



PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 16 of the SA Public Sector Newsletter.

A Federal taskforce has just released new guidelines to counter foreign interference in the Australian university sector. The guidelines contain a number of recommendations for identifying and managing risks and conflicts that may arise with foreign investors and affiliates.

This issue also contains the usual round-up of recent Commonwealth and South Australian cases and legislation

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

IN THE MEDIA

Govt targets foreign interference on campus

Universities will have to inform the government of any identified risk of foreign interference under new guidelines developed across both sectors. Interference risks identified in the guidelines include cyber attacks; attempts to direct research; intellectual property theft and moves to steal away researchers and academic staff. (18 November 2019) <https://www.governmentnews.com.au/govt-targets-foreign-interference-on-campus/>

'The most archaic laws in the country': Campaign to decriminalise sex work in SA fails

A campaign to decriminalise sex work in South Australia fails, with the state's Parliament voting against a bill. (13 November 2019) <https://www.abc.net.au/news/2019-11-13/sa-sex-work-decriminalisation-bill-voted-down/11699904>

Reconciliation action easy as ABC

The Australian Broadcasting Corporation (ABC) has launched a new Reconciliation Action Plan (RAP) aimed at boosting Indigenous representation across its media platforms. (21 November 2019) <https://about.abc.net.au/press-releases/abc-reconciliation-action-plan-gives-a-voice-to-first-australians/>

IN PRACTICE AND COURTS

[ACICA launch Australian Arbitration Survey](#)

ACICA has launched the Australian Arbitration Survey to gather empirical evidence from practitioners as to what works in arbitration and what can be improved on. To take the survey it is necessary to first obtain a respondent number from ACICA.

[AHRC: Submission date extended for the National Conversation - have your say](#)

The Australian Human Rights Commission has extended the date to hear from anyone on the key human rights priorities for Australia into the future. Submissions for the Free and Equal: An Australian conversation on human rights project will be kept open until 29 November 2019

Current Consultations

Legal and Constitutional Affairs References Committee – November 2019

[Impact of changes to service delivery models on the administration and running of Government programs](#)

[Nationhood, national identity and democracy](#)

[Native Title Legislation Amendment Bill 2019](#)

[Customs Amendment \(Product Specific Rule Modernisation\) Bill 2019 \[Provisions\]](#)

[Crimes Legislation Amendment \(Sexual Crimes Against Children and Community Protection Measures\) Bill 2019 \[Provisions\]](#)

Rural and Regional Affairs and Transport References Committee

[New - Federal Government's response to the drought, and the adequacy and appropriateness of policies and measures to support farmers, regional communities and the Australian economy](#)

Community Affairs Legislation Committee

[New - Australian Sports Anti-Doping Authority Amendment \(Sport Integrity Australia\) Bill 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. 46/2019, 18 November 2019.

[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.

[What does open government mean to you: Open Government Partnership \(OGP\)](#)

OGP is about governments and civil society groups committing to work together to make sure governments are transparent, responsive and accountable to the public. Your input will help gain a better understanding of community attitudes to open government and inform the next OGP National Action Plan. More information is available on the Open Government Partnership Australia website. Complete the questionnaire [here](#). (12 November 2019)

[SA Attorney General: New Director of Public Prosecutions](#)

Supreme Court Justice Martin Hinton commenced work as South Australia's new Director of Public Prosecutions on Monday 18 November.

[SA Attorney General: Regulation proposed for foreign lawyers](#)

Lawyers who come to South Australia from overseas and wish to practise foreign law in this State will need to be registered under legislation. The requirement for registration is supported by the Law Society of South Australia, the South Australian Bar Association and the Law Council of Australia. (14 November 2019)

[SA Attorney General: Gambling reforms to deliver more money for people at risk](#)

The State Government will inject an additional one million dollars a year into South Australia's Gamblers Rehabilitation Fund, to further enhance the mechanisms for supporting people at risk of gambling related harm. (14 November 2019)

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Guidelines to counter foreign interference in the Australian university sector](#)

These guidelines have been developed for, and in partnership with, the Australian university sector, to help manage and engage with risk to deepen resilience against foreign interference. They are designed to build on risk management policies and security practices already implemented by many Australian universities.

CASES

[Estates 77 Pty Ltd v Minister for the Environment \(No 2\) \[2019\] FCA 1935](#)

ADMINISTRATIVE LAW – application of 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) – whether the Minister for Environment made an error of law in considering the applicants' action a 'controlled action' – whether the applicants were exempt under s 43A of the EPBC Act

ENVIRONMENTAL LAW – EPBC Act – construction of s 43A – whether 'specific environmental authorisation' was given by a law of the State – consideration of Minister for Environment and Heritage v Greentree (No 2) [2004] FCA 741; (2004) 138 FCR 198 – endangered and vulnerable species of black cockatoo.

