



PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome back to Issue 18, our first issue for 2020.

This fortnight we have updates on emergency exceptions for government agencies covered by the Privacy Act 1988 (Cth) to assist bushfire victims, uncertainty over the status of the high-profile PFAS class action, and proposed changes to building licences in SA. We also have a number of changes to Federal Court practice directions and notes, calls for consultations, and an assortment of new or amended legislation.

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

IN THE MEDIA

PS privacy powers move to emergency level

The Government's Privacy (Australian Bushfires Disaster) Emergency Declaration allows personal information about people affected by the bushfires to be exchanged by Agencies and private sector organisations for specific purposes that might not otherwise be allowed. The Declaration will apply for the next 12 months. (23 January 2020) <https://www.oaic.gov.au/privacy/guidance-and-advice/australian-bushfires-disaster-emergency-declaration-understanding-your-privacy-obligations/>

High Court decision prompts lawyers to use the humble BBQ to sign clients Explainer

A recent High Court ruling that impacts how class actions can be funded in Australia has threatened a planned PFAS class action, which has been billed as Australia's biggest ever, involving eight sites across Australia. (11 January 2020) <https://www.abc.net.au/news/2020-01-11/class-action-lawsuit-changes-and-what-they-mean-for-consumers/11858928>

Credit reporting changes to benefit consumers

The Office of the Australian Information Commissioner (OAIC) has approved amendments to the Credit Reporting Code 2014 that will benefit consumers. ARCA began consulting on the amendments in 2018, following

an independent review of the Code. The amendments to the Code will be introduced on 14 February 2020. (December 2019) <https://www.oaic.gov.au/updates/news-and-media/credit-reporting-changes-to-benefit-consumers/>

Strengthening licensing for the building sector

Commissioner for Consumer Affairs Dini Soulio said that, from 1 July 2020, licence applicants in South Australia will need to complete training relating to costing, construction planning, contract administration and dispute resolution. (22 January 2020) <https://www.agd.sa.gov.au/newsroom/strengthening-licensing-building-sector>

Calls for tougher Ombudsman powers over Moran misconduct

Controversial Adelaide City councillor Anne Moran has refused to publicly apologise for committing misconduct, despite being ordered to do so by her fellow councillors – who are also appealing to the State Government to beef up the Ombudsman's powers when members "flout the law with impunity", (29 January 2020) <https://indaily.com.au/news/local/2020/01/29/calls-for-tougher-ombudsman-powers-over-moran-misconduct/>

IN PRACTICE AND COURTS

OAIC: Bushfires Disaster Emergency Declaration under the Privacy Act

Australian Government agencies and private sector organisations covered by the Privacy Act 1988 who are part of the bushfire disaster response can now operate under emergency privacy provisions to assist people impacted by the bushfires and coordinate and manage the response. (21 January 2020)

ACC: Government response to the Digital Platforms Inquiry

The government released its response to the Australian Competition and Consumer Commission (ACCC)

Digital Platforms Inquiry final report on 12 December 2019. The government has committed to reviewing copyright enforcement reforms made in 2018 at the end of 2020 and considers this will be an opportune time to better evaluate the opportunities for facilitating online copyright enforcement.

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. 3/2020, 28 January 2020](#)

[Issue No. 01/2020, 13 January 2020](#)

[High Court of Australia Digital Lodgment System Portal](#)

In January 2020 the High Court of Australia introduced a Digital Lodgment System Portal (DLS Portal) to permit parties to start cases, file documents, pay fees, receive notifications from the Court and track the progress of a case without attending the Registry.

[Federal Circuit Court of Australia: Joint Practice Direction 1 of 2020 - Core Principles in the Case Management of Family Law Matters](#)

This Practice Direction sets out the ten core principles that underpin the exercise of the family law jurisdiction of the Courts. All steps taken in proceedings before the Courts, including commencement of proceedings, should follow these principles. (28 January 2020)

Federal Circuit Court Discrete Property List - 28 January, 2020 Commencement

From 28 January 2020, applications which seek financial orders only will be listed before a Registrar on the First Court Date and managed by a Registrar until the conclusion of the dispute resolution process. Referral to a Judge on the First Court Date will only be permitted in circumstances of genuine urgency requiring judicial determination.

