



PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 13 of the SA Public Sector Newsletter.

Commonwealth privacy regulation is back in the spotlight this issue, with a new guide released by the Office of the Australian Information Commissioner advising on how health service providers can protect patients' personal information. This is a timely publication following a recent Commonwealth Superannuation Corporation data breach, emphasising Oaic comments that human error is the most common cause of breaches.

On an international front, Australia and the USA are also currently negotiating a bilateral agreement to address cross-jurisdictional requests for service providers to disclose information.

IN THE MEDIA

Health privacy gets its own guide

The Office of the Australian Information Commissioner (Oaic) has released a new guide to health privacy to help keep patients' personal information safe. The guide brings together a wide range of Oaic advice for all health service providers covered by the Privacy Act 1988. (10 October 2019) <https://www.oaic.gov.au/assets/privacy/guidance-and-advice/guide-to-health-privacy/guide-to-health-privacy.pdf>

Joint Statement Announcing United States and Australian Negotiation of a CLOUD Act Agreement by U.S. Attorney General William Barr and Minister for Home Affairs Peter Dutton

The United States and Australia have entered into formal negotiations for a bilateral agreement under the U.S. Clarifying Lawful Overseas Use of Data Act (the CLOUD Act), as the first step towards significantly boosting law enforcement cooperation between the two allies, with strong protections for rule of law, privacy and civil liberties. (07 October 2019) <https://minister.homeaffairs.gov.au/peterdutton/Pages/australian-negotiation-cloud-act.aspx>

For more information on the CLOUD Act, go to: <https://www.justice.gov/dag/page/file/1153466/download> and <https://www.justice.gov/dag/cloudact>

Report reveals the big risks of Australian data breaches

The most recent Australian Notifiable Data Breaches Report, from April 01 to June 30, has identified contact details as the most at risk from a data breach, with malicious or criminal attacks accounting for the majority of breaches. (10 October 2019) <https://www.insurancebusinessmag.com/au/news/cyber/report-reveals-the-big-risks-of-australian-data-breaches-180177.aspx>

Commonwealth Superannuation Corporation investigating privacy breach

A superannuation fund says it is "urgently investigating" a privacy breach that resulted in personal financial details of nearly 20 Australians being sent to an ABC radio producer. (02 October 2019) <https://www.abc.net.au/news/2019-10-02/csc-investigating-privacy-breach/11566344>

High Court to rule on class actions challenge

A High Court decision expected this year on class actions funding could make it more difficult for cases to be brought if the ruling overturns use of existing arrangements. (07 October 2019) <https://www.insurancenews.com.au/local/high-court-to-rule-on-class-actions-challenge>

Greater certainty for employers when hiring staff with criminal records

The Government has amended the Australian Human Rights Commission Regulations 1989 to allow employers to exercise reasonable discretion against prospective employees if their criminal record is relevant to the position being applied for. But it remains unlawful for employers to discriminate if the conviction is irrelevant to the role. (03 October 2019) <https://www.attorneygeneral.gov.au/Media/Pages/greater-certainty-for-employers-when-hiring-staff-with-criminal-records-3-october-2019.aspx>

Equipping security agents to respond to suspected terror attacks

A new resource will help better prepare security personnel if they need to respond to a suspected terrorism incident in South Australia, available online here: <https://www.cbs.sa.gov.au/resources/counter-terrorism-awareness-security-industry-personnel> (03 October 2019) <https://www.agd.sa.gov.au/newsroom/equipping-security-agents-respond-suspected-terror-attacks>

Foundation launched to pursue paedophiles for victim compensation

A new foundation to help fund lawsuits against perpetrators of child sexual abuse is launched, with profits from successful legal action used to help victims and survivors. (02 October 2019) <https://www.abc.net.au/news/2019-10-02/sabre-foundation-launched-to-fund-paedophile-lawsuits/11566844>

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, including immigration and citizenship.

Issue No. 40/2019, 8 October 2019

Senate Committee Inquiries

[Inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press](#)

The inquiry was referred by the Attorney-General, The Hon Christian Porter MP who noted that the Government will consider proposals from media organisations and interested bodies which aim to ensure the right balance is struck between a free press and keeping Australians safe. For further information about the inquiry see the [full terms of reference](#). As agreed by the Attorney-General, the reporting date for this inquiry has been extended to 28 November 2019.