[Shafran v Repatriation Commission \[2019\] FCA 1833](#)

DEFENCE AND WAR – veterans' entitlements – application for judicial review of conduct of the Veterans' Review Board – whether the Secretary committed a jurisdictional error in providing the report to the Principal Member before giving it to the veteran for comment

STATUTORY INTERPRETATION – where s 137(1) of the Veterans' Entitlements Act 1986 (Cth) requires the Secretary to prepare a report – where s 137(4) requires the Secretary to provide the report, any comments on it made by the veteran and any supplementary report arising from any consequential investigation to the Principal Member of the Board as soon as practicable – whether the Secretary can only send the relevant documents to the Board once the time for comment and any consequential investigation has ended – whether it is a jurisdictional error for the Secretary to send the documents to the Principal Member before providing it to the veteran

STATUTORY INTERPRETATION – where s 137(3) requires the Secretary to give the veteran 28 days on which to comment on the report or such longer time as is requested – where s 137(3) does not expressly provide for approval of the extension or how long it may be for – whether there is an implied reasonableness restriction on the veteran's rights to request an extension under s 137(3) – whether the Secretary has the power to grant or refuse an extension request under s 137(3) – whether the request must be made to the Secretary – whether the Board has jurisdiction to make directions regarding a request for an extension of time to comment under s 137(3)

[Bailey v Repatriation Commission \[2019\] FCA 1840](#)

ADMINISTRATIVE LAW – veterans' entitlements – whether tribunal misapplied ss 120(3) of the Veterans' Entitlement Act 1986 (Cth) (VE Act) – Tribunal erred in finding material did not point to a hypothesis by weighing evidence

ADMINISTRATIVE LAW – veterans’ entitlements – whether Tribunal misapplied ss 196B(14) of the VE Act – whether ‘but for’ and ‘operative cause’ tests sufficient in circumstances – Tribunal erred
Veterans’ Entitlement Act 1986 (Cth), ss 5C, 6-6F, 7, 9, 13, 120, 120A, 196B

[The Wilderness Society \(Tasmania\) Inc v Minister for the Environment \[2019\] FCA 1842](#)

ENVIRONMENT LAW – application for judicial review of a referral decision made under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) – where a delegate of the Minister decided under s 75 of the Act that the proposed action was not a “controlled action” – where delegate adopted Departmental brief as reasons for decision – whether delegate’s decision involved an error of law or misdirection due to erroneous view of Act’s requirements, including task under s 75 – where delegate relied on assessment of proposed action conducted by the Tasmanian Parks and Wildlife Service under the “Reserve Activity Assessment” (RAA) process – where delegate took into account mitigation and avoidance measures proposed by proponent under RAA process in deciding action was not a “controlled action” – whether non-compliance with s 77A of the Act – whether delegate was required to consider whether to exercise power in s 74A of the Act before making decision under s 75 – application allowed

[Frugniet v Tax Practitioners Board \[2019\] FCAFC 193](#)

ADMINISTRATIVE LAW – Appeal from Federal Court decision dismissing appeal under s 44 of the Administrative Appeals Tribunal Act 1975 (Cth) against Administrative Appeals Tribunal (AAT) decision – where no further hearing held after reconstituting the AAT – where AAT affirmed Tax Practitioners Board decision terminating the appellant’s registration as a tax agent under ss 40-5(1)(b), Tax Agent Services Act 2009 (Cth), on the ground it was not satisfied he was a fit and proper person – whether AAT breached procedural fairness including by reason of delay or the failure by the reconstituted Tribunal to hold a further hearing – whether AAT erred in having regard to certain evidence of conduct in court and other tribunal proceedings – whether AAT erred in having regard to a witness statement where the witness was not called – whether AAT had jurisdiction to determine the validity of the Board’s decision – where only a court may authoritatively determine whether an administrative body has acted within jurisdiction – where AAT’s decision effectively overtook any jurisdictional error in the Board’s decision – appeal dismissed.

[Van Dieren and Australian Securities and Investments Commission \[2019\] AATA 4777](#)

PRACTICE AND PROCEDURE – application for stay of decision under s 41(2) of the Administrative Appeals Tribunal Act 1975 – relevant considerations – prospects of success – consequences for the Applicant of a refusal of stay – public interest – consequences for the Respondent in carrying out its functions – whether the application for review would be rendered nugatory –

stay application refused – Tribunal does not have power to order any stay on publication by way of a media release where there has not been a stay granted – order that the hearing of the application be expedited

[‘RJ’ and Australian Federal Police \(Freedom of information\) \[2019\] AICmr 72](#)

Freedom of Information – Whether disclosure would have a substantial adverse effect on the management or assessment of personnel – Whether contrary to the public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5) and 47E(c)

[‘RI’ and Department of Home Affairs \(Freedom of information\) \[2019\] AICmr 71](#)

