



PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 24 of the SA Public Sector Newsletter.

This issue includes important COVID-19 related developments in South Australia, including a series of Regulations made under the COVID-19 Emergency Response Act 2020 (SA), the expansion of the list of people who can witness statutory declarations to facilitate access to the services by the community while COVID-19 restrictions are in place, and a boost to the Legal Services Commission's free telephone and online legal assistance services, which will be prioritising COVID-19 legal enquiries.

In other news, the Federal Government has launched its COVID-19 tracking app, amidst continuing privacy concerns and the Federal Court of Australia has granted leave to the Australian Information Commissioner to serve legal documents on Facebook in respect of its alleged breaches of Australian privacy law. This means that Facebook will be subject to the litigation in Australia.

This issue of the Newsletter also provides a round-up of COVID-19 related policy and legal developments federally and around the country, as well as the usual summary of practice notes, cases and legislation.

COVID-19 - USEFUL LINKS

[Cleaning and disinfection in the workplace - non-health care settings](#)

[Home isolation and self-quarantine information](#)

[Latest SA Health Updates](#)

[South Australian COVID-19 response](#)

[South Australian Government COVID-19 website](#)

IN THE MEDIA

Stricter bail laws to protect the community

SA Government will introduce amendments to State Parliament to toughen up bail provisions during the COVID-19 pandemic. The presumption of bail will be

reversed for offenders who assault emergency services workers and frontline hospital staff. (27 April 2020)

<https://www.premier.sa.gov.au/news/media-releases/news/stricter-bail-laws-to-protect-the-community>

COVIDSafe: Australian government launches COVID-19 tracing app amid lingering privacy concerns

Australians can now download the government's controversial COVID-19 contact tracing app, COVIDSafe, amid ongoing concerns about privacy of those using the app. The Health minister has published a determination that prevents the data being used for other purposes, including for law enforcement purposes or court orders, and the data must be held within Australia. (26 April 2020)

<https://www.theguardian.com/australia-news/2020/apr/26/australias-coronavirus-tracing-app-set-to-launch-today-despite-lingering-privacy-concerns>

Government media release COVIDSafe: [New app released to slow the spread of COVID-19](#)

LCA: Privacy protections must be built into COVID-19 tracking app

While the Law Council of Australia acknowledges the government's desire to improve the efficiency of COVID-19 contact tracing arrangements through the roll out of a tracing app, the privacy settings of any such app will require careful scrutiny, with many in the community understandably hesitant about the collection of their personal information by the government. (20 April 2020) <https://www.lawcouncil.asn.au/media/media-releases/privacy-protections-must-be-built-into-covid-19-tracking-app>

Review into Police Complaints and Discipline Act completed

An independent review of South Australia's Police Complaints and Discipline Act has recommended ways to streamline processes and improve the way in which complaints against police officers are dealt with. (24 April 2020) <https://www.agd.sa.gov.au/newsroom/review-police-complaints-and-discipline-act-completed>

Supreme Court judge in NCA bombing murder trial 'regrettably' agrees to step down

A Supreme Court judge "regrettably" recuses himself from the long-awaited trial of Domenic Perre, the man accused of blowing up Adelaide's National Crime Authority offices in 1994. (24 April 2020) <https://www.abc.net.au/news/2020-04-24/judge-forced-to-step-aside-in-domenic-perre-nca-bombing-trial/12181334>

Leading disability advocate appointed to key guardianship role

Renowned disability advocate Richard Bruggemann has been appointed to a new role in Government to assess temporary orders designed to protect both the community and people living with a cognitive impairment or mental incapacity from the spread of COVID-19. (24 April 2020) <https://www.agd.sa.gov.au/newsroom/leading-disability-advocate-appointed-key-guardianship-role>

COVID-19 arrangements for electronic witnessing of legal documents

President of the Law Society of NSW has welcomed the passing of an emergency regulation which allows for the witnessing of legal documents to be conducted electronically during the COVID-19 pandemic. The temporary provisions, which have been added to the Electronic Transactions Regulation 2017, provide altered arrangements for the witnessing of documents. (23 April 2020) <https://www.lawsociety.com.au/resources/news-and-media/COVID-19-arrangements-for-electronic-witnessing-of-legal-documents>

