



## PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 9 of the South Australian Public Sector Newsletter. This edition contains updates on some potentially significant recent legal decisions both locally and nationally.

The High Court has rejected Glencore's claims that documents made public via the Paradise Papers leak are subject to legal professional privilege. This indicates that privilege cannot be claimed to stop publically available information being used, notwithstanding that Glencore did not intentionally release the information.

The SA Employment Tribunal has also delivered a decision that may potentially broaden the class of claimants against James Hardie (now known as Amaca). The Tribunal determined that James Hardie failed to take reasonable steps to minimise risk of exposure to a DIY handyman thought to have contracted mesothelioma from renovating two houses containing asbestos in the 1990s and 2000s, decades after the product was sold.

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

### IN THE MEDIA

#### 'Home renovators beware': Handyman wins landmark \$3m asbestos compo

An Adelaide man who is part of a so-called third wave of asbestos victims who did not help produce asbestos or build homes with it wins a landmark compensation case against James Hardie. (06 August 2019) <https://www.news.com.au/national/record-3-million-payout-for-south-australia-asbestos-victim/news-story/57c17f754568832b331ca07daea31e3c>

James Hardie court decision available [here](#).

#### Lawyers fear Australia more open to hacks, leaks after High Court ruling on Glencore

The ATO has also argued that legal privilege only extended as far as protecting such material from being compelled to be handed over during investigations or proceedings, not requiring the return of already leaked

material. (15 August 2019) <https://www.abc.net.au/news/2019-08-15/lawyers-fear-ramifications-of-high-court-ruling-on-glencore-/11414806>

#### Mining giant loses fight to keep Paradise Papers revelations out of ATO's reach

Australia's biggest coal producer, Glencore, loses a High Court bid to have documents linked to its offshore financial arrangements kept out of reach of the Australian Tax Office (ATO) by invoking legal privilege. (14 August 2019) <https://www.abc.net.au/news/2019-08-14/glencore-high-court-paradise-papers-ruling/11410228>

#### Glencore's High Court loss to the Tax Office has some lawyers worried

Tax Commissioner Chris Jordan says he should be able to access confidential taxpayer information in order to fight a defamation case against him, because if he doesn't, other individuals in dispute with the ATO could launch lawsuits against him. (13 August 2019) <https://www.abc.net.au/news/2019-08-13/ato-boss-chris-jordan-says-lawsuits-against-him-could-spike/11406224>

#### Police should reconsider policy to always shoot threats in the torso, deputy coroner says

SA Police should consider whether it is "reasonable" to always shoot high-risk threats in the torso and instead aim for limbs in some cases, the deputy coroner has found during his inquest into a 2015 fatal police shooting. (14 August 2019) <https://www.abc.net.au/news/2019-08-14/sa-police-shooting-death-of-alexander-kuskoff-inquest-findings/11412788>

#### SA Police officer helped 'dangerous cult' members in campaign against online critic

Acting detective Eric Walsh sought advice from police colleagues on ways to silence online criticism of Universal Medicine, a group found by a jury to be a "dangerous cult". (14 August 2019) <https://www.abc.net.au/news/2019-08-14/universal-medicine-police-officer-led-campaign-against-blogger/11408182>

**Notorious paedophile Peter Liddy applies for release from jail**

One of Australia's most notorious paedophiles has applied for parole, but South Australia is considering whether the former magistrate should be indefinitely detained behind bars. (13 August 2019) <https://www.abc.net.au/news/2019-08-13/paedophile-peter-liddy-applies-for-parole/11410986>

**Bikies 'small players' in organised crime as Adelaide feud continues**

Despite fears of an escalating bokie war in Adelaide, outlaw motorcycle clubs account for only a fraction of criminal activity that costs Australia up to \$47.4 billion annually, a criminologist says. (16 August 2019) <https://www.abc.net.au/news/2019-08-16/bikies-small-players-in-organised-crime/11418106>

