



PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 8 of the South Australian Public Sector Newsletter.

This edition contains updates on the progress of a number of Federal bills covering a range of topics, including counter-terrorism, landowner rights to refuse gas and coal mining activities, royal commission procedures, and the exchange of information to facilitate identity matching services proposed between the Commonwealth and states and territories.

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

IN THE MEDIA

Strengthening Australia's counter-terrorism laws

The Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Bill 2019, introduced today, will make it harder for high risk terrorist offenders to get out of jail – even when they have served their full sentence – by closing a loophole which prevented some from being served with continuing detention orders (CDOs). (01 August 2019) <https://www.attorneygeneral.gov.au/Media/Pages/Strengthening-australias-counter-terrorism-laws-1-august-2019.aspx>

Ministers agree to national crackdown on vehicles displaying obscene messages

State and federal transport ministers agree on a national strategy to crack down on vehicles, such as Wicked Campers, festooned with rude slogans in SA. (01 August 2019) <https://www.abc.net.au/news/2019-08-02/ministers-agree-to-national-ban-on-obscene-campervans/11379886>

Protocol to provide balanced framework for Legal Professional Privilege claims

A new protocol dealing with legal professional privilege (LPP) being developed by the Law Council of Australia and the Australian Tax Office will help avoid unnecessary and protracted disputes over claims of LLP. (26 July 2019) <https://www.lawcouncil.asn.au/media/media-releases/protocol-to-provide-balanced-framework-for-legal-professional-privilege-claims>

OAIC: FTC fine and privacy requirements for Facebook

The \$US5 billion penalty against Facebook announced by the US Federal Trade Commission is a globally significant order that demonstrates the concerns of privacy regulators around the world. (25 July 2019) <https://www.oaic.gov.au/updates/news-and-media/ftc-fine-and-privacy-requirements-for-facebook/>

Fall-out from Setka affair could give Coalition easier passage of union bill

One of the Coalition government's first priorities in the new parliament is the passage of its Ensuring Integrity Bill, aimed at tightening regulations on unions and union officials. The bill would give the minister for industrial relations, as well as the Registered Organisations Commission and any party deemed to have "sufficient interest", the power to apply to the Federal Court to deregister a union. (24 July 2019) <https://theconversation.com/fall-out-from-setka-affair-could-give-coalition-easier-passage-of-union-bill-120586>

Statutory Review of the Amalgamated AAT Tabled

The Government today tabled the Statutory Review of the amalgamated AAT. The Administrative Appeals Tribunal was amalgamated with the former Social Security Appeals Tribunal, the Migration Review Tribunal and the Refugee Review Tribunal, following the commencement of the Tribunals Amalgamation Act 2015 on 1 July 2015 (23 July 2019) <https://www.attorneygeneral.gov.au/Media/Pages/statutory-review-of-the-amalgamated-aat-tabled-23-july-2019.aspx>
A copy of the report is available [here](#).

IN PRACTICE AND COURTS

AAT Bulletin

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions. Issue No. 30/2019, 29 July 2019. <https://www.aat.gov.au/AAT/media/AAT/Files/AAT%20Bulletins/30-19.pdf>

Law Society of SA Submissions

22/07/2019 Criminal Code Amendment (Agricultural Protection) Bill 2019

<https://www.lawsocietysa.asn.au/pdf/Submissions/agriculturalp.pdf>

Advocacy Notes

The monthly newsletter providing the latest news and advocacy from the Law Society.

See the latest issue [here](#) Aug 2, 2019.

PUBLISHED - ARTICLES, PAPERS, REPORTS**[Party leadership changes and challenges: a quick guide](#)**

Parliament of Australia: 29 July 2019

This quick guide outlines the current rules relating to the election of leaders for the four largest federal parliamentary parties: the Liberal Party (LIB), the Nationals (NATS), the Australian Labor Party (ALP) and the Australian Greens (AG). Appendices provide prime ministerial changes since 2007 together with a list of the changes and challenges to leaders of the Liberal Party, the Nationals, and the ALP.

CASES**[Binqld Finances Pty Ltd \(In Liq\) v Israel Discount Bank Limited; In the Matter of Binqld Finances Pty Ltd \(In Liq\) \[2019\] FCA 1186](#)**

TAXATION – Meaning of “protected information” in s 355-30 of Sch 1 to the Taxation Administration Act 1953 (Cth) – whether information in a settlement deed with the Australia Taxation Office is “protected information” – whether disclosure of information would be an offence under s 355-155 of Sch 1 to the Taxation Administration Act 1953 (Cth) – whether the exceptions in s 355-175 and/or s 355-205 of Sch 1 to the Taxation Administration Act 1953 (Cth) engaged or applicable – whether disclosure of “protected information” “necessary” to give effect to a provision of taxation law – whether entire deed “protected information” – whether disclosure of non-protected information in an ATO settlement deed would contravene s 355-155 of Sch 1 to the Taxation Administration Act 1953 (Cth)