Video conferencing to facilitate legal transactions in era of social distancing

Queensland legal practitioners will be able to use video conferencing technology to conduct a range of transactions that usually require face to face meetings, as COVID-19 social distancing requirements remain in place. (23 April 2020) <http://statements.qld.gov.au/Statement/2020/4/23/video-conferencing-to-facilitate-legal-transactions-in-era-of-social-distancing>

QLS welcomes signing off on new COVID-19 document witnessing laws

Queensland's peak legal body has applauded the state government's passing of laws designed to assist in the managing of legal affairs during the COVID-19 pandemic. (23 April 2020) https://www.qls.com.au/About_QLS/News_media/News/COVID-19_document_witnessing_laws

Expanding criteria for witnessing Statutory Declarations

The list of people who can witness statutory declarations in South Australia has been expanded, ensuring community members can still access the service while public health restrictions are in place to combat the spread of COVID-19. (22 April 2020) <https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/April-2020/Oversight-of-wide-ranging-Coronavirus-changes-to-j>

OAIC Statement on Facebook proceedings

The Federal Court of Australia granted leave to the Australian Information Commissioner to serve legal documents on US-based Facebook Inc and Facebook Ireland. The Court found that "the material demonstrates a genuine argument about contravention, sufficient to justify causing the respondents to be subject to the litigation in Australia where the merit of that argument can be judicially determined." (22 April 2020) <https://www.oaic.gov.au/updates/news-and-media/statement-on-facebook-proceedings/>

OAIC takes stand over virus transparency

The Office of the Australian Information Commissioner (OAIC) has joined with its State and Territory counterparts to issue a public statement on the importance of transparency during the current COVID-19 pandemic. (21 April 2020) <https://www.informationcommissioners.org/covid-19>

How these agencies are breaching patient privacy

Privacy experts have criticised Services Australia and AHPRA for sharing thousands of private health records every year without informing patients, a practice that appears to contradict the government's own guidelines. (21 April 2020) <http://medicalrepublic.com.au/how-these-agencies-are-breaching-patient-privacy/27729>

COVID-19 legal assistance for South Australians

Legal aid is boosting its free assistance for South Australians hit hard by COVID-19. Attorney-General, Vickie Chapman said it was imperative that South Australians who need legal advice, can access that advice easily and free of cost. (17 April 2020) <https://www.agd.sa.gov.au/newsroom/covid-19-legal-assistance-south-australians>

Appointment of the Family Court and Federal Circuit Court Chief Executive Officer and Principal Registrar

The Morrison Government has appointed Mr David Pringle as the Chief Executive Officer and Principal Registrar of the Family Court of Australia and CEO of the Federal Circuit Court of Australia. (16 April 2020) <https://www.attorneygeneral.gov.au/media/media-releases/appointment-family-court-and-federal-circuit-court-chief-executive-officer-and-principal-registrar-16-april-2020>

The Family Court of Australia and Federal Circuit Court of Australia formalises support for alternative dispute resolution with the introduction of an Arbitration List

To support the development and promotion of arbitration for property matters in family law, the Family Court of Australia and the Federal Circuit Court of Australia (the Courts) have established a new specialist list in each Court, to be known as the National Arbitration List. (16 April 2020) <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/mr160420>

Press freedom remains under threat despite High Court ruling

The High Court unanimously ruled that the warrant relied on by the Australian Federal Police to raid the home of News Corporation journalist Annika Smethurst was invalid, and the raid was therefore unlawful. However laws that criminalise public interest reporting remain in place, leaving journalists and whistleblowers exposed to police investigation and prosecution. The Law Council of Australia and Human Rights Law Centre both discuss the judgment and their concerns about the ongoing vulnerability of public interest journalism. (15 April 2020) <https://www.lawcouncil.asn.au/media/media-releases/high-court-decision-highlights-ongoing-vulnerability>
<https://www.hrlc.org.au/news/2020/4/15/press-freedom-remains-under-threat-despite-high-court-ruling>

IN PRACTICE AND COURTS

Federal Circuit Court of Australia

[Practitioner and litigant guide to virtual hearings and Microsoft Teams](#)

This Guide is for proceedings conducted in the Family Court of Australia and the Federal Circuit Court of Australia. (22 April 2020)

High Court of Australia

Practice Notes

[Evidence by Affidavit](#)

High Court of Australia, 3 of 2020 - This Practice Direction takes effect on 15 April 2020.

