



PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

IN THE MEDIA

SA new protections for whistleblowers

New laws to protect whistleblowers came into effect on 1 July 2019. The new laws strengthen transparency and accountability in government, protect the identity of informants and allows them to pass on information to the relevant authorities without fear of reprisal

<https://www.agd.sa.gov.au/newsroom/new-protections-whistleblowers>

Industrial reforms introduced into Parliament

The Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019 and the *Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2019* have been introduced into the House of Representatives. The Ensuring Integrity Bill implements recommendations giving more power and greater flexibility to the Federal Courts to de register lawbreaking unions and take action against certain militant parts of unions and their officials

<https://www.attorneygeneral.gov.au/Media/Pages/industrial-reforms-a-major-test-for-labor.aspx>

Mining bill passes SA Parliament but rebel MPs hopeful for inquiry

Landholders fight for independent review after the controversial Mining bill passes the Lower House

<https://www.abc.net.au/news/rural/2019-07-04/mining-bill-passes-sa-parliament-but-rebel-mps-hope-for-inquiry/11277340>

Morrison Government delivers to protect farmers

The Morrison Government has introduced legislation to protect them from the unlawful actions of animal activists. *The Criminal Code Amendment (Agricultural Protection) Bill 2019* introduces new offences for the incitement of trespass, property damage, or theft on agricultural land

<https://www.attorneygeneral.gov.au/Media/Pages/morrison-government-delivers-to-protect-farmers.aspx>

Social media key to law change to lift automatic anonymity for accused sex offenders

Accused sexual predators and paedophiles will no longer get special treatment with the South Australian justice system as Attorney General Vickie Chapman moves to abolish automatic anonymity

<https://www.abc.net.au/news/2019-06-26/automatic-anonymity-for-sa-accused-sex-predators-to-be-abolished/11247178>

APS slides on information publishing

Agencies across the Australian Public Service are going backwards in their rate of compliance with the open Government requirements of the Information Publication Scheme (IPS)

<https://www.oaic.gov.au/media-and-speeches/news/information-publication-scheme-survey>

Stronger protections for telecommunications consumers

Telco consumers will be better protected from financially over committing themselves and poor sales practices under new consumer protection rules approved. ACMA Chair Nerida O'Loughlin said the impact of this is serious, particularly for those in vulnerable circumstances, leading to financial hardship and denial of access to critical services

<https://www.acma.gov.au/theACMA/stronger-protections-for-telecommunications-consumers>

Data Standards Body welcomes initial live use of banking Product Reference Data standards

The Federal Government's Consumer Data Right (CDR) regime, which will give Australians greater control over their own data, is one step closer with the API based publication of banking Product Reference Data on 1 July 2019, developed using CDR standards

<https://www.csiro.au/en/News/News-releases/2019/Data-Standards-Body-welcomes-initial-live-use-of-banking-Product-Reference-Data-standards>

IN PRACTICE AND COURTS

Attorney-Generals Department reminder: CBS accepting labour hire licence applications

Consumer and Business services will recommence accepting applications from labour hire businesses requiring a licence under South Australia's existing laws from June 14 this year. Labour hire providers will have until 31 August 2019 to lodge an application with the Commissioner. Businesses wishing to find out more can visit <https://www.cbs.sa.gov.au/campaigns/labour-hire-laws>

Public Interest Disclosure Act 2018

The new [Public Interest Disclosure Act 2018](#) commenced on 1 July 2019, replacing the *Whistleblowers Protection Act 1993*. It creates two types of protection - those for any person wishing to report public interest information on environmental and health matters, and protections purely for public servants wishing to disclose allegations of public sector maladministration, corruption or misconduct <https://www.agd.sa.gov.au/newsroom/new-protections-whistleblowers>

ICAC Reminder: Public Interest Disclosure Guidelines

The Public Interest Disclosure Act 2019 (PID Act) came into operation on 1 July 2019. Section 14 of the PID Act provides that the Commissioner may publish guidelines for purpose of that Act. View the guidelines [here](#).

Ombudsman SA: July 2019

[Department of Planning, Transport and Infrastructure - Conduct of an FOI external review](#)

The Ombudsman considered, of his own initiative under the Ombudsman Act, issues that came to his attention in the course of an external review concerning the Department of Planning, Transport and Infrastructure (the agency) conducted under the *Freedom of Information Act 1991*

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. 26/2019](#), 1 July 2019

HCA Bulletins

[High Court of Australia Bulletin \[2019\] HCAB 5](#)

PUBLISHED - ARTICLES, PAPERS, REPORTS

[The Trusted Insider](#)

ICAC SA: Published on 21 June 2019

An Examination of Issues from Two ICAC Investigations. The Commissioner's report has been prepared in accordance with section 42 of the ICAC Act.