[Federal Court of Australia—Amended Practice Notes](#)

The Chief Justice of the Federal Court has advised the amended Practice Notes are now finalised. The amended practice notes will be available from Friday 20 December 2019 on the Federal Court's website and will take effect from that date. The list includes the following Federal Court Practice Notes

[Federal Court Revised Class Actions Practice Notice](#)

A revised Class Actions Practice Note was issued on 20 December 2019, following the decision in *BMW Australia Ltd v Brewster*; *Webster Banking Corporation v Lenthall* [2019] HCA 45.

Legal and Constitutional Affairs References Committee

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

[Nationhood, national identity and democracy](#)

[Federal Circuit and Family Court of Australia Bill 2019](#)

[\[Provisions\] and Federal Circuit and Family Court of Australia \(Consequential Amendments and Transitional Provisions\) Bill 2019 \[Provisions\]](#)

[Crimes Legislation Amendment \(Combatting Corporate Crime\) Bill 2019](#)

Current Consultations

Finance and Public Administration Legislation Committee

[National Integrity \(Parliamentary Standards\) Bill 2019](#)

[Public Governance, Performance and Accountability Amendment \(Tax Transparency in Procurement and Grants\) Bill 2019](#)

Foreign Affairs, Defence and Trade References Committee

[Australia's declarations made under certain international laws](#)

Community Affairs Legislation Committee

[Australian Sports Anti-Doping Authority Amendment \(Sport Integrity Australia\) Bill 2019](#)

[Religious Freedom Bills—Second Exposure Drafts](#)

The Attorney-General's Department is inviting public feedback in relation to the second exposure draft of a package of legislation on religious freedom.

[ALRC Discussion Paper: corporate criminal responsibility](#)

The Discussion Paper makes 23 proposals for reform and asks 11 questions on particular areas of reform. A number of aspects of corporate criminal liability are discussed, including: the division between criminal offences and civil penalty provisions; the method for attributing liability to corporations; individual liability for corporate offences; sentencing; and, specific issues such as illegal phoenix activity.

[AG South Australia - First appointment to new Court of Appeal](#)

The Marshall Liberal Government has announced that eminent barrister, Mark Livesey QC, has been appointed to South Australia's new Court of Appeal. (23 January 2020)

Ombudsman SA - Publications

January 2020: [Department for Energy and Mining – Use of the FOI Act to justify redaction of information on a public register](#)

The department advised the Ombudsman that it had applied the exemption clauses under Schedule 1 to the Freedom of Information Act 1991 (FOI Act) to redact information within the submissions prior to their publication online. Ombudsman's view was that: the department misapplied the FOI Act to information that is required by law to be available on a public register.

PUBLISHED - ARTICLES, PAPERS, REPORTS[Global Innovation Index 2019](#)

The Global Innovation Index (GII) is a source of insight into the multidimensional facets of innovation-driven growth. In this year's edition, it analyzes the medical innovation landscape of the next decade, looking at how technological and non-technological medical innovation will transform the delivery of healthcare worldwide.

[Corruption perceptions index 2019](#)

The index offers an annual snapshot of the relative degree of corruption by ranking countries and territories from all over the globe. In 2012, Transparency International revised the methodology used to construct the index to allow for comparison of scores from one year to the next.

[So when is the next election: Australian elections timetable as at January 2020](#)

APH Library: 13 January 2020

CASES[Crown Resorts Limited v Zantran Pty Limited \[2020\] FCAFC 1](#)

CONTRACTS – express obligations of confidence allegedly preventing voluntary communications with the solicitors for opposing party in litigation

CONFIDENTIAL INFORMATION – consideration of the sources of obligations of confidence

PRACTICE AND PROCEDURE – consideration of orthodox approaches to enforcing obligations of confidence and obtaining information from potential witnesses in advance of trial

[Secretary, Department of Education and Training v Simpson Networks Pty Ltd t/as Melbourne School Holiday Club \[2019\] FCAFC 239](#)

