



## PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 11 of the SA Public Sector Newsletter.

This fortnight the Independent Commissioner Against Corruption's office has been busy, with the release of a third report following the Public Integrity Survey 2018 setting out its local government findings, and the first ever charges made under section 54 of the ICAC Act in relation to a public servant disclosing confidential information connected to an ICAC investigation.

In other local news, SA is set to receive a new dedicated Court of Appeal as part of the Supreme Court, and SACAT has been given jurisdiction to hear certain matters under the *Equal Opportunity Act 1984* (SA).

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

### IN THE MEDIA

#### ICAC SA: Local government integrity insights

In responding to the Commissioner's Public Integrity Survey 2018, local government staff and elected members have provided valuable insight into the integrity culture of local government. The Commissioner made a recommendation that all elected members and leaders of councils read the report to consider what improvements can be made to individual councils. (12 September 2019) <https://icac.sa.gov.au/media-release/local-government-integrity-insights>

#### South Australia to get new Court of Appeal

The State Government will establish a new dedicated Court of Appeal in South Australia, as a division of the Supreme Court. With dedicated judges, the Court of Appeal will develop specific judicial expertise in appeals, leading to efficiencies and consistent, high quality judgments. (11 September 2019) <https://www.agd.sa.gov.au/newsroom/south-australia-get-new-court-appeal>

#### Man accused of impersonating police had previous conviction of deception, court hears

A man accused of impersonating a police officer by carrying out traffic stops and forcing a driver to pay a fake fine was previously prosecuted for pretending to be a SafeWork SA officer, a court hears. (09 September 2019) <https://www.abc.net.au/news/2019-09-09/men-accused-of-impersonating-police-officers-remanded-in-custody/11493832>

#### First public servant charged with breaching ICAC secrecy rules in SA

A former employee at Renewal SA becomes the first public servant charged with breaching secrecy provisions surrounding investigations by SA's Independent Commissioner Against Corruption. (09 September 2019) <https://www.abc.net.au/news/2019-09-09/first-public-official-accused-of-breaching-sa-icac-secrecy-rules/11491888>

#### SA Government plans to increase adoptions of children in state care

Aboriginal children will be excluded from a plan to boost adoptions of children in state care in South Australia because of cultural sensitivities around the Stolen Generation, the State Government says. (06 September 2019) <https://www.abc.net.au/news/2019-09-06/adoption-of-children-in-state-care/11486384>

#### Councillor who anonymously published election pamphlets pleads guilty

The former deputy mayor of a suburban Adelaide council admits to anonymously publishing and distributing pamphlets containing allegations about two other candidates, in what has been described as the first prosecution of its type. (02 September 2019) <https://www.abc.net.au/news/2019-09-02/local-councillor-in-court-for-publishing-electoral-material/11470660>

## SA Police 'bodycam' video evidence to be admissible in domestic violence prosecutions

New laws that allow police 'bodycam' video to be admitted to court as the evidence of domestic violence victims have come into effect, reducing the stress of court for victims and potentially leading to more convictions. (02 September 2019) <https://www.agd.sa.gov.au/newsroom/sa-police-bodycam-video-evidence-be-admissible-domestic-violence-prosecutions>

### IN PRACTICE AND COURTS

#### [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#)

The first sitting of the Disability Royal Commission was held on 16 September. Further information on upcoming key events and other pertinent information is available at the link above.

#### New Senate Inquiries – September 2019

##### Community Affairs Legislation Committee

Submissions are currently sought on the following bills: [Social Security \(Administration\) Amendment \(Income Management to Cashless Debit Card Transition\) Bill 2019](#) (by 4 October 2019)

[Social Services Legislation Amendment \(Drug Testing Trial\) Bill 2019](#) (by 27 September 2019)

##### Legal and Constitutional Affairs Legislation Committee

Submissions are sought on the [Crimes Legislation Amendment \(Sexual Crimes Against Children and Community Protection Measures\) Bill 2019 \[Provisions\]](#) (by 30 September 2019).