The Registrar may accept the filing of the affidavit signed by the deponent but not sworn or affirmed before a qualified witness on the understanding that, if required, the affidavit will later be sworn or affirmed when circumstances allow

Law Council of Australia Submissions

21 April 2020— Law Council

[Human rights and technology](#)

[AAT Bulletin](#)

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions. Issue No. 13/2020, 20 April 2020.

[ACMA: New rules for phones to assist people with special communications needs](#)

ACMA has registered updated industry rules to ensure information about the accessibility features of different phone models is readily available. The updated rules will apply to phone equipment including portable, mobile, wireless and satellite phones sold in Australia. Consumers can visit the [Accessible Telecoms](#) website for more information on products suitable for people with disability and specific communications needs. View information on the [Accessibility Code](#). (21 April 2020)

[ACMA: Australian content options paper released](#)

The Australian Government has released the [Supporting Australian stories on our screens options paper](#). The paper outlines several options, ranging from keeping the status quo to deregulation. In the past weeks, the COVID-19 pandemic has heightened existing issues and pressures. In response, the ACMA has implemented [temporary measures](#) to support commercial and subscription television licensees. (16 April 2020)

Current Senate Inquiries

Select Committee on [COVID-19](#)

Environment and Communications References Committee

[Press Freedom](#)

On 16 March 2020, the Committee presented a progress report recommending that the Senate grant an extension of time to report until 20 May 2020.

Legal and Constitutional Affairs References Committee

[Nationhood, national identity and democracy](#)

On 23 March 2020 the committee's reporting date was extended to 9 September 2020.

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 \[Provisions\]](#) Report by 20 November 2020.

South Australia

South Australia Courts

22/04/2020 [Deferral of go-live date - CourtSA Civil](#)

17/04/2020 [Practice Note - witnessing of Grants of Probate during COVID 19 - Supreme Court 17 April 2020](#)

17/04/2020 [Magistrates Court - avoiding attendance at registry counters and filing of documents effective 20 April 2020](#)

16/04/2020 [Practice Note- Witnessing of affidavits during COVID-19 - Supreme Court, District Court and Magistrates Court 16 April 2020](#)

COVID-19 Statutory Declarations

These changes mean that people such as government employees, accountants, religious ministers, medical professionals and bank officers who meet the criteria will also be able to witness these documents. A full list of people who can now act as authorised witnesses can be found in the [COVID-19 Emergency \(Section 16\) Regulations 2020 \(PDF 62KB\)](#). The regulations, along with a full list of authorised witnesses, can be found on the [AGD website](#). (22 April 2020)

PUBLISHED - ARTICLES, PAPERS, REPORTS[Monitoring changes in domestic violence in the wake of COVID-19 social isolation measures](#)

BOCAR: 23 April 2020

The statistics only capture the first two weeks of social distancing measures. "These data reflect the early days of social isolation measures and the situation could well change as time goes on. We will continue to closely monitor changes in domestic violence through a range of data sources."

[Rapid implementation of Australian Government initiatives](#)

ANAO: 16 April 2020

This edition of audit insights outlines key messages from Auditor-General reports which have examined the rapid implementation of government initiatives. Topics covered include risk management, governance, resource mobilisation, accountability and program oversight in the context of rapid implementation.

ANAO Performance Audits in Progress

Due to table: June, 2020 Open for contribution

[Administration of financial disclosure requirements under the Commonwealth Electoral Act](#)

Due to table: June, 2020 Open for contribution

[Management of the Australian Government's Register of Lobbyists – follow-up](#)**CASES**[Re Young; Re Young \[2020\] HCA 13](#)

High Court – Leave to issue or file proceeding – Removal of proceedings – Where causes said to be pending in Supreme Court of New South Wales said to involve matter "arising under any treaty" within meaning of s 75(i) of Constitution – Where applications for removal of causes into High Court under s 40 of Judiciary Act 1903 (Cth) were refused – Where applicant sought to file documents in the form of applications for leave to appeal and accompanying summons – Where Registrar directed to refuse to issue or file documents without leave of a Justice first had and obtained – Whether appellate jurisdiction of High Court extends to hearing and determining appeal from order granting or refusing removal of cause – Whether order is under implied exception to appellate jurisdiction prescribed by Parliament within meaning of s 73(i) of Constitution – Whether conditions for grant of leave to appeal established.