[Cyber Resilience of Government Business Enterprises and Corporate Commonwealth Entities](#)

ANAO: 04 July 2019

The objective of this audit was to assess the effectiveness of the management of cyber security risks by three government business enterprises or corporate Commonwealth entities. The entities selected for audit are ASC Pty Ltd, the Australian Postal Corporation and the Reserve Bank of Australia.

[National Disability Insurance Scheme Fraud Control Program](#)

ANAO: 25 June 2019

The objective of this audit was to examine the effectiveness of the National Disability Insurance Agency's (NDIA) fraud control program and its compliance with the Commonwealth Fraud Control Framework

[State government integrity frameworks review](#)

IBAC released 27 June 2019

The review found that reporting from colleagues and supervisors/managers were the most common ways suspected corrupt conduct had been identified in the participating agencies.

See the [full report and summary version](#)

[State Trustees failed some of Victoria's most vulnerable people: Ombudsman](#)

Victorian Ombudsman Deborah Glass found State Trustees had failed some of the most vulnerable people in Victoria. The agency manages the finances of around 10,000 Victorians who are unable to look after their own affairs due to disability, illness or injury

Read the full report [here](#)

CASES

[Masson v Parsons \[2019\] HCA 21](#)

Appeal allowed. Constitutional law (Cth) – Courts – Federal courts – Federal jurisdiction – Matter arising under Commonwealth law – Where Commonwealth law provides rules in respect of parentage of children born of artificial conception procedures – Where State law provides irrebuttable presumption that biological father of child conceived by fertilisation procedure is not father in specified circumstances – Whether s 79(1) of Judiciary Act 1903 (Cth) operates to pick up and apply text of State law as Commonwealth law – Whether State law regulates exercise of jurisdiction – Whether Commonwealth law has "otherwise provided" within meaning of s 79(1) of Judiciary Act – Whether tests for contrariety under s 79(1) of Judiciary Act and s 109 of Constitution identical – Whether State law applies of its own force in federal jurisdiction.

Family law – Parenting orders – Meaning of "parent" – Where Family Law Act 1975 (Cth) presumes best interests of child served by shared parental responsibility – Where s 60H of Family Law Act provides rules in respect of parentage of children born of artificial conception procedures – Where appellant provided semen to first respondent to conceive

child with belief that he was fathering child – Where appellant had ongoing role in child’s financial support, health, education and general welfare and enjoyed extremely close and secure attachment relationship with child – Where first respondent later in de facto relationship with second respondent – Where appellant found to be “parent” within ordinary meaning of word but not under s 60H – Whether s 60H exhaustive of persons who may qualify as “parent” of child born of artificial conception procedure – Whether “parent” used in Family Law Act according to ordinary meaning except as otherwise provided – Whether appellant is “parent” within ordinary meaning – Whether ordinary meaning of “parent” excludes “sperm donor” – Whether appellant is “sperm donor”.

[The Environmental Group Ltd v Bowd \[2019\] FCA 951](#)

INDUSTRIAL LAW – termination of employment – where employee reported in a CEO report financial irregularities to the board – where employee made a complaint to the Australian Securities and Investments Commission alleging serious fraud within the company before completion of an audit

CORPORATIONS – protection for whistleblowers – whether employee had reasonable grounds to suspect contraventions of the Corporations Act 2001 (Cth) – whether disclosure was made in good faith – whether complaint was made for a secondary purpose

COPYRIGHT – acts not constituting copyright infringement – whether copying was done for the purposes of a judicial proceeding – whether the possibility of a future proceeding is sufficient for the purposes of s 43 of the Copyright Act 1968 (Cth)

[Margaret Simons and Department of Communications and the Arts \(Freedom of information\) \[2019\] AICmr 55](#)

Freedom of Information – Request involving use of computers – Whether documents contain deliberative matter prepared for a deliberative purpose – Whether disclosure of personal information unreasonable – Whether contrary to the public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5), 17, 22, 47C, 47F and 55D = set aside decision

[Daniel Shore and Department of Human Services \(Freedom of information\) \[2019\] AICmr 51](#)

Freedom of Information – Whether a practical refusal reason exists – Whether the request consultation process was followed – Whether the request satisfies the identification of documents requirement – (CTH) Freedom of Information Act 1982 ss 24, 24AA, 24AB and 55D – set aside decision

[Michael Leichsenring and Department of Defence \(Freedom of Information\) \[2019\] AICmr 51](#)

Freedom of Information – Whether documents subject to legal professional privilege – (CTH) Freedom of Information Act 1982 s 42 – set aside decision

[‘QQ’ and Department of Home Affairs \(Freedom of information\) \[2019\] AICmr 49](#)