#### [Draft Religious Freedom Bills](#)

The Australian Government invites submissions on a package of legislative reforms on religious freedom. These are the: Religious Discrimination Bill 2019; Religious Discrimination (Consequential Amendments) Bill 2019 and Human Rights Legislation Amendment (Freedom of Religion) Bill 2019. Submissions on the Bills close on 2 October 2019.

#### [ICAC SA: Local Government Integrity Insights: A Third Report from the ICAC Public Integrity Survey 2018](#)

Report released on 12 September 2019

There is a need for local government to ensure their organisation fosters a culture where staff feel safe and secure enough to raise issues of corruption and inappropriate conduct.

#### [Ombudsman SA: September 2019: Department of Treasury and Finance](#)

The applicant sought documents from the agency in relation to KordaMentha's review and subsequent administration of the Central Adelaide Local Health Network. The agency did not grant access to all documents and the applicant sought external review.

#### [SACAT: Equal Opportunity](#)

From 2 September 2019, the Tribunal will have jurisdiction under the Equal Opportunity Act (EO Act) 1984 to determine complaints referred by the Commissioner for Equal Opportunity, make orders exempting persons or organisations from a part of the EO Act, and to review a decision of the Commissioner for Equal Opportunity to refuse to extend the time to lodge a complaint.

### PUBLISHED - ARTICLES, PAPERS, REPORTS

#### [Australia's welfare 2019: in brief](#)

Australian Institute of Health and Welfare: 11 September 2019

This report tells the story of welfare in Australia with key findings on housing, education and skills, employment and work, income and finance, government payments, social support, justice and safety.

#### [Understanding the attitudes and motivations of adults who engage in image-based abuse](#)

Colette Mortreux, Karen Kellard, Nicola Henry, Asher Flynn  
Office of the eSafety Commissioner (Australia): 11 September 2019

This research focuses on perpetrators of image-based abuse and front-line workers who engage with perpetrators on a professional basis.

### CASES

#### [Minogue v Victoria \[2019\] HCA 31](#)

Constitutional law – State Parliament – Constitution – Ch III – Where plaintiff convicted of murder of police officer – Where plaintiff sentenced to imprisonment for life with non-parole period – Where plaintiff's non-parole period expired – Where s 74AB of Corrections Act 1986 (Vic) prevented making of parole order in respect of plaintiff unless Adult Parole Board satisfied plaintiff in imminent danger of dying or seriously incapacitated and does not have physical ability to harm any person, and does not pose risk to community – Where s 74AB identified plaintiff by name and applied only to plaintiff – Where plaintiff not in imminent danger of dying or seriously incapacitated – Where s 74AAA of Corrections Act imposed conditions for making parole order if person convicted of murder and victim police officer – Whether ss 74AB and 74AAA contrary to Ch III of Constitution and therefore invalid – Whether ss 74AB and 74AAA impermissibly legislatively resented plaintiff – Whether ss 74AB and 74AAA impose additional or separate punishment to that imposed by sentencing court – Whether s 74AB distinguishable from provision upheld in *Knight v Victoria* (2017) 261 CLR 306; [2017] HCA 29 – Whether *Knight* and *Crump v New South Wales* (2012) 247 CLR 1; [2012] HCA 20 should be reopened. Constitution, Ch III.

[DHP19 v Secretary of the Department of Health \[2019\] FCA 1451](#)

ADMINISTRATIVE LAW – judicial review of a decision of a delegate of the respondent to cancel the listing of the applicant’s product from the Australian Register of Therapeutic Goods pursuant to s 30(2) Therapeutic Goods Act 1989 (Cth).

PRACTICE AND PROCEDURE – application for suspension of operation of decision – whether operation of Secretary’s decision should be suspended – whether there is a serious question to be tried – consideration of the balance of convenience and prejudice to the applicant – whether interests of justice favour granting a suspension of the decision – where undertakings offered by the applicant.

Administrative Decisions (Judicial Review) Act 1977 (Cth) ss 5, 6, 10, 15(1)(a); Federal Court of Australia Act 1973 (Cth) ss 23, 37AF, 37AG(1)(a); Judiciary Act 1903 (Cth) s 39B.

