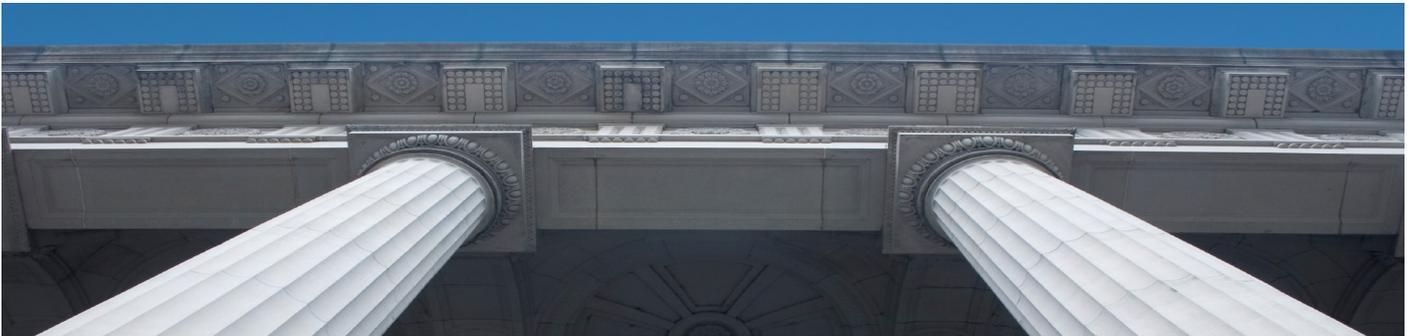


14 MAY 2020

ISSUE 25



PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 25 of the SA Public Sector Newsletter.

The COVIDSafe App is highlighted in this issue, including the release of the draft legislation codifying existing privacy protections in relation to individual's data collected by the App, as well as commentary on the draft by the Law Council and the Australian Human Rights Commission.

This issue also discusses broader COVID-19 related privacy issues, including guidance published by the Office of the Australian Information Commissioner (OAIC) and statements released by the OAIC and the Australian and New Zealand Information Access Commissioners regarding privacy and data protection.

In other news, the SA Uniform Civil Rules 2020 have been made by the Supreme, District and Magistrates Courts and are set to commence operation on 18 May 2020.

This issue of the Newsletter also provides the usual round-up 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

New protections for South Australians during the COVID-19 pandemic

Attorney-General Vickie Chapman will introduce the latest legislative measures to respond to the COVID-19 pandemic. Speeding up infrastructure projects and ensuring clarity in disputes between commercial landlords and tenants are among the latest legislative measures. (12 May 2020) <https://www.agd.sa.gov.au/newsroom/new-protections-south-australians-during-covid-19-pandemic>

COVID-19 restrictions to ease from Monday 11 May

South Australia is set to relax COVID-19 restrictions with the SA government releasing its Roadmap for Easing COVID-19 Restrictions, with stage one to start on Monday 11 May. (08 May 2020) <https://www.covid-19.sa.gov.au/latest-news/covid-restrictions-to-ease-from-monday>

Consumer Data Right Compliance and Enforcement Policy released

The ACCC and the OAIC jointly released the Compliance and Enforcement Policy for the Consumer Data Right. The Policy outlines the approach that the ACCC and the OAIC have adopted to encourage compliance with, and address breaches of, the Consumer Data Right regulatory framework. (08 May 2020) <https://www.accc.gov.au/media-release/consumer-data-right-compliance-and-enforcement-policy-released>

LCA: Funding boost will help front line legal services

The \$20 million earmarked for domestic violence, \$29.8 million towards tenancy disputes, insurance, credit and debt related problems, work related claims and the remaining \$13.5 million on IT upgrades is a welcome injection of funding that will help meet a rise in demand for legal services. (08 May 2020) <https://www.lawcouncil.asn.au/media/media-releases/funding-boost-will-help-front-line-legal-services>

ACMA moves to block more illegal gambling websites

The ACMA is set to request Australian internet service providers (ISPs) to block more illegal offshore gambling websites. We urge Australian users of these sites to withdraw their money now. ACMA investigations found them to be operating in breach of the Act 2001. (07 May 2020) <https://www.acma.gov.au/articles/2020-05/acma-moves-block-more-illegal-gambling-websites>

ICAC investigating alleged 'improper conduct' by university vice-chancellor

South Australia's Independent Commissioner Against Corruption confirms he is investigating allegations of improper conduct by the vice-chancellor of the University of Adelaide. (07 May 2020) <https://www.abc.net.au/news/2020-05-07/icac-investigating-alleged-improper-conduct-by-vice-chancellor/12224370>

Police officers to be prosecuted over alleged assault of teen after judge reverses decision

Two South Australian police officers will continue to be prosecuted for allegedly assaulting a 17-year-old boy on the Eyre Peninsula in 2013, after the state's top judge finds the investigation was legal. (06 May 2020) <https://www.abc.net.au/news/2020-05-06/police-officers-to-face-court-over-assault-claims-after-reversal/12220740>

New agreement to deliver better outcomes for phone and internet consumers and providers

Telephone and internet users across Australia are expected to benefit from a new approach to collaboration and information-sharing by the Australian Communications and Media Authority (ACMA) and the Telecommunications Industry Ombudsman (TIO). (06 May 2020) <https://www.acma.gov.au/articles/2020-05/new-agreement-deliver-better-outcomes-phone-and-internet-consumers-and-providers>

COVID-19: The duty to document does not cease in a crisis, it becomes more essential