ADMINISTRATIVE LAW - appeal from decision of the Federal Circuit Court quashing decision of a delegate of the Secretary relating to the payment of child care benefits - where respondent was a provider of child care services - consideration of the provisions of the A New Tax System (Family Assistance) Act 1999 (Cth) and the A New Tax System (Family Assistance) (Administration) Act 1999 (Cth) - where delegate found that there was no genuine liability to pay as required under s 43(1)(c) of the Act - where delegate calculated a zero rate and nil amount in fee reduction - whether delegate was required to consider the actual arrangements made by the provider with the eligible individuals - whether primary judge erred in finding that the delegate failed to undertake the statutory task in failing to consider a mandatory relevant consideration - whether primary judge erred in finding that the delegate's decision was unreasonable - where primary judge erred in undertaking the task entrusted to the delegate on review - appeal allowed.

[AB v Chief Commissioner of Police \[2020\] FCA 14](#)

ADMINISTRATIVE LAW – judicial review – permission for registered sex offenders to leave Australia –

– review of decision of competent authority in response to an application for permission to travel for the purposes of s 271A.1 of the Criminal Code Act 1995 (Cth) – terms of permission – relevant considerations – whether decision unreasonable – whether irrelevant considerations taken into account – whether relevant considerations not taken into account – whether merits of the case not addressed – whether denial of natural justice – whether decision contrary to law – application dismissed.

[Quinn and Australian Tax Office \(Freedom of information\) \[2019\] AATA 5550](#)

(b) sets aside the decision under review in relation to the claims made under s 47C of the Freedom of Information Act 1982 (Cth) in respect of documents 29 and 35, and in lieu thereof the decision is that these documents, while conditionally exempt, are not such as to warrant denial of release in the public interest and are to be released.

Freedom of Information – Legal Professional Privilege – Conditionally exempt documents – deliberative processes – public interest.

Freedom of Information Act 1982 (Cth).

[Cassidy and Australian Securities and Investments Commission \[2020\] AATA 66](#)

PRACTICE AND PROCEDURE – STAY APPLICATION – application for stay of decision to ban applicant from providing financial services – publication of decision to ban by media release – where applicant is no longer acting as a financial advisor – where applicant in process of selling his business – whether stay necessary to secure the effectiveness of the hearing – where financial penalty and reputational damage – prospects of success – public interest – public's right to know – stay refused. Administrative Appeals Tribunal Act 1975 (Cth) ss 35, 41

[United Firefighters Union of Australia Aviation Branch and Airservices Australia \(Freedom of information\) \[2020\] AICmr 4](#)

Freedom of Information – Whether a practical refusal reason exists – Whether work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations – (CTH) Freedom of Information Act 1982 ss 24, 24AA, 24AB and 55D. Decision. I substitute my decision that a practical refusal reason does not exist

['RO' and Department of Home Affairs \(Freedom of information\) \[2020\] AICmr 3](#)

Freedom of Information – Whether reasonable steps taken to locate documents – (CTH) Freedom of Information Act 1982 s 24A. Under s 55K of the Freedom of Information Act 1982 (the FOI Act), I set aside the decision of the Department of Home Affairs (the Department) of 22 April 2018, as varied on 17 May 2018. 3

The Department has not established that all reasonable steps were taken to find documents that would fall within the scope of the request.

[‘RM’ and Australian Taxation Office \(Freedom of information\) \[2020\] AICmr 1](#)

Human resource records relating to the applicant’s conduct and working arrangements – Whether disclosure would have a substantial adverse effect on the management or assessment of personnel.

[‘RN’ and Department of Veterans’ Affairs \(Freedom of information\) \[2020\] AICmr 2](#)

Electronic records relating to the applicant for the previous 7 years – Whether reasonable steps taken to locate document.

[PRICE v BW & RD SMART \[2020\] SASCFC 2](#)

APPEAL AND NEW TRIAL - APPEAL - GENERAL PRINCIPLES - INTERFERENCE WITH DISCRETION OF COURT BELOW - PARTICULAR CASES - OTHER MATTERS - COSTS

PROCEDURE - COSTS - APPEALS AS TO COSTS - DISCRETION

PROCEDURE - COSTS - DEPARTING FROM THE GENERAL RULE - POWERS OF COURT

Appeal against a Master’s order that the appellant, as a non-party to an action, pay two thirds of the respondent’s costs of the underlying proceedings. Held, 2. An outcome error has been established.