**New laws to support park residents and owners in SA**

New laws aimed at better supporting people who live in or own a residential park have come into effect today. The new legislation provides stronger protections for people who rent a site but provide their own dwelling, with even greater protections now in place for long-term park residents, who have lived there for 5 years or more. (12 August 2019) <https://www.agd.sa.gov.au/newsroom/new-laws-support-park-residents-and-owners>

**ACMA issues \$88,200 in infringement notices under NBN rules**

The Australian Communications and Media Authority (ACMA) has issued its first infringement notices under rules designed to ensure telcos provide consumers with adequate information about their National Broadband Network (NBN) services. (07 August 2019) <https://www.acma.gov.au/theACMA/acma-issues-88200-in-infringement-notices-under-nbn-rules>

**IN PRACTICE AND COURTS****[High Court Practice Direction 1 of 2019](#)**

The High Court has recently issued a new practice direction, which applies to matters set down after 1 October 2019.

**[High Court \(2020\) Sittings Rules 2019](#)**

The High Court has provided a copy of the Rule of Court appointing the High Court sittings for 2020. The Rule of Court appoints the Full Court sittings to be held in Canberra throughout the year and the days on which special leave applications will be heard. Sittings of the Court will continue to be held in Adelaide, Brisbane, Hobart and Perth as required. (August 2019)

**[Attorney General: Purchasing legal services - Whole of Australian Government Legal Services Panel](#)**

The Whole of Australian Government Legal Services Panel commenced on 15 August 2019. The panel consists of five broad Areas of Law, comprising a number of Practice Areas.

**[Federal Court of Australia: Notice to the Profession regarding Use of Junior Counsel](#)**

The Hon J L B Allsop AO, Chief Justice of the Federal

Court of Australia, has issued a Notice to the Profession on the use of Junior Counsel. The note indicates that the Federal Court of Australia encourages the active participation of junior counsel where two counsel are briefed for a party. (12 August 2019)

**[LCA Note: Glencore International Ag and Ors v Commissioner of Taxation of the Commonwealth of Australia and Ors](#)**

High Court judgment: The Law Council of Australia has issued a note on the decision of the High Court of Australia in *Glencore International Ag and Ors v Commissioner of Taxation of the Commonwealth of Australia and Ors*. (15 August 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. Issue No. 32/2019, 12 August 2019.

**South Australia****Law Society of SA Submissions**

[22/07/2019 Criminal Code Amendment \(Agricultural Protection\) Bill 2019](#)

**[Advocacy Notes](#)**

The monthly newsletter providing the latest news and advocacy from the Law Society. See the latest issue here [Aug 2, 2019 – Advocacy Notes - August 2019 \(Iss 28\)](#).

**PUBLISHED - ARTICLES, PAPERS, REPORTS****[Whistleblower policies: consultation paper](#)**

Australian Securities and Investments Commission: 07 August 2019. This consultation paper seeks feedback on our proposed guidance for entities that must have a whistleblower policy—public companies, large proprietary companies and proprietary companies.

**CASES****[Palmer v Australian Electoral Commission \[2019\] HCA 24](#)**

The application is dismissed. Parliamentary elections (Cth) – House of Representatives – Counting of votes – Where s 274(2A)-(2C) of Commonwealth Electoral Act 1918 (Cth) provides for indicative two-candidate preferred count in each Division – Where s 7(3) of Commonwealth Electoral Act confers power on Australian Electoral Commission to do all things necessary or convenient for or in connection with performance of its functions – Where practice of Australian Electoral Commission to publish information about indicative two-candidate preferred count for a Division after close of polls in that Division – Whether publication of information for a Division before polls closed in all parts of nation has any demonstrated effect on electoral choices – Whether information inaccurate or misleading – Whether publication constitutes imprimatur to any particular candidate or outcome – Whether publication authorised by s 7(3).

