



PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 7 of the South Australian Public Sector Newsletter

This edition includes a number of legislative changes that received assent on 11 July 2019. In particular, sections 7, 11 and 12 of the Statutes Amendment (Domestic Violence) Act 2018 (SA) come into operation from 1 September 2019.

These provisions address admissibility of recorded evidence in domestic violence proceedings, including the making or varying of intervention orders. The changes are intended to enable police to present evidence in chief from domestic violence victims via recordings, rather than in person. They also provide for interim variations to be made between a police application to vary a final intervention order and the final determination of the application.

We hope you enjoy this edition of our public sector newsletter.

IN THE MEDIA

'The public has a right to know': Buildings identified in cladding audit kept secret

The South Australian Government refuses to release a list of buildings containing potentially-flammable aluminium cladding following an ABC request under Freedom of Information laws. (16 July 2019) <https://www.abc.net.au/news/2019-07-16/cladding-audit-documents-kept-secret-after-foi-request/11312910>

Two arrested in alleged procurement corruption in SA

As part of an extensive and long running investigation ICAC investigators executed nine search warrants and two people were arrested. It will be alleged that between 1 June 2018 and 15 July 2019 the men colluded to corrupt the tender and procurement processes associated with the \$150 million redevelopment of the Yatala Labour Prison in order to financially benefit themselves. (15 July 2019) <https://icac.sa.gov.au/public-statement/15jul2019>

Court rejects indigenous action over SA nuclear dump

The Federal Court rejected a claim that native title holders should be included in a Kimba community survey to gauge support for a nuclear dump. But Justice White found the council had not excluded the Barngarla because of their Aboriginality, but had restricted the ballot to members of the Kimba community who had the right to elect council members. (12 July 2019) <https://indaily.com.au/news/2019/07/12/court-rejects-indigenous-action-over-sa-nuclear-dump/>

IN PRACTICE AND COURTS

High Court of Australia

[High Court of Australia Bulletin \[2019\] HCAB 5 \(8 July 2019\)](#)

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. 28/2019, 15 July 2019. <https://www.aat.gov.au/AAT/media/AAT/Files/AAT%20Bulletins/28-19.pdf>

CASES

[Luppino v Fisher \(No 2\) \[2019\] FCA 1100](#)

CRIMINAL LAW – application for judicial review of an ex parte order made by a magistrate under s 3LA of the Crimes Act 1914 (Cth) requiring the Plaintiff to provide a constable with any information or assistance which is reasonable and necessary to allow the constable to access, copy or convert data on a computer or data storage device – whether there was a denial of procedural fairness in the grant of the order – whether the order identifies the information or assistance required to be provided – whether the order specifies the period in which, and the place at which, the information or assistance is to be provided – whether the order failed to identify the particular computer or data storage device the subject of the order – whether

a mobile phone is a “computer” or “data storage device” – whether the magistrate granting the order could have been satisfied by either ss 3LA(2)(c)(i) or 3LA(2)(c)(ii) – whether the order was made by the magistrate in his personal capacity or by the Magistrates Court of South Australia – application allowed and declaration of invalidity made.

Administrative Decisions (Judicial Review) Act 1977 (Cth) ss 5, 6; Australian Human Rights Commission Act 1986 (Cth) s 46PO(4)(b).

[Kempfi v Adani Mining Pty Ltd \(No 2\) \[2019\] FCAFC 117](#)

NATIVE TITLE – statutory construction – subject matter of judicial review of administrative decision-making – where representative body certified area ILUA under s 203BE(1)(b) of the Native Title Act 1993 (Cth) – whether challenge to s 203BE(1)(b) certificate possible after Registrar determines under s 24CK to register area indigenous land use agreement (ILUA)

NATIVE TITLE – statutory construction – where representative body must not certify agreement under s 203BE(5) unless of opinion that all reasonable efforts have been made to ensure that all persons who hold or may hold native title in area covered by the agreement have been identified and all persons so identified have authorised the making of the agreement

Administrative Decisions (Judicial Review) Act 1977 (Cth); Federal Court of Australia Act 1976 (Cth) s 27. The appeal be dismissed with costs.