[ZHENG & ANOR v COMMISSIONER OF AUSTRALIAN FEDERAL POLICE & ANOR; COMMISSIONER OF AUSTRALIAN FEDERAL POLICE v ZHENG & ANOR \[2019\] SASCFC 157](#)

CRIMINAL LAW - PROCEDURE - CONFISCATION OF PROCEEDS OF CRIME AND RELATED MATTERS - RESTRAINING OR FREEZING ORDER

LIMITATION OF ACTIONS - EXTENSION OR POSTPONEMENT OF LIMITATION PERIODS

CONSTITUTIONAL LAW - OPERATION AND EFFECT OF THE COMMONWEALTH CONSTITUTION - EXTERNAL AFFAIRS (CONSTITUTION, S 51(XXIX)) - IMPLEMENTATION OF TREATIES AND CONVENTIONS - PARTICULAR CASES

CONSTITUTIONAL LAW - OPERATION AND EFFECT OF THE COMMONWEALTH CONSTITUTION - BANKING (CONSTITUTION, S 51(XIII))

[\(NO. 1 OF 2019\) \[2019\] SASCFC 149](#)

CONSTITUTIONAL LAW - THE NON-JUDICIAL ORGANS OF GOVERNMENT - THE LEGISLATURE - LEGISLATION AND LEGISLATIVE POWERS - EXAMINATION OF VALIDITY OF LEGISLATION BY COURTS – Sentencing

[BROWN v KIRKPATRICK \[2020\] SASC 5](#)

MAGISTRATES - APPEAL AND REVIEW - SOUTH AUSTRALIA - APPEAL TO SUPREME COURT

DEFAMATION - PUBLICATION - GENERALLY - MODES OF PUBLICATION

DEFAMATION - STATEMENTS AMOUNTING TO DEFAMATION - PARTICULAR STATEMENTS - IMPUTATION

Held (allowing the appeal in part): 2. The plaintiff’s claim for defamation is allowed with judgment to be entered for the plaintiff in the amount of \$3,500 inclusive of pre-judgment interest.

LEGISLATION

Acts

[Interactive Gambling Amendment \(National Self-exclusion Register\) Act 2019](#)

19/12/2019 - Act No. 127 of 2019

The Register will allow individuals to exclude themselves from being provided interactive wagering services by all licensed interactive wagering service providers in Australia, and limit the amount of direct marketing to the individual.

[Communications Legislation Amendment \(Deregulation and Other Measures\) Act 2019](#)

18/12/2019 - Act No. 120 of 2019

Amends the: Broadcasting Services Act 1992 to: remove duplicative requirements for licensees, publishers and controllers to notify the Australian Communications and Media Authority (ACMA) of certain changes in control of regulated media assets; remove requirements for certain television broadcasters to apply different classification standards for films when developing industry codes of practice; remove certain classification-related licence conditions on commercial television and community television broadcasting licensees and providers of open narrowcasting services; and amend two statutory publication requirements. Competition and Consumer Act 2010 and Telecommunications Act 1997 to amend the statutory information collection powers of the ACMA and the ACCC.

[Counter-Terrorism Legislation Amendment \(2019 Measures No. 1\) Act 2019](#)

18/12/2019 - Act No. 119 of 2019

Act compilation

[Parliamentary Joint Committee on Law Enforcement Act 2010](#)

[Federal Circuit Court of Australia Act 1999](#)

[Ombudsman Act 1976](#)

Regulation

[Taxation Administration \(Remedial Power—Disclosure of Protected Information by Taxation Officers\) Determination 2020](#)

29/01/2020 – This instrument modifies the operation of the taxpayer confidentiality rules in Division 355 of Schedule 1 to the Taxation Administration Act 1953. The modification ensures that a taxation officer can

disclose protected information of a deceased person to the registered tax agent, BAS agent, or legal practitioner of an executor or administrator of the estate of the individual who has died.