Words and phrases – "abuse of process", "appellate jurisdiction", "cause", "exception", "federal jurisdiction", "incidental judicial power", "leave to issue or file", "order granting or refusing removal of a cause", "original jurisdiction", "preliminary and discretionary nature", "proceedings inter partes", "removal", "special leave", "substantial injustice", "treaty".

[Smethurst v Commissioner of Police \[2020\] HCA 14](#)

Held: Search warrant was invalid

Police – Search warrants – Validity of warrant – Where police searched premises in reliance on warrant – Where police retained material copied from first plaintiff's mobile phone in reliance on warrant – Where warrant relied upon reasonable grounds for suspecting commission of Commonwealth offence – Where warrant purported to set out offence against s 79(3) of Crimes Act 1914 (Cth) – Whether warrant misstated substance of s 79(3) of Crimes Act – Whether warrant failed to state offence to which it related with sufficient precision.

Injunctions – Mandatory injunction – Principles applicable – Where plaintiffs sought mandatory injunction requiring destruction or delivery up of material obtained under invalid warrant – Where plaintiffs sought injunction restraining police from making information available to prosecuting authorities – Whether statutory basis for injunction – Whether plaintiffs identified legal right to support injunction in auxiliary jurisdiction – Whether consequences of trespass provide basis for injunction – Whether s 75(v) of Constitution provides basis for injunction – Whether damages inadequate – Whether injunctive relief should be refused on discretionary grounds.

Constitution, s 75(v); Australian Federal Police Act 1979 (Cth), s 8.; Crimes Act 1914 (Cth), Pts IAA, VII; ss 3C, 3E, 3F, 3H, 3LA, 3ZQU, 79(3); Judiciary Act 1903 (Cth), s 32.

[Aurora Funds Management Limited v Australian Government Takeovers Panel \(Judicial Review\) \[2020\] FCA 496](#)

CORPORATIONS – application for judicial review of a decision of Australian Government Takeovers Panel – ADMINISTRATIVE LAW – bias – where Sitting President of Panel contemporaneously briefed as senior counsel in Supreme Court of New South Wales proceeding involving no parties to present proceeding – where Fifth Respondent a director of party to Supreme Court proceeding – where Fifth Respondent's credit said to be impugned by position of Sitting President's client in Supreme Court proceeding – where Sitting President had done no work on brief at time of Panel's decision – whether reasonable apprehension of bias – consideration of extent of knowledge of fair-minded lay observer

PRACTICE AND PROCEDURE – where hearing reopened to allow for additional ground of review – where leave to raise two additional formulations of ground refused – consideration of relevant principles Administrative Decisions (Judicial Review) Act 1977 (Cth) s 5; Evidence Act 1995 (Cth) ss 59, 76, 136; Judiciary Act 1903 (Cth) s 39B

[Australian Information Commission v Facebook Inc \[2020\] FCA 531](#)

PRACTICE AND PROCEDURE – Alleged contraventions of s 13G of the Privacy Act 1988 (Cth) – Interlocutory Application – Application for interim suppression and non-publication orders under s 37AI of the Federal Court of Australia Act 1976 (Cth) – Application for service outside of Australia pursuant to r 10.43(3) and (4) of the Rules – Application for substituted service under r 10.24 of the Federal Court Rules 2011 (Cth) – Application granted

[Cigno Pty Ltd v Australian Securities and Investments Commission \[2020\] FCA 479](#)

CORPORATIONS – financial services and markets – product intervention orders in Pt 7.9A of the Corporations Act 2001 (Cth) – judicial review of the ASIC Corporations (Product Intervention Order – Short Term Credit) Instrument 2019/917 (PIO)

ADMINISTRATIVE LAW – exercise of ASIC’s power under s 1023D(3) of the Corporations Act to order by legislative instrument that a person not engage in specified conduct – whether ASIC’s delegate asked the correct question – whether threshold state of satisfaction for the exercise of the rule-making power was reached – whether ASIC’s delegate considered a requisite “class” of financial products when there was only one existing product

[Fujian Xingxing Restaurant Pty Ltd v Eternity Trading Pty Ltd \[2020\] FCA 483](#)

HIGH COURT AND FEDERAL COURT – cross-vesting – consumer law – practice and procedure – where proceedings in NSW Civil & Administrative Tribunal (NCAT) and Federal Court are related – whether NCAT proceedings can be transferred to Federal Court – meaning of “court” in cl 6(1) of Sch 4 to Civil and Administrative Tribunal Act 2013 (NSW) – whether cl 6(1) can authorise transfer of proceedings to the Federal Court. Dismissed. Constitution ss 75, 76