Freedom of Information – Whether disclosure would prejudice lawful methods or procedures – Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency – Whether disclosure is contrary to the public interest – (CTH) Freedom of Information Act 1982 ss 11A, 37(2)(b) and 47E(d)

[Justin Warren and Services Australia \(Freedom of information\) \[2019\] AICmr 70](#)

Freedom of Information – Whether documents brought into existence for the dominant purpose of briefing a Minister on a Cabinet document – Whether disclosure would prejudice lawful methods or procedures – Whether document contains deliberative matter prepared for a deliberative process – 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), 34(1)(c), 37(2)(b), 47C and 47E(d)

[HAUGHTON v AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD \[2019\] SASC 198](#)

REAL PROPERTY - TORRENS TITLE - MORTGAGES, CHARGES AND ENCUMBRANCES
MORTGAGES - MORTGAGE CONTRACT
COURTS AND JUDGES - COURTS - JURISDICTION AND POWERS
CONSTITUTIONAL LAW - IMPERIAL, COLONIAL, STATE AND COMMONWEALTH CONSTITUTIONAL RELATIONSHIPS - GENERALLY - SOVEREIGNTY

Appeal against order for possession. Held: The appeal is dismissed. An extension of time in which to appeal is refused.

[HAUGHTON v CHAPMAN \[2019\] SASC 200](#)

MAGISTRATES - APPEAL AND REVIEW - SOUTH AUSTRALIA - APPEAL TO SUPREME COURT
CRIMINAL LAW - PROCEDURE - ADJOURNMENT, STAY OF PROCEEDINGS OR ORDER RESTRAINING PROCEEDINGS - STAY OF PROCEEDINGS - ABUSE OF PROCESS

Appeal against dismissal of Magistrates Court Information.

Whether the Magistrate erred in dismissing the Information - whether the Magistrate had the power to dismiss the Information - whether the appeal should be summarily dismissed. Held: The appeal is summarily dismissed.

[RAEDEL & ANOR v SHAHIN \[2019\] SASCFC 141](#)

APPEAL AND NEW TRIAL - APPEAL - GENERAL PRINCIPLES - INTERFERENCE WITH JUDGE'S FINDINGS OF FACT - FUNCTIONS OF APPELLATE COURT - WHERE CONFLICT OF EVIDENCE
APPEAL AND NEW TRIAL - APPEAL - GENERAL PRINCIPLES - INTERFERENCE WITH DISCRETION OF COURT BELOW - IN GENERAL

LEGISLATION

Commonwealth

Regulations

[National Redress Scheme for Institutional Child Sexual Abuse Amendment \(2019 Measures No. 1\) Rules 2019](#)

21/11/2019 - This instrument amends the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 to exclude eight Queensland grammar schools from the definition of 'State institution' under the National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (the Act) and to prescribe various Queensland, New South Wales and Victorian laws for the purposes of section 27 of the Act.

[Social Security \(Declared Overseas Terrorist Act—Christchurch 2019\) Declaration 2019](#)

18/11/2019 - This instrument declares the 15 March 2019 attacks in Christchurch as a 'declared overseas terrorist act' for the purposes of the Australian Victim of Terrorism Overseas Payment Scheme.

[Social Security \(Declared Overseas Terrorist Act\) Declaration 2019—Karachi 2002](#)

18/11/2019 - This instrument declares the 8 May 2002 attacks in Karachi as a 'declared overseas terrorist act' for the purposes of the Australian Victim of Terrorism Overseas Payment Scheme.

[ASIC Corporations \(Whistleblower Policies\) Instrument 2019/1146](#)

14/11/2019 - This instrument provides relief to public companies limited by guarantee that operate on a not-for-profit basis and have annual consolidated revenue of less than \$1 million from the requirement to have a whistleblower policy under s1317A(1) of the Corporations Act 2001.

[AusCheck \(Major National Event—International Cricket Council T20 World Cup Australia 2020\) Declaration 2019](#)

11/11/2019 - This instrument enables AusCheck to conduct and coordinate background checks in connection with the accreditation of individuals who are working or volunteering at the T20WC.

South Australia

Bills

[Legal Practitioners \(Foreign Lawyers and Other Matters\) Amendment Bill 2019](#)

House of Assembly—No 124A As reported with amendments, report agreed to and passed remaining stages, 26 November 2019.

Acts

2019-34 [Controlled Substances \(Youth Treatment Orders\) Amendment Act 2019](#)

The paramount consideration in the administration, operation and enforcement of this Part must always be the best interests of the child that is, or is proposed to be, subject to an order under this Part
Assented 21/11/2019

Act Proclamations

21.11.2019 p 3928 [Statutes Amendment \(SACAT\) Act \(Commencement\) Proclamation 2019](#)

21.11.2019 p 3929 [Youth Court \(Designation and Classification of Magistrate\) Proclamation 2019](#)

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