[Randlab Australia Pty Ltd v Australian Pesticides and Veterinary Medicines Authority \[2019\] FCA 1472](#)

JUDICIAL REVIEW – search warrant – three condition search warrant – where search warrant issued under s 143A of the Agricultural and Veterinary Chemicals Code as scheduled to the Agricultural and Veterinary Chemicals Code Act 1994 (Cth) (Agvet Code) – whether the decision to issue the search warrant involved jurisdictional error – where applicants claim the warrant was issued unlawfully – where applicants claim the execution of the warrant was unlawful – whether the information on oath was sufficient to justify issuing a search warrant under the Agvet Code – whether the warrant is invalid on the face of the warrant – whether description of the offences was insufficiently particular – where search terms used to identify electronic material – whether transfer of electronic material and its removal from the premises was unlawful under s 132B of the Agvet Code – whether operation of electronic equipment authorised under s 132B of the Agvet Code – whether search and seizure of physical items unlawful – whether executing officers misunderstood the terms of the warrant – whether the warrant authorised the search and seizure of evidential material in subsections (a) and (b) of s 3(1) of the Agvet Code only – severance – whether the invalid parts of the warrant can be severed from the valid parts – whether the Court should exercise its discretion not to return items unlawfully seized.

HELD – judicial review application allowed – search and seizure of electronic material and physical items unlawful – property to be returned to the applicants.

[Pathmanathan v St John of God Healthcare Inc \[2019\] FCA 1460](#)

HUMAN RIGHTS – application for leave to commence proceeding otherwise barred by operation of s 46PO(3A) of the Australian Human Rights Commission

Act 1986 (Cth) – where complaints to the Australian Human Rights Commission terminated on the basis that the complaints were lodged more than 12 months after the alleged acts, omissions or practices took place – whether the Court should exercise the discretion to grant leave.

[Estates 77 Pty Ltd v Minister for the Environment \[2019\] FCA 1427](#)

ADMINISTRATIVE LAW – application for judicial review of a decision made under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) – judicial review under the Administrative Decisions (Judicial Review) Act 1977 (Cth) and the Judiciary Act 1903 (Cth) – decision of the Minister under s 75(1) of the EPBC Act – whether the Court can consider whether a proposed action is likely to have a ‘significant impact’ on listed threatened species of cockatoo – whether a question of jurisdictional fact.

[Graham Mahony and Australian Charities and Not-for-profits Commission \(Freedom of information\) \[2019\] AICmr 64](#)

Freedom of Information – Whether inclusion of certain matter would cause reasons for decision to be an exempt document – 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 – Whether reasonable steps taken to locate documents – (CTH) Freedom of Information Act 1982 ss 11A(5), 24A, 26(2), 47E(d).

[‘RE’ and Department of Home Affairs \(Freedom of information\) \[2019\] AICmr 63](#)

Freedom of Information – 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), 47E(d).

[‘RC’ and TICA Default Tenancy Control Pty Ltd \(Privacy\) \[2019\] AICmr 60](#)

Privacy – Privacy Act 1988 (Cth) – National Privacy Principles – Australian Privacy Principles – Definition of ‘personal information’ – Collection of personal information – NPP 1 – Breach substantiated – Data quality – NPP 3 – APP 10 – Compensation awarded for non-economic loss – Declaration that respondent must take specified steps.

[John Power and Department of Human Services \(Freedom of information\) \[2019\] AICmr 62](#)

Freedom of Information – Whether documents contain deliberative matter prepared for a deliberative process – Whether disclosure is contrary to the public interest – (CTH) Freedom of Information Act 1982 ss 11A and 47C.

I substitute my decision that the material that the Department found to be exempt under s 47C of the FOI Act is not exempt. On 4 July 2017, the applicant applied to the Department for access to:

Memos, reports, briefings, correspondence or other documentation addressing concerns or flagging the possibility of the sale of Medicare patient details on the darknet.

#### [Treasury and Finance, Department of 2019/02113 \[2019\] SAOmbFOI 7](#)

Determination The determination of the agency is varied. By application under the Freedom of Information Act 1991 (the FOI Act) the applicant requested access from the agency to: All advice to the Treasurer (including but not limited to notes, memos, minutes, briefings, emails, meeting notes, reports and documents) relating to KordaMentha's review and subsequent administration of the Central Adelaide Local Health Network.

