a), 198F(3), 198F(5), 199A(2), 199B, 199B(3), 199C, 199D, 199D(4)

As soon as practicable, the respondent notify the Minister for Home Affairs that the applicant is a relevant transitory person for the purposes of s 198E(1) of the Migration Act 1958 (Cth).

[Vito Mitolo & Son Pty Ltd v Mitolo Wines Aust Pty Ltd \[2019\] FCA 903](#)

ADMINISTRATIVE LAW – application for an extension of time within which to lodge an application for judicial review under the Administrative Decisions (Judicial Review) Act 1977 (Cth) of a decision of a delegate of the Registrar of Trade Marks – where the application for an extension of time and the substantive application were heard together – consideration of the principles relevant to whether an extension of time should be granted

TRADE MARKS – where the first respondent lodged applications for the registration of trade marks under the Trade Marks Act 1995 (Cth) – where the applicant filed a notice of intention to oppose the registration of the trade marks – where the applicant made a request under reg 5.15 of the Trade Marks Regulations 1995 (Cth) for an extension of time within which to file evidence in support of its opposition – where the delegate refused the request and gave reasons

ADMINISTRATIVE LAW – whether the delegate erred in finding that there were not exceptional circumstances justifying the extension of time under reg 5.15(2)(b) – consideration of the meaning of “exceptional circumstances” – whether the delegate considered the relevant circumstances as a whole or in aggregate in assessing whether there were exceptional circumstances for the purposes of reg 5.15(2)(b)

[NWFQ and Privacy Commissioner \[2019\] AATA 1302](#)

PRIVACY – review of decision of the Privacy Commissioner – where Commissioner found that data security failure caused interferences with the Applicant’s privacy in breach of Part III of the Privacy Act 1988 – where it was determined that the Other Parties were consequently liable to pay compensation for non-economic loss and her legal expenses – whether the sums payable by the Other Parties should be increased – whether Applicant is entitled to aggravated damages – decision under review is affirmed. Freedom of Information Act 1982; Privacy Act 1988 s 52

[Phonographic Performance Company of Australia Limited v Copyright Tribunal of Australia \[2019\] FCAFC 95](#)

COPYRIGHT – application for judicial review of a decision of the Copyright Tribunal of Australia made on a reference under s 154(4) of the Copyright Act 1958 (Cth) – where the first applicant sought approval of a licence scheme for the subscription television industry for the use of copyright and sound recordings owned or controlled by persons and entities it represents – where the first applicant is a copyright collecting society

ADMINISTRATIVE LAW – whether the Tribunal asked itself the wrong question and failed to accord procedural fairness to the first applicant – where the Tribunal engaged in a process of judicial estimation to determine whether the proposed licence fee was reasonable or equitable in the circumstances

ADMINISTRATIVE LAW – whether the Tribunal failed to consider charges payable by the second respondent pursuant to an agreement under which it was granted a non-exclusive licence to broadcast or communicate certain musical works and lyrics – whether the Tribunal failed to take into account a mandatory relevant consideration – whether the Tribunal failed to accord procedural fairness to the first applicant by not dealing with a clearly articulated case – whether the Tribunal misconstrued “in the circumstances” in s 154(4) of the Act

ADMINISTRATIVE LAW – whether the Tribunal failed to consider charges payable by commercial television providers – whether the Tribunal failed to take into account a mandatory relevant consideration and thereby failed to accord procedural fairness to the first applicant – whether the Tribunal made findings for which there was no evidence, or which were irrational – whether the Tribunal erred in its approach to calculating a “substantial” increase in fees

ADMINISTRATIVE LAW – whether the Tribunal erred in determining that it had power to vary the proposed licence scheme to incorporate rights which had not been licensed to the first applicant – consideration of the power conferred on the Tribunal by s 154(4) of the Act

COPYRIGHT – consideration of the history, context and purpose of Part VI of the Act – consideration of the definitions of “licence”, “licensor” and “licence scheme” in s 136(1) of the Act – consideration of the nature of a “licence scheme” under s 136(1) of the Act

ADMINISTRATIVE LAW — whether it is appropriate to set aside the Tribunal’s decision and refer the entire matter back to the Tribunal for reconsideration — where the Court has the power to set aside part of a decision pursuant to s 16 of the Administrative Decisions (Judicial Review) Act 1977 (Cth) — where the Tribunal treated the decision as to price separately from that as to power

[‘QM’ and Australian Federal Police \(Freedom of information\) \[2019\] AICmr 41](#)

Freedom of Information — Whether material in documents irrelevant to the request — Whether disclosure would have a substantial adverse effect on the management or assessment of personnel — Whether contrary to public interest to release conditionally exempt documents — (Cth) Freedom of Information Act 1982, ss 11A(5), 22 and 47E(c) Decision set aside

[Paul Farrell and Department of Home Affairs \(Freedom of information\) \(No. 4\) \[2019\] AICMr 40](#)

Whether material obtained in confidence — Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency — Whether disclosure of personal information is unreasonable — Whether disclosure would unreasonably affect an organisation in respect of its lawful business affairs — Whether contrary to public interest to release conditionally exempt documents — Whether material in documents irrelevant to the request (CTH) Freedom of Information Act 1982 ss 11A(5), 22, 45, 47E, 47F, 47G and 55D – Decision set aside

[Macquarie Group Limited and Australian Securities and Investments Commission \(Freedom of information\) \[2019\] AICmr 39](#)

Freedom of Information — Access grant — Whether disclosure would unreasonably affect an organisation in respect of its lawful business affairs — Whether contrary to the public interest to release conditionally exempt documents — (CTH) Freedom of Information Act 1982 ss 11A(5), 47G

I affirm the decisions of the Australian Securities and Investments Commission (ASIC) of 29 May 2017 to grant access to documents requested under the FOI Act.

