



PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 19 of the SA Public Sector Newsletter.

Privacy and data protection has featured heavily this fortnight, including the Parliamentary Joint Committee on Intelligence and Security conducting a review of the mandatory data retention scheme which has been in place for telecommunication companies since 2017.

We also have updates which highlight the intersection between emergencies and privacy regulation, with the Attorney-General making an Australian Bushfires Disaster emergency declaration under the Privacy Act 1988 and the Australian Communications and Media Authority taking action against 15 telcos for failing to provide vital information that supports Australia's emergency services.

We also have a number of new Federal Court practicing directions, a consultation paper on proposed amendments to the legal profession uniform law and a number of new regulations at both the Commonwealth and State level.

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

IN THE MEDIA

Review of the mandatory data retention regime

The Parliamentary Joint Committee on Intelligence and Security has commenced a review of the mandatory data retention regime prescribed by Part 5-1A of the Telecommunications (Interception and Access) Act 1979 (TIA Act), with the review to be completed by 13 April 2020.

The mandatory data retention regime is a legislative framework which requires carriers, carriage service providers and internet service providers to retain a defined set of telecommunications data for two years, ensuring that such data remains available for law enforcement and national security investigations. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/Dataretentionregime

Big data increasing corruption risks

Organised crime groups are targeting data bases held by government agencies, a report warns. Reliance on technology in the public sector and the ubiquity of personal devices and smart phones in the workplace are increasing the risk of corruption, Victoria's corruption watchdog says. (13 February 2020) <https://www.governmentnews.com.au/big-data-increasing-corruption-risks/>

ACMA directs telcos to comply with critical customer data rules

ACMA has taken action against 15 telcos for failing to provide vital information that supports Australia's emergency services such as Triple Zero and the Emergency Alert system. The ACMA investigations found the telcos breached the IPND rules by failing to provide customer data, or providing inaccurate data. (13 February 2020) <https://www.acma.gov.au/articles/2020-02/acma-directs-telcos-comply-critical-customer-data-rules>

LCA: High Court decision natural outcome of Mabo

The Law Council of Australia has welcomed a landmark High Court decision confirming that the Australian Parliament cannot use the "aliens" power to make laws for Aboriginal Australians. Law Council President said the decision of the High Court in *Love v Commonwealth of Australia*; *Thoms v Commonwealth of Australia* flows from the *Mabo (No. 2)* decision in 1992. (11 February 2020) <https://www.lawcouncil.asn.au/media/media-releases/high-court-decision-natural-outcome-of-mabo>

New ACLEI Commissioner appointed

Attorney-General Christian Porter is pleased to announce that Ms Jaala Hinchcliffe has been appointed to lead the Australian Commission for Law Enforcement Integrity (ACLEI). (07 February 2020) <https://www.attorneygeneral.gov.au/media/media-releases/new-aclei-commissioner-appointed-7-february-2020>

Disciplinary action taken against demolition business over deceptive conduct

South Australia's consumer watchdog has commenced proceedings in the Supreme Court against the director of a West Lakes based demolition business alleging he engaged in unconscionable conduct, wrongly accepted payment and made false or misleading representations to eight consumers. (07 February 2020) <https://www.agd.sa.gov.au/newsroom/disciplinary-action-taken-against-demolition-business-over-deceptive-conduct>

LCA: Religious Freedom Bills - Second Exposure Drafts

The Law Council provided a submission to the Attorney-General's Department on the second exposure drafts of the Religious Freedom Bills (ie Religious Discrimination Bill 2019 (the Bill); Religious Discrimination (Consequential Amendments) Bill 2019; Human Rights Legislation Amendment (Freedom of Religion) Bill 2019). (06 February 2020) <https://www.lawcouncil.asn.au/media/news/religious-freedom-bills-second-exposure-drafts>

LCA: Corporate Criminal Responsibility

A key concern for the Law Council was the proposed model for reforming the attribution of criminal responsibility to both bodies' corporate and individual officers within corporations. The Australian Law Reform Commission will deliver its Final Report on the 30 April 2020. (06 February 2020) <https://www.lawcouncil.asn.au/media/news/corporate-criminal-responsibility>