#### [GHAMRAWI v THE QUEEN \[2019\] SASCFC 108](#)

CRIMINAL LAW - APPEAL AND NEW TRIAL  
- MISCARRIAGE OF JUSTICE - PARTICULAR  
CIRCUMSTANCES AMOUNTING TO MISCARRIAGE -  
IMPROPER ADMISSION OR REJECTION OF EVIDENCE

CRIMINAL LAW - PARTICULAR OFFENCES - DRUG  
OFFENCES - PROCEDURE - SEARCHES OF PERSONS,  
PROPERTY OR PREMISES

CRIMINAL LAW - EVIDENCE - JUDICIAL DISCRETION  
TO ADMIT OR EXCLUDE EVIDENCE - EVIDENCE  
UNFAIR TO ADMIT OR IMPROPERLY OBTAINED

Appeal against conviction. In this case, however, the balance of the competing considerations weighs strongly against excluding the evidence of what was discovered by this unlawful search.

## LEGISLATION

### Bills

#### [Combating Child Sexual Exploitation Legislation Amendment Bill 2019](#)

Senate 12/09/2019 - The Bill protects children from sexual exploitation by improving the Commonwealth framework of offences relating to child abuse material, overseas child sexual abuse, forced marriage, failing to report child sexual abuse and failing to protect children from such abuse. The Bill amends the Criminal Code Act 1995(Criminal Code), the Customs Act 1901(Customs Act), the Crimes Act 1914(Crimes Act), the Surveillance Devices Act 2004 and the Telecommunications (Interception and Access) Act 1979.

#### [Crimes Legislation Amendment \(Police Powers at Airports\) Bill 2019](#)

Senate 12/09/2019 – The Bill amends the Crimes Act 1914 to: broaden existing identity check provisions and create offences and powers in relation to identity

check, move-on and ancillary directions by constables and protective services officers at Australia's major airports; and Australian Federal Police Act 1979 to provide that the offence of contravening an identity check or move-on direction is a protective service offence for the purposes of the Act.

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

House of Representatives Message from Senate reported 12/09/2019. Consideration of Senate message Details: House agreed to Senate amendments 12/09/2019. Amends the Criminal Code Act 1995 to introduce two new offences in relation to the incitement of trespass or property offences on agricultural land.

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

HR Message from Senate reported 10/09/2019. Consideration of Senate message. Details: House agreed to Senate amendments 10/09/2019 Senate 09//09/2019 – 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.

#### [National Integrity Commission Bill 2018 \(No. 2\)](#)

HR 10/09/2019 - The bill establishes the Australian National Integrity Commission as an independent public sector anti-corruption commission for the Commonwealth; provides for the appointment, functions and powers of the National Integrity Commissioner and commissioners; and makes consequential amendments to the Law Enforcement Integrity Commissioner Act 2006, Ombudsman Act 1976 and Public Interest Disclosure Act 2013.

### Regulation

#### [Australian Human Rights Commission Regulations 2019](#)

13/09/2019 - These regulations declare additional grounds of discrimination for the purposes of the Australian Human Rights Commission's equal opportunity in employment function, provided for by Division 4 of Part II of the Australian Human Rights Commission Act 1986.

#### [Disability Discrimination Regulations 2019](#)

13/09/2019 - These regulations declare 'combat duties' and 'combat-related duties' for the purposes of subsection 53(2) of the Disability Discrimination Act 1992. The Regulations also prescribe certain Commonwealth and State laws for the purposes of subsection 47(2) of the Disability Discrimination Act 1992.

[Telecommunications \(Protecting Australians from Terrorist or Violent Criminal Material\) Direction \(No. 1\) 2019](#)

09/09/2019 - This instrument directs relevant service providers to block the websites included in the list of websites hosting terrorist or violent criminal material, in connection with the eSafety Commissioner’s function of promoting online safety for Australians by protecting them from access or exposure to material that promotes, incites or instructs in, terrorist acts or violent crimes.

**Regulations**

[Electricity \(Principles of Vegetation Clearance\) \(Miscellaneous\) Variation Regulations 2019](#)  
No 206 of 2019

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