[Paul Farrell and Department of Home Affairs \(No. 3\) \(Freedom of information\) \[2019\] AICmr 38](#)

Freedom of Information — Whether documents contain deliberative matter prepared for a deliberative purpose — Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency — Whether disclosure would unreasonably affect an organisation in respect of its lawful business affairs — Whether contrary to the public interest to release conditionally exempt documents — (CTH) Freedom of Information Act 1982 ss 11A(5), 47C, 47E(d) and 47G

I substitute my decision that the documents are not exempt.

[Outside the Square Solutions and Australian Skills Quality Authority \(Freedom of information\) \[2019\] AICmr 33](#)

Freedom of Information — Whether disclosure could reasonably be expected to cause damage to Commonwealth-State relations — Whether contrary to public interest to release conditionally exempt documents — Whether material in documents irrelevant to the request — (CTH) Freedom of Information Act 1982 ss 11A(5), 22, 47B. I vary the internal review decision of the Australian Skills Quality Authority (ASQA) of 3 February 2017.

[Caleb Cluff and Australian Broadcasting Corporation \(Freedom of information\) \[2019\] AICmr 35](#)

Freedom of Information — Whether documents contain deliberative matter prepared for a deliberative purpose — Whether contrary to the public interest to release conditionally exempt documents — (Cth) Freedom of Information Act 1982 ss 11A(5) and 47C. Set aside the decision

[Seven Network \(Operations\) Limited and Australian Federal Police \(Freedom of information\) \[2019\] AICmr 32](#)

Freedom of Information — Whether disclosure would infringe the privileges of the Parliament of the Commonwealth — (CTH) Freedom of Information Act 1982 s 46(c)

I consider that disclosure of the CCTV footage under the FOI Act would be inconsistent with the Code, and in particular the Statement of Purpose in the Code. I am satisfied that giving the applicant access to the CCTV footage would infringe the privileges of the Parliament by improperly interfering with the free exercise by a House of Parliament of its authority or functions.

[Seven Network \(Operations\) Limited and Australian Competition and Consumer Commission \(Freedom of information\) \[2019\] AICmr 29](#)

Freedom of Information — Whether documents contain deliberative matter prepared for a deliberative purpose — Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency — Whether contrary to public interest to release conditionally exempt documents — (CTH) Freedom of Information Act 1982, ss 11A(5), 47C and 47E(d)

I set aside the decision of the Australian Competition and Consumer Commissioner (the ACCC) of 11 October 2017, as varied on 16 February 2018. I substitute my decision that the material the ACCC found to be exempt under ss 47C and 47E(d) of the FOI Act is not exempt.

[Chris Drake and Australian Electoral Commission \(Freedom of information\) \[2019\] AICmr 24](#)

Freedom of Information — Whether a practical refusal reason exists — Whether the request consultation process was followed — Whether work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations — Whether the request satisfies the identification of documents requirement — (CTH) Freedom of Information Act 1982 ss 24, 24AA, 24AB and 55D

I substitute my decision that a practical refusal reason does not exist. 3

[Australian Society for Kangaroos and Rural Industries Research and Development Corporation trading as AgriFutures Australia \(Freedom of information\) \[2019\] AICmr 31](#)

Freedom of Information – Whether reasonable steps taken to locate documents – Whether disclosure would involve disclosure of information concerning an organisation’s business, commercial or financial affairs which would unreasonably affect that organisation – Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency –Whether contrary to the public interest to release conditionally exempt documents – Whether the agency has discharged its onus – (CTH) Freedom of Information Act 1982 ss 11A(5), 24A, 47E(d), 47G and 55D(1)

[Viscariello v Legal Practitioners Disciplinary Tribunal & Anor \[2019\] SASC 98](#)

Professions and trades - lawyers - complaints and discipline - professional misconduct and unsatisfactory professional conduct

Appeal and new trial - appeal - practice and procedure - south australia - extension of time for appeal

Administrative law - judicial review - procedure and evidence - extension of time - generally

Administrative law - judicial review - procedure and evidence – applications

LEGISLATION

[AusCheck Legislation Amendment \(2019 Measures No. 1\) Regulations 2019](#)

19/06/2019 – These regulations amend the AusCheck Regulations 2017, the Aviation Transport Security Regulations 2005 and the Maritime Transport and Offshore Facilities Security Regulations 2003 to provide for more reliable and accurate outcomes from the AusCheck scheme, enhance efficiencies within the processes of the scheme and improve the security of the scheme.

Schedule 1—Document Verification Service

(ia) if the Category A identification document for the individual is determined under section 5AA—details of one or more Category B identification documents or Category C identification documents for the individual, being details AusCheck can use to verify electronically the individual’s identity for the purposes of a background check.

Regulations and Rules

2019 -123 [Liquor Licensing \(General\) \(Regulated Premises\) Variation Regulations 2019](#)

Reminders

2019 – 32 [Fines Enforcement and Debt Recovery \(Treatment Programs\) Variation Regulations 2019](#)

These regulations come into operation on 1 July 2019.

2019-33 [Public Interest Disclosure Regulations 2019](#)

Commencement 01 July 2019:r2

Proclamations

13.6.2019 p 1828 & 1892 [Youth Court \(Designation and Classification of Special Justice\) Proclamation 2019](#)

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