IN PRACTICE AND COURTS

[Practice Direction - Federal Circuit Court of Australia](#)

This practice direction sets out guiding principles for case management arrangements for cases that meet the definition of a Priority Property Pool under \$500,000 Case (PPP500). All steps taken in proceedings before the Court in these cases, including commencing proceedings, should follow these principles. This practice direction takes effect from the date that it is issued and, to the extent practicable, applies to all PPP500 cases filed on or after 1 March 2020. (07 February 2020).

[Joint Practice Direction - Family Court of Australia and Federal Circuit Court of Australia](#)

This link directs you to the Joint Practice Direction "Core Principles in the Case Management of Family Law Matters" Family Court of Australia and Federal Circuit Court of Australia - Joint Practice Direction: JPD1 of 2020.

[LSC: Consultation Paper - Proposed Amendments to the Legal Profession Uniform Law](#)

The Legal Services Council has published a consultation paper on proposed amendments to the Legal Profession Uniform Law. Submissions can be sent to the Council at submissions@legalservicescouncil.org.au on or before Friday, 28 February 2020.

[Australian Bushfires Disaster Emergency Declaration – Understanding your privacy obligations](#)

The Attorney-General has made the Privacy (Australian

Bushfires Disaster) Emergency Declaration (No. 1) 2020 (the emergency declaration) under Part VIA of the Privacy Act 1988 (Cth) (Privacy Act). The emergency declaration was made in response to bushfires in Australia resulting in death, injury and property damage occurring from August 2019 into 2020. The emergency declaration expires on 20 January 2021.

OAIC: 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. <https://www.oaic.gov.au/updates/news-and-media/credit-reporting-changes-to-benefit-consumers/>

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](#)

Legal and Constitutional Affairs Legislation Committee

[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](#)

SA ICAC: Evaluation of the Department for Correctional Services – Statement

Deputy Commissioner Riches will conduct an evaluation of the practices, policies and procedures of the Department for Correctional Services. The Department for Correctional Services plays an important role in South Australian public administration. The unique functions the Department performs and the complex and challenging environment in which it operates raises significant corruption risks (03 February 2020). <https://icac.sa.gov.au/public-statement/03feb2020>

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Unauthorised access and disclosure of information held by the Victorian public sector](#)

Analyses key risks associated with unauthorised access and disclosure of information by Victorian public sector employees and explains how the misuse of information or material by public officers may be corrupt conduct.

[Australian outlaw motorcycle gang involvement in violent and organised crime](#)

This paper examines offending by outlaw motorcycle gang (OMCG) members, chapters and gangs, with a focus on violent and organised crime-type offending, using criminal history data for a large sample of Australian OMCG members known to law enforcement.

[Australia's housing system needs a big shake-up: here's how we can crack this](#)

A national housing strategy is long overdue. The Commonwealth and its agencies – not the states – control key instruments driving housing outcomes, especially tax and social security settings, as well as financial regulation. (17 February 2020)

CASES

[Choice Pharmacy Vincentia Pty Ltd v Australian Community Pharmacy Authority \[2020\] FCA 93](#)

ADMINISTRATIVE LAW – partial hearing of application for judicial review of recommendation to approve and approval to supply pharmaceutical benefits from particular premises – whether recommendation and approval were authorised by the National Health Act 1953 (Cth) – whether there was no evidence or other material to justify the recommendation and approval – whether premises are a “large medical centre” under National Health (Australian Community Pharmacy Authority Rules) Determination 2011 – meaning of requirement that premises must operate “for at least 70 hours each week”

Administrative Decisions (Judicial Review) Act 1977 (Cth) s 5

National Health Act 1953 (Cth) ss 90, 99J, 99K, 99L

[‘RP’ and Department of Defence \(Freedom of information\) \[2020\] AICmr 5](#)