[Nick Xenophon and Department of Defence \(Freedom of information\) \[2019\] AICmr 53](#)

Freedom of Information – Whether disclosure would cause damage to the international relations of the Commonwealth – Whether documents contain deliberative matter prepared for a deliberative purpose – Whether disclosure would unreasonably affect an organisation in respect of its lawful business affairs – (CTH) Freedom of Information Act 1982 ss 33(a)(iii), 47C, 47G(1)(a) and 55D(1).

[Decmil Group and Department of Industry, Innovation and Science \(Freedom of information\) \[2019\] AICmr 50](#)

Freedom of Information – Whether reasonable steps taken to locate documents – 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), 24A, 47C, 47E.

[ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA v RASCHKE & ANOR \[2019\] SASCF 83](#)

CONSTITUTIONAL LAW - THE NON-JUDICIAL ORGANS OF GOVERNMENT - THE CROWN - CLASSIFICATION OF FUNCTIONS: JUDICIAL, LEGISLATIVE OR ADMINISTRATIVE - PARTICULAR FUNCTIONS - OTHER MATTERS

CONSTITUTIONAL LAW - OPERATION AND EFFECT OF THE COMMONWEALTH CONSTITUTION - GENERAL MATTERS

Dismissing the appeal: 1. The powers exercised by the Tribunal in making the orders for vacant possession were judicial.

[KOHV v FUCHS \[2019\] SADC 94](#)

APPEAL AND NEW TRIAL - APPEAL - PRACTICE AND PROCEDURE

Application to set aside a judgment obtained in default of appearance allowed on the basis of concessions by the respondent that the applicant was not notified of the hearing due to her solicitor failing to advise her of it.

[CHERRY RED PTY LTD v CALONSAG \[2019\] SADC 95](#)

APPEAL AND NEW TRIAL - APPEAL - GENERAL PRINCIPLES

Application to review a decision of a Magistrate refusing to set aside a default judgment on the basis of material not placed before the Magistrate. Discussion of the proper application of the power to set aside conferred by MCCR 87(2)(b) of the Magistrates Court (Civil) Rules 2013 (SA).

LEGISLATION

[Australian Prudential Regulation Authority \(confidentiality\) determination No.1 of 2019](#)

17/07/2019 - This instrument prescribes information provided by general insurers and Lloyd’s underwriters for the purposes of the National Claims and Policies Database under Reporting Standard GRS 800.1, GRS 800.2, GRS 800.3, LOLRS 800.1, LOLRS 800.2 and LOLRS 800.3.

[Enhancing Online Safety \(Protecting Australians from Terrorist or Violent Criminal Material\) Legislative Rule 2019](#)

15/07/2019 – This rule provides for the eSafety Commissioner to exercise powers under relevant legislation to take action, where required, to reduce Australian internet users’ exposure to material that promotes, instructs or incites in matters of terrorist acts or violent crimes.

South Australia

Acts

2019-13 [Statutes Amendment \(Child Exploitation and Encrypted Material\) Act 2019](#)

Assented 11 July 2019 - Act to amend the Child Sex Offenders Registration Act 2006, the Criminal Law Consolidation Act 1935, the Evidence Act 1929 and the Summary Offences Act 1953

2019-14 [Statutes Amendment \(SACAT\) Act 2019](#)

Assented 11 July 2019 - Includes amendments - Australian Civil and Administrative Tribunal Act 2013 - Amendment of section 22—Assessors162Amendment of section 40—Power to require person to give evidence or to produce evidentiary material163Amendment of section 90—Accessibility of evidence 164Amendment of section 93A—Disrupting proceedings of Tribunal

2019-15 [Victims of Crime \(Offender Service and Joinder\) Amendment Act 2019](#)

Assented 11 July 2019

2019-16 [Parliamentary Committees \(Petitions\) Amendment Act 2019](#)

Assented 11 July 2019

Regulations and Rules

No 188 [Evidence \(Domestic Violence Proceedings\) Variation Regulations 2019](#) published in Gazette 18 July 2019 p 2748.

No 189 [Intervention Orders \(Prevention of Abuse\) \(Recorded Evidence\) Variation Regulations 2019](#)

published in Gazette 18.7.2019 p 2750.

Proclamations

18.7.2019 p 2744 [Statutes Amendment \(Domestic Violence\) Act \(Commencement\) Proclamation 2019](#)

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