Freedom of Information – Whether release of documents would disclose the existence or identity of a confidential source of information in relation to the enforcement or administration of the law – (CTH) Freedom of Information Act 1982 s 37(1)(b)

[‘QP’ and the Commonwealth Bank of Australia Limited \(Privacy\) \[2019\] AICmr 48](#)

Privacy – Privacy Act 1988 (Cth) – Australian Privacy Principles – APP 10 Quality of personal information disclosed – Breach of APP 10.2 – Compensation awarded – Non-economic loss – Aggravated damages not awarded

[Lisa Martin and Department of Home Affairs \(Freedom of Information\) \[2019\] AICmr 47](#)

Freedom of Information – Whether disclosure could cause damage to the international relations of the Commonwealth – Whether disclosure would have a substantial adverse effect on the management or assessment of personnel – 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 – (CTH) Freedom of Information Act 1982 ss 11A(5), 33(a)(iii), 47E(c), 47F, 47G(1)(a) and 55D(1) – set aside decision

[‘QO’ and Department of Human Services \(Freedom of information\) \[2019\] AICmr 46](#)

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 – (CTH) Freedom of Information Act 1982 ss 24, 24AA, 24AB and 55D – set aside decision

[Darren McAulay and Department of Human Services \(Freedom of information\) \[2019\] AICmr 45](#)

Freedom of Information – Whether disclosure would prejudice lawful methods or procedures – Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency – Whether disclosure is contrary to the public interest – (CTH) Freedom of Information Act 1982 ss 11A, 37(2)(b) and 47E(d)

[Kellie Tranter and Department of Home Affairs \(Freedom of information\) \[2019\] AICmr 44](#)

Freedom of Information – Whether disclosure could cause damage to the international relations of the Commonwealth – (CTH) Freedom of Information Act 1982 s 33(a)(iii)

[‘QN’ and Australian Financial Security Authority \(Freedom of information\) \[2019\] AICmr 43](#)

Freedom of Information – Access grant – 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 – (CTH) Freedom of Information Act 1982 ss 11A(5), 47F, 47G

[Attorney General \(SA\) v Marmandis \(No 2\) \[2019\] SASCFC 77](#)

Procedure - civil proceedings in state and territory courts - costs - general rule: costs follow event - general principles and exercise of discretion

The Court allowed an appeal against a judgment by a single Judge in a judicial review action quashing a default judgment entered in the Magistrates Court in favour of the second respondent against the first respondent.

[The Public Advocate & Ors v C,B \(No2\) \[2019\] SASCFC 78](#)

Procedure - civil proceedings in state and territory courts - costs - general matters

Procedure - civil proceedings in state and territory courts - costs - recovery of costs - entitlement

Procedure - civil proceedings in state and territory courts - costs - taxation and other forms of assessment

Application for costs. This Court dismissed an appeal from a decision of a single Judge of the Supreme Court that BC was unlawfully detained in the locked ward of an aged care facility by reason of a decision of the Public Advocate, and that a writ of habeas corpus should follow.

[Voller v Nationwide News Pty Ltd; Voller v Fairfax Media Publications Pty Ltd; Voller v Australian News Channel Pty Ltd \[2019\] NSWSC 766](#)

DEFAMATION – Publication – Generally – Public Facebook Page – Liability of Media Company Owner of Public Facebook Page for comments by third-party users – probable that defamatory comments would be posted – Public Facebook Page operated for commercial interests of Media Company – Capacity to prevent and control postings – resources required – no assessment performed of likelihood of defamatory comments – Discussion of general test for primary or first publisher – liability of subordinate or secondary publisher – innocent dissemination – separate question asked – Media Company owners of Public Facebook Page held to be primary publisher

LEGISLATION**Acts Compilation**[Freedom of Information Act 1982](#)

01/07/2019 - Act No. 3 of 1982 as amended

South Australia**Regulations and Rules**

2019 - 165 [Criminal Law Consolidation \(Medical Termination of Pregnancy\) Variation Regulations 2019](#)
27 June 2019 - from 01 July 2019

2019 - 176 [Independent Commissioner Against Corruption \(Schedule 1 of Act\) Variation Regulations 2019](#)
27 June 2019 - from 01 July 2019

2019 - 184 [Supreme Court Variation Regulations 2019](#)
27 June 2019 - from 01 July 2019

Reminders

2019 - 32 [Fines Enforcement and Debt Recovery \(Treatment Programs\) Variation Regulations 2019](#)
These regulations came into operation on 1 July 2019

2019 - 33 [Public Interest Disclosure Regulations 2019](#)
Commenced 01 July 2019

Proclamations

27.6.2019 p-2322 [Statutes Amendment \(Screening\) Act \(Commencement\) Proclamation 2019](#)

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