[Godla v Commissioner of Police, New South Wales Police Force \[2020\] FCA 489](#)

ADMINISTRATIVE LAW – application for judicial review of decision under federal statute made by an agent of a state decision-maker, the Commissioner of Police, NSW – pseudonym application – where the Commissioner’s agent refused applications by the applicant for permission to travel as required by s 271A.1 of the Criminal Code (Cth) in circumstances where the applicant was named on the NSW Child Protection Register – where the Minister for Foreign Affairs cancelled the applicant’s passport and refused to reinstate the applicant’s passport – whether decision-makers made reviewable errors under s 5, s 6, or s 7 of the Administrative Decisions (Judicial Review) Act 1977 (Cth) – no other viable grounds of review established – application dismissed with costs

[JWR Productions Australia Pty Ltd v Duncan-Watt \(No 3\) \[2020\] FCA 528](#)

COSTS – application for indemnity costs on the basis of a Notice of Offer to Compromise issued under r 25.01(1) of the Federal Court Rules 2011 (Cth) – where refusal of offer was unreasonable – indemnity costs awarded

COSTS – application for indemnity costs on the basis of s 43 of the Federal Court of Australia Act 1976 (Cth) and s 40 of the Defamation Act 2005 (NSW) – where refusal of offer was not unreasonable – party / party costs awarded

[Military Rehabilitation and Compensation Commission v Riley \[2020\] FCA 488](#)

ADMINISTRATIVE LAW – appeal from Administrative Appeals Tribunal on questions of law – whether the Administrative Appeals Tribunal misconstrued s 7(1) of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (Cth) – appeal allowed and matter remitted for redetermination according to law

[Roadshow Films Pty Limited v Telstra Corporation Limited \[2020\] FCA 507](#)

COPYRIGHT – section 115A of the Copyright Act 1968 (Cth) – whether injunction should be granted requiring carriage service providers to take reasonable steps to disable access to online locations infringing or facilitating infringement of copyright – appropriate form of orders – injunction granted

Copyright Act 1968 (Cth) ss 14, 36(1), 103C, 115A, 120, 126
Copyright Amendment (Online Infringement) Act 2018 (Cth)

Federal Court Rules 2011 (Cth) rr 16.07, 22.04

[Josh Taylor and Australian Charities and Not-For-Profits Commission \(Freedom of information\) \[2020\] AICmr 13](#)

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) and 47E(d)

[‘RW’ and Services Australia \(Freedom of information\) \[2020\] AICmr 12](#)

Freedom of Information – Whether a practical refusal reason exists – Whether the request consultation process was followed – 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

[‘RV’ and Services Australia \(Freedom of information\) \[2020\] AICmr 11](#)

Freedom of Information – Whether documents contain deliberative matter prepared for a deliberative process – Whether contrary to public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5) and 47C

[BELL v DEPUTY CORONER OF SOUTH AUSTRALIA
\[2020\] SASC 59](#)

ADMINISTRATIVE LAW - JUDICIAL REVIEW - GROUNDS
OF REVIEW - JURISDICTIONAL MATTERS

ADMINISTRATIVE LAW - JUDICIAL REVIEW -
REVIEWABLE DECISIONS AND CONDUCT

EVIDENCE - ADMISSIBILITY - EXCLUSIONS: PRIVILEGES
COURTS AND JUDGES - JUDGES - DISQUALIFICATION
FOR INTEREST OR BIAS

LEGISLATION

Commonwealth

[Fair Work Commission Amendment \(Miscellaneous
Measures\) Rules 2020](#)

24/04/2020 - This instrument amends the Fair Work
Commission Rules 2013.

Part 3—Amendments to require declarations rather than
statutory declarations

South Australia

Proclamations

23.4.2020 p 811 [Evidence \(Reporting on Sexual
Offences\) Amendment Act \(Commencement\)
Proclamation 2020](#)

Regulations and Rules

2020-45 [COVID-19 Emergency Response \(Schedule 1\)
Regulations 2020](#)

2020-46 [COVID-19 Emergency Response \(Commercial
Leases\) Regulations 2020](#)

2020-47 [COVID-19 Emergency Response \(Section 16\)
Regulations 2020](#)

2020-48 [COVID-19 Emergency Response \(Section 17\)
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

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](#)



[Dem Christou](#)



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