[High Court Amendment \(Electronic Filing and Other Matters\) Rules 2019](#)

20/12/2019 - These Rules amend the High Court Rules 2004 to provide for electronic lodgment of documents, including amending the court forms, for all cases commenced after 1 January 2020. They also amend the second schedule governing the schedule of fees for work done or services performed.

[Public Governance, Performance and Accountability \(Establishing Old Parliament House\) Amendment \(Board Members\) Rules 2019](#)

17/12/2019 - This instrument amends the Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016 to provide that the Old Parliament House Board may have a maximum of eight members.

[Privacy Amendment \(Extension of External Dispute Resolution Scheme Exemption\) Regulations 2019](#)

17/12/2019 - These regulations amend the Privacy Regulation 2013 to permit energy and water utilities in the Australian Capital Territory to disclose credit information between 1 January 2020 and 31 December 2021. The regulations will allow ACT utility companies to access the credit reporting system without the requirement to be a 'member' of an external dispute resolution (EDR) scheme.

South Australia

Acts assented – 19 December 2019

2019-45 [Supreme Court \(Court of Appeal\) Amendment Act 2019](#)

2019-46 [Statutes Amendment \(Legalisation of Same Sex Marriage Consequential Amendments\) Act 2019](#)

2019-49 [Legal Practitioners \(Foreign Lawyers and Other Matters\) Amendment Act 2019](#)

Acts Proclamations

7.1.2020 p 6 [Emergency Management \(Proclaimed Situation\) Variation Proclamation 2020](#)

13.1.2020 p 76 [Administrative Arrangements \(Alteration of Title of Body Corporate\) Proclamation 2020](#)

13.1.2020 p 77 [Administrative Arrangements \(Committal of Acts\) Proclamation 2020](#)

13.1.2020 p 78 [Public Sector \(Alteration of Title of Department for Trade, Tourism and Investment\) Proclamation 2020](#)

13.1.2020 p 79 [Administrative Arrangements \(References to Department for Trade, Tourism and Investment\) Proclamation 2020](#)

Regulations and Rules 2020

2020-2 [Criminal Law Consolidation \(General\) \(Relevant Industry Regulatory Authority\) Variation Regulations 2020](#)

Proclamations and Notices 2020

23.1.2020 p 109 [Statutes Amendment and Repeal \(Simplify\) Act \(Commencement\) Proclamation 2020](#)

30.1.2020 p 185 [Statutes Amendment and Repeal \(Classification of Publications, Films and Computer Games\) Act \(Commencement\) Proclamation 2020](#)

KEY CONTACTS

Your contacts responsible for navigating our firm, connecting you with appropriate expertise and achieving maximum efficiency and your newsletter editors.

PANEL RELATIONSHIP CONTACTS



[Loretta Reynolds](#)

Partner, Markets
+61 8 8236 1406
+61 403 069 819
lreynolds@tglaw.com.au



[Josh Simons](#)

Partner
+61 8 8236 1122
+61 414 370 774
jsimons@tglaw.com.au



[Adrian Tembel](#)

Chief Executive Partner
+61 8 8236 1312
+61 402 009 560
atembel@tglaw.com.au

NEWSLETTER EDITORS



[Chris Kelly](#)

Partner
+61 8 8236 1169
+61 402 883 848
ckelly@tglaw.com.au



[Jemma Smith](#)

Senior Associate
+61 8 8236 1321
jsmith@tglaw.com.au

THOMSON GEER ADELAIDE PARTNERS

To view expertise and contact details of our Adelaide Partners, please click on their names below and above.



[David Beer](#)



[Fraser Bell](#)



[Geoff Brennan](#)



[Dem Christou](#)



[Bronwyn Furse](#)



[David Gaszner](#)



[George Hodson](#)



[Karl Luke](#)



[Michael Liebich](#)



[Stephen Lyons](#)



[Michael O'Donnell](#)



[Matthew Prescott](#)



[Tony Saint](#)



[Paul Tanti](#)



[Stephen Voss](#)

Further information about other partners and staff is available at tglaw.com.au

This Alert is produced by Thomson Geer. It is intended to provide general information in summary form on legal topics, current at the time of publication. The contents do not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in particular matters. Liability limited by a scheme approved under Professional Standards Legislation.