PRACTICE AND PROCEDURE – Application for suppression orders in relation to a settlement deed – whether power under s 37AF of the Federal Court of Australia Act 1976 (Cth) should be exercised – whether sufficient grounds established under s 37AG(1) of the Federal Court of Australia Act 1976 (Cth) – whether grounds specified in accordance with s 37AG(2) of the Federal Court of Australia Act 1976 (Cth) – whether necessary to prevent prejudice to the proper administration of justice – whether the risk of exposure to cross-claims a sufficient reason to suppress – whether disclosure of personal information a sufficient reason to suppress

[‘QZ’ and Australian Criminal Intelligence Commission \(Freedom of information\) \[2019\] AICmr 57](#)

Freedom of Information – Whether reasonable steps taken to locate documents – 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), 24A and 47E(c)

[Self Care Corporation Pty Limited and Department of Health \(Freedom of information\) \[2019\] AICmr 56](#)

Freedom of Information – Access Grant – Whether documents contain commercially valuable information – 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), 47(1)(b) and 47G(1)(a)

[Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science \[2019\] FCAFC 122](#)

STATUTES – Customs Act 1901 (Cth) – Part XVB – ferrous grinding balls exported from the People’s Republic of China to Australia – judicial review of anti-dumping measures

STATUTES – Customs (International Obligations) Regulation 2015 (Cth) – normal price of goods – ordinary course of trade – determination of profit – determination of cost of production or manufacture – determination of administrative, selling and general costs

ADMINISTRATIVE LAW – whether reviewable error in substituting a higher benchmark price from Latin America to determine cost of production in the People’s Republic of China but not substituting the higher benchmark price to determine the relevant profit – whether legally erroneous to calculate amount of profit by employing a profit margin expressed as a percentage – whether all of the comparative advantages and disadvantages between the respective markets were mandatory relevant considerations, irrespective of submissions made by interested parties

[STEPHENSON v RETURN TO WORK CORPORATION OF SOUTH AUSTRALIA \[2019\] SASCF 89](#)

WORKERS’ COMPENSATION - PROCEEDINGS TO OBTAIN COMPENSATION - DETERMINATION OF CLAIMS. ADMINISTRATIVE LAW - JUDICIAL REVIEW - GENERALLY

Where appellant then made a subsequent successful application for compensation for impairments caused by use of prescribed medications – where Full Bench set aside award – whether consent orders properly founded a cause of action estoppel – whether Tribunal has jurisdiction to make an order which precludes all entitlements for impairments not yet suffered.

Held, per Kourakis CJ (Nicholson and Parker JJ agreeing): appeal allowed, orders of Full Bench set aside, orders of Hannon DPJ reinstated.

[GILLOTT v DISTRICT COURT OF SOUTH AUSTRALIA & ORS \[2019\] SASC 132](#)

PROCEDURE - CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS - ENDING PROCEEDINGS EARLY - SUMMARY DISPOSAL - SUMMARY JUDGMENT FOR DEFENDANT OR RESPONDENT: STAY OR DISMISSAL OF PROCEEDINGS

ADMINISTRATIVE LAW - PREROGATIVE WRITS AND ORDERS - CERTIORARI - GROUNDS FOR CERTIORARI TO QUASH - EXCESS OR WANT OF JURISDICTION - PARTICULAR INSTANCES OF JURISDICTIONAL ERROR

On 5 July 2019, the application for summary dismissal was heard and judgment was reserved. Held, summarily dismissing the defendant's application for Judicial Review:

LEGISLATION

Acts

[Counter-Terrorism \(Temporary Exclusion Orders\) \(Consequential Amendments\) Act 2019](#)

31/07/2019 - Act No. 54 of 2019

[Counter-Terrorism \(Temporary Exclusion Orders\) Act 2019](#)

31/07/2019 - Act No. 53 of 2019 Counter-Terrorism (Temporary Exclusion Orders) Act 2019

Bills

[Australian Security Intelligence Organisation Amendment \(Sunsetting of Special Powers Relating to Terrorism Offences\) Bill 2019](#)

Finally passed both Houses 01 August 2019 - Amends the Australian Security Intelligence Organisation Act 1979 to extend the operation of the Australian Security Intelligence Organisation's questioning and detention powers for a further 12 months to 7 September 2020

[Treasury Laws Amendment \(Consumer Data Right\) Bill 2019](#)

Finally passed both Houses 01 August 2019 - Amends the Competition and Consumer Act 2010, Australian Information Commissioner Act 2010 and Privacy Act 1988 to create the Consumer Data Right to provide individuals and businesses with a right to access specified data in relation to them held by businesses

[Criminal Code Amendment \(Agricultural Protection\) Bill 2019](#)

House of Representatives Third reading agreed to 01 Aug 2019

Amends the Criminal Code Act 1995 to introduce two new offences in relation to the incitement of trespass or property offences on agricultural land. The Bill contains exemptions for journalists and those who are making lawful disclosures of information, including whistleblowers.