Ombudsman SA Publications

October 2019: [Department for Child Protection – Statement of investigation](#)

October 2019: [Department of Treasury and Finance](#)

The applicant sought emails from the Director, Enterprise Bargaining, Department of Treasury and Finance, Minister of Health and Wellbeing, the Treasurer and other senior SA Health Executives in relation to the doctor's right of practice.

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Cabinet Handbook - 13th edition](#)

Department of the Prime Minister and Cabinet (Australia). This handbook is designed to ensure that the Cabinet observes conventions and principles and fulfils its central purpose of informed decision-making.

CASES

[Paul Farrell and Department of Home Affairs \(No 6\) \(Freedom of information\) \[2019\] AICmr 66](#)

Freedom of Information – 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), 47C and 47F.

[Paul Farrell and Department of Home Affairs \(No 5\) \(Freedom of information\) \[2019\] AICmr 65](#)

Freedom of Information – Whether disclosure would disclose commercially valuable information – Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency – Whether disclosure of personal information unreasonable – Whether contrary to public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A, 47, 47E(d) and 47F.

[Taylor v Department of Health \[2019\] FCA 1588](#)

HUMAN RIGHTS – application for interlocutory injunctive relief in relation to claims of disability discrimination and adverse actions arising from the Department of Health's treatment of an application for registration in the Australian General Practice Training Program – objection to competency on the basis the Court does not have jurisdiction – claims brought under the Disability Discrimination Act 1992 (Cth) and Fair Work Act 2009 (Cth) – no employment or prospective employment relationship – no termination of the disability discrimination complaint by the President of the Australian Human Rights Commission – whether jurisdiction under s 39B(1A)(c) of the Judiciary Act 1903 (Cth) – objection to competency upheld.

South Australia

[ANANGU PITJANTJATJARA YANKUNYTJATJARA v OMBUDSMAN & ANOR \[NO 2\] \[2019\] SASC 173](#)

PROCEDURE - COSTS - GENERAL RULE - COSTS FOLLOW THE EVENT

On 13 September 2019 this Court dismissed the plaintiff's application for judicial review. Held, allowing the defendants' applications for costs; the plaintiff is to pay the costs of the first and second defendants on a party/party basis, those costs to be taxed if not agreed.

[Treasury and Finance, Department of 2019/00516 \[2019\] SAOmbFOI 8](#)

Determination The determination of the agency is reversed. By application under the Freedom of Information Act 1991 (the FOI Act) the applicant requested access from the agency to: Emails from Director Enterprise Bargaining, Department of Treasury and Finance, Mr Simon Johnson to Ministers for Health and Wellbeing and the Treasurer regarding doctor's Right of practice.

[MSP v THE QUEEN \[2019\] SASCFC 120](#)

CRIMINAL LAW - APPEAL AND NEW TRIAL - PARTICULAR GROUNDS OF APPEAL - MISDIRECTION AND NON-DIRECTION - PRESENTATION OF CROWN CASE - REVIEW OF EVIDENCE

Appellant submitted that trial Judge: 3. That the directions in relation to evidence of the complaint did not amount to a miscarriage of justice;4. That the trial Judge's failure to direct the jury in respect of statements made by the complainant to a third party about what the appellant had stated were not evidence of the truth of those statements was an error which was so highly prejudicial to the appellant and has led to a miscarriage of justice.

Held: For the reasons given I would allow the appeal and order a re-trial.

LEGISLATION**Commonwealth****Regulation****[Public Interest Disclosure Rules 2019](#)**

11/10/2019 - These rules bring the Australian Securities and Investments Commission back within the scope of the Public Interest Disclosure Act 2013

South Australia**Act Proclamations**

3.10.2019 p 3398 [Criminal Law Consolidation \(Assaults on Prescribed Emergency Workers\) Amendment Act \(Commencement\) Proclamation 2019](#)

10.10.2019 p 3448 [Administrative Arrangements \(Administration of Port Pirie Smelting Facility \(Lead-In-Air Concentrations\) Act\) Proclamation 2019](#)

10.10.2019 p 3448 [Administrative Arrangements \(Conferral of Ministerial Functions and Powers\) Proclamation 2019](#)

Regulations

2019-217 [Criminal Law Consolidation \(General\) \(Prescribed Occupations and Employment\) Variation Regulations 2019](#)

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