Freedom of Information – Whether disclosure of personal information is unreasonable – Whether contrary to public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982, ss 11A(5) and 47F<http://classic.austlii.edu.au/au/cases/cth/AICmr/2020/5.html>

[SULLIVAN v DOHERTY \[2020\] SASC 13](#)

ADMINISTRATIVE LAW - ADMINISTRATIVE TRIBUNALS - SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE LAW - ADMINISTRATIVE TRIBUNALS - STATUTORY APPEALS FROM ADMINISTRATIVE AUTHORITIES TO COURTS

LANDLORD AND TENANT - RESIDENTIAL TENANCIES LEGISLATION - RECOVERY OF POSSESSION

1. Permission to appeal should be granted (at [70]).
2. The Senior Member erred in making a finding about the value of the appellant's possessions because the evidence was incapable of supporting such a finding (at [92]-[101]).
3. The appellant was denied procedural fairness because the contention that his possessions were not valuable property was never put to him and was not an issue in the proceedings in the Tribunal (at [105]).

[PONIATOWSKA v CHANNEL SEVEN SYDNEY PTY LTD \(No 2\) \[2020\] SASCFC 5](#)

DEFAMATION - DAMAGES - GENERAL DAMAGES - ASSESSMENT

APPEAL AND NEW TRIAL - PROCEDURE - SOUTH AUSTRALIA - POWERS OF COURT - ASSESSMENT OF DAMAGES

The appellant sued the respondents for defamation. The trial Judge dismissed the action. The Judge did not assess damages but summarised the evidence and made some findings of fact relevant to damages. This Court allowed the appellant's appeal on liability and heard submissions on the assessment of damages.

LEGISLATION

[Student Identifiers Amendment \(Enhanced Student Permissions\) Bill 2019](#)

Introduced Senate 11/02/2020 - Amends the Student Identifiers Act 2014 to: allow any entity to request access to an individual's authenticated vocational education and training (VET) transcripts (or extract), where that access is permitted by the access controls set by the individual; and introduce new civil penalties in relation to further applications for student identifiers, alteration of authenticated VET transcripts and representing that a non-authentic document is an authenticated VET transcript (or extract).

Regulation

[Privacy \(Credit Reporting\) Code 2014 \(Version 2.1\)](#)

14/02/2020 - This instrument is a written code of practice about credit reporting under s 26N(1) of the Privacy Act 1988 as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012. The CR Code V2.1 repeals and replaces the Previous Code to clarify obligations under the Previous Code, reflect current industry practice and ensure consistency with the provisions in the Privacy Act.

[Marriage \(Celebrant Professional Development\) Statement 2020](#)

13/02/2020 - This instrument provides Commonwealth registered marriage celebrants with a list of activities to choose from to complete their ongoing professional development obligations for 2020.

[Competition and Consumer \(Consumer Data Right\) Rules 2020](#)

05/02/2020 - This instrument prescribes the Consumer Data Right as an economy-wide reform that will apply sector-by-sector, starting with the banking sector. The Competition and Consumer (Consumer Data Right) Rules 2020 deal with aspects of the Consumer Data Right regime as provided in Part IVD of the Competition and Consumer Act 2010, including the accreditation process, the use and disclosure of CDR data, dispute resolution, and rules in relation to the Privacy Safeguards.

South Australia

Regulations and Rules

2020-7 [Local Government \(General\) \(Prescribed Body\) Variation](#)

2020-8 [Local Government Finance Authority \(Prescribed Local Government Bodies\) Variation Regulations 2020](#)

2020-9 [Ombudsman Regulations 2020](#)

2020-10 [Freedom of Information \(General\) \(Prescribed Agency\) Variation Regulations 2020](#)

2020-11 [Independent Commissioner Against Corruption \(Schedule 1 of Act\) Variation Regulations 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

ESCALATION CONTACT

NEWSLETTER EDITORS



[Chris Kelly](#)

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



[Lisa Ziegler](#)

Special Counsel
+61 8 8236 1103
lziegler@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](#)



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