[Identity-matching Services Bill 2019](#)

HR Second reading moved 31 Jul 2019 - The Bill will facilitate the secure, automated and accountable exchange of identity information between the Commonwealth and state and territory governments, pursuant to the objectives of the Intergovernmental Agreement on Identity Matching Services (IGA).

[Australian Passports Amendment \(Identity-matching Services\) Bill 2019](#)

HR Second reading moved 31 Jul 2019 - This Bill amends the Australian Passports Act 2005 (Passports Act) to provide a legal basis for ensuring that the Minister is able to make Australian travel document data available for all the purposes of, and by the automated means intrinsic to, the identity-matching services to which the Commonwealth and the States and Territories agreed in the Intergovernmental Agreement on Identity Matching Services (IGA).

[Royal Commissions Amendment \(Private Sessions\) Bill 2019](#)

Senate Second reading moved 31 Jul 2019 - Amends the: Royal Commission Act 1902 to: enable a Royal Commission to hold private sessions where a regulation is made authorising it to do so; enable the Chair of a multi-member Royal Commission, or a sole Commissioner, to authorise Assistant Commissioners to hold private sessions; and impose limits on the use and disclosure of private session information and certain information given to the Child Sexual Abuse Royal Commission; and Freedom of Information Act 1982 to make consequential amendments.

[Fair Work \(Registered Organisations\) Amendment \(Ensuring Integrity\) Bill 2019](#)

Senate Second reading moved 31 Jul 2019.

Amendments include certain serious criminal offences as a new category of 'prescribed offence' for the purposes of the automatic disqualification regime in relation to registered organisations; establish an offence for a disqualified person to continue to act as an official or in a way that influences the affairs of an organisation; allow the Federal Court to disqualify officials from holding office in certain circumstances or if they are otherwise not a fit and proper person; allow the Federal Court to cancel the registration of an organisation on a range of grounds.

[Landholders' Right to Refuse \(Gas and Coal\) Bill 2015](#)

Senate Restored to Notice Paper 31 Jul 2019. The bill: provides that Australian landholders have the right to refuse the undertaking of gas and coal mining activities by corporations on their land without prior written authorisation; sets out the requirements of a prior written authorisation; provides for relief which a court may grant a land owner when prior written authorisation is not provided; prohibits hydraulic fracturing for coal seam gas, shale gas and tight gas by corporations; and provides for civil penalties.

[Human Rights \(Parliamentary Scrutiny\) Amendment \(Australian Freedoms\) Bill 2019](#)

Senate Second reading moved 23 Jul 2019 - Amends the Human Rights (Parliamentary Scrutiny) Act 2011 to: include a definition of 'Australian freedoms'; require the Parliamentary Joint Committee on Human Rights to explicitly consider 'Australian freedoms' in its examinations of legislation; and require statements of compatibility for bills and disallowable legislative instruments to provide certain information in relation to 'Australian freedoms'.

Assented

[Counter-Terrorism \(Temporary Exclusion Orders\) Bill 2019](#)

Finally passed both Houses 25 Jul 2019 Assent Act no: 53 Year: 2019 30 July 2019

Introduces a temporary exclusion order scheme to delay Australians of counter-terrorism interest from re-entering Australia until appropriate protections are in place.

[Counter-Terrorism \(Temporary Exclusion Orders\) \(Consequential Amendments\) Bill 2019](#)

Finally passed both Houses 25 Jul 2019 Assent Act no: 54 Year: 2019 30 July 2019

Introduces a temporary exclusion orders scheme to delay Australians of counter-terrorism interest from re-entering Australia until appropriate protections are in place.

Regulation

[Defence Determination, Conditions of service Amendment \(Approved forms and privacy\) Determination 2019 \(No. 21\)](#)

29/07/2019 - This determination amends the Defence Determination 2016/19, Conditions of service to remove elements that are of a non-legislative nature such as examples, non-examples, cross-reference notes, see notes and forms, to remove any specific reference to a form number or name and replace it with the defined term 'approved form' and to put beyond doubt Defence's right to collect, use or disclose personal information in the administration of member benefits.

South Australia

Acts

2019-17 [Criminal Law Consolidation \(Assaults on Prescribed Emergency Workers\) Amendment Act 2019](#)
Assented to 01 August 2019 - amend the Criminal Law Consolidation Act 1935, and to make related amendments to the Criminal Law (Forensic Procedures) Act 2007 and the Summary Offences Act 1953.

Proclamations

25.7.2019 p 2826 [Fair Work \(Assignment of Judge\) Proclamation 2019](#)

Regulations

2019-193 [Victims of Crime \(Statutory Compensation\) Regulations 2019](#) Version 25 July 2019

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