Constitutional law (Cth) – Parliament – Elections – Whether publication of information about indicative two-candidate preferred count prior to close of polls

[James v WorkPower Inc \[2019\] FCA 1239](#)

PRACTICE AND PROCEDURE – application by litigation representative for approval of settlement – consideration of relevant factors for approval of settlement – settlement approved

Australian Human Rights Commission Act 1986 (Cth) ss 46P, 46PO(1)

Disability Discrimination Act 1992 (Cth) ss 5, 6, 15  
Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)

[Hunt v Repatriation Commission \[2019\] FCA 1191](#)

ADMINISTRATIVE LAW – veterans' entitlements – Veterans' Entitlements Act 1986 (Cth) – whether Tribunal made findings that were not rationally supported – whether the Tribunal erred in its application of s 120(3) – whether the Tribunal failed to apply correctly the standard of proof under s 120(1)

Administrative Appeals Tribunal Act 1975 (Cth) s 44  
Veterans' Entitlements Act 1986 (Cth) ss 7, 9, 13, 120, 120A, 196B

['RB' and Department of Home Affairs \(Freedom of information\) \[2019\] AICmr 58](#)

Freedom of Information – 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) and 47F....copy of the [applicant's child's] passenger cards and movement records.

[REGISTRAR OF MOTOR VEHICLES v MAGISTRATES COURT OF SOUTH AUSTRALIA & ANOR \[2019\] SASC 142](#)

MAGISTRATES - APPEAL AND REVIEW - SOUTH AUSTRALIA - JUDICIAL REVIEW  
MAGISTRATES - JURISDICTION

The Registrar contends that the Magistrate had no jurisdiction to hear the purported appeal under the Motor Vehicles Act 1959 (SA). Held (per Doyle J): 1. The Magistrate fell into jurisdictional error in hearing and allowing Ms Round's purported appeal.

[RANKINE v PAROLE BOARD OF SOUTH AUSTRALIA \[2019\] SASC 145](#)

ADMINISTRATIVE LAW - JUDICIAL REVIEW - GROUNDS OF REVIEW - UNREASONABLENESS  
ADMINISTRATIVE LAW - JUDICIAL REVIEW - GROUNDS OF REVIEW - PROCEDURAL FAIRNESS  
ADMINISTRATIVE LAW - JUDICIAL REVIEW - GROUNDS OF REVIEW - FAILURE TO OBSERVE STATUTORY PROCEDURE

Held, granting the defendant's application for summary judgment and dismissing the plaintiff's claim: 1. There is no reasonable basis for the plaintiff's claim against the defendant and as such the defendant is entitled to summary judgment pursuant to rule 232.

[FITZPATRICK v LIFETIME SUPPORT AUTHORITY & ANOR \[2019\] SASCFC 97](#)

ADMINISTRATIVE LAW - JUDICIAL REVIEW  
STATUTES - ACTS OF PARLIAMENT - INTERPRETATION - INTERPRETATION ACTS AND PROVISIONS - PRESERVATION OF RIGHTS, LIABILITIES AND LEGAL

PROCEEDINGS ON AMENDMENT, REPEAL, LAPSING ETC OF ACT OR PROVISION  
STATUTES - ACTS OF PARLIAMENT - OPERATION AND EFFECT OF ACTS - RETROSPECTIVE OPERATION  
Application for judicial review of a decision by the Lifetime Support Authority (the Authority) to accept the plaintiff as a member of the Lifetime Support Scheme (the LSS) established by the Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013 (SA) (the LSS Act).

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

Assent Act no: 61 Year: 2019 – 12 Aug 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](#)

Assent Act no: 63 Year: 2019 - 12 Aug 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

**Regulation**[High Court \(2020 Sittings\) Rules 2019](#)

08/08/2019 – These Rules of Court appoint the High Court days of sitting for 2020.

**South Australia****Acts**[2019-18 Director of Public Prosecutions \(Pension Entitlements\) Amendment Act 2019](#)**Proclamations**

8.8.2019 p.2948 [Statutes Amendment \(SACAT\) Act \(Commencement\) Proclamation 2019](#)

**Subordinate Legislation**

No 199 [Subordinate Legislation \(Postponement of Expiry\) Regulations 2019](#)  
Gazette 15.8.2019 p2977



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