Australian and New Zealand Information Access Commissioners join with their international counterparts in a [statement](#) calling for documentation, preservation and access to information during COVID-19. (06 May 2020) <https://www.ipc.nsw.gov.au/statements/covid-19-duty-document-does-not-cease-crisis-it-becomes-more-essential>

ACMA: Update on local number porting

The ACMA is aware of Telstra's suspension of Local Number Porting (LNP) due to the impact of COVID-19. LNP is a regulatory obligation that allows consumers and businesses to keep their number and maintain continuity of service when changing service providers. Telstra suspending these activities puts it in breach of its LNP obligations. (05 May 2020) <https://www.acma.gov.au/articles/2020-05/update-local-number-porting>

Law Council President's statement on the COVIDSafe App exposure draft

The public release of the government's exposure draft Bill underpinning the COVIDSafe App is welcomed by the Law Council. The Bill proposes to replace the Determination made under the Biosecurity Act 2015 (Cth) with primary legislation, by inserting a new provision in the Privacy Act 1988 (Cth). (05 May 2020) <https://www.lawcouncil.asn.au/media/media-releases/law-council-presidents-statement-on-the-covidsafe-app-exposure-draft>

OAIC confronts pandemic privacy

The OAIC has revealed that Government Agencies and other organisations are struggling with their obligations under the Privacy Act 1988 while combating the spread of COVID-19. (05 May 2020) <https://www.oaic.gov.au/updates/news-and-media/covid-19/>

Legislation for COVIDSafe App Privacy Protections

Attorney-General, Christian Porter, has released draft legislation which will codify the existing protections for individuals' data collected by the COVIDSafe App that have been established in the Health Minister's Biosecurity Act Determination. (04 May 2020) <https://www.attorneygeneral.gov.au/media/media-releases/legislation-covdsafe-app-privacy-protections-4-may-2020>

New APS strategy to boost digital skills

The Australian Public Service Commissioner, Peter Woolcott, has released an Australian Public Service (APS) Digital Professional Stream Strategy to enhance the digital expertise of the APS workforce. (04 May 2020) <https://www.apsc.gov.au/aps-digital-professional-stream>

ICA flags caution over Consumer Data Right expansion plans

A Treasury inquiry into whether a so-called "write" access might be added to the Consumer Data Right regime should only proceed if the benefits outweigh the negatives, the Insurance Council of Australia says. (04 May 2020) <https://www.insurancenews.com.au/regulatory-government/ica-flags-caution-over-consumer-data-right-expansion-plans>

Campaign to combat domestic violence during COVID-19 crisis

The Department of Social Services is rolling extra measures out to ensure people experiencing domestic, family and sexual violence know where to get help during the COVID-19 pandemic. (03 May 2020) <https://ministers.dss.gov.au/media-releases/5791>

Commission welcomes COVIDSafe App

The Australian Human Rights Commission has welcomed the COVIDSafe App as an important public health initiative, which can help protect the rights of Australians to health and life. The App also opens the possibility of easing restrictions on other human rights, such as freedom of movement and freedom of association. (27 April 2020) <https://humanrights.gov.au/about/news/media-releases/commission-welcomes-covidsafe-app>

IN PRACTICE AND COURTS

[ACICA Guide - Managing the Impact of COVID-19: Use of Arbitration to Mitigate Risk](#)

The Guide is intended to raise awareness and promote the use of arbitration in appropriate circumstances to resolve disputes and manage risk during COVID-19. It contains links to relevant ACICA resources. (29 April 2020)

[Attorney-General: COVIDSafe draft legislation](#)

We have developed draft legislation, the Privacy Amendment (Public Health Contact Information) Bill 2020, to support the [COVIDSafe App](#) (released on 26 April 2020) and provide strong ongoing privacy protections. The Australian Government intends to introduce this draft legislation in Parliament in the week of 11 May 2020.

[Federal Circuit Court of Australia remodelled website homepage](#)

The Federal Circuit Court of Australia launched a remodelled website homepage on 30 April 2020. The content of the website has not changed, but court users and practitioners will notice a new layout, including direct links to the Court's three main areas of filing: family law, migration law and general federal law.

Courts Practice Directions

[Joint Practice Direction 3 of 2020 - The COVID-19 List](#)

Federal Circuit Court of Australia, 3 of 2020

This Joint Practice Direction establishes a fast-tracked, national list in each Court ("the COVID-19 List") to allow the Courts to swiftly deal with urgent COVID-19 applications on a national basis.

[Joint Practice Direction 3 of 2020 - The COVID-19 List](#)

Family Court of Australia, 3 of 2020

Australia update

The Family Court of Australia and the Federal Circuit Court of Australia have [announced](#) they are establishing a court list dedicated to deal exclusively with urgent parenting-related disputes that have arisen due to the COVID-19 pandemic. The list will commence on 29 April 2020.

Alternative Dispute Resolution

The Courts have issued a [guide to electronic Alternative Dispute Resolution](#). This guide is for ADR events conducted in the Family Court of Australia and the Federal Circuit Court of Australia. (28 April 2020)

[OIAC: Consumer Data Right Compliance and Enforcement Policy released](#)

The ACCC and the Office of the Australian Information Commissioner jointly released the Compliance and Enforcement Policy for the Consumer Data Right. View a copy of the [Compliance and Enforcement Policy](#). (05 May 2020)

[OAIC: COVID-19 Privacy guidance](#)

The OAIC has released [privacy guidance](#) for agencies and private sector employers to help keep workplaces safe and handle personal information appropriately as part of the COVID-19 response. This includes answers to frequently asked questions. New [detailed advice](#) will help regulated entities assess the privacy risks involved in changed working environments, and a new [step-by-step tool](#) to help guide them through the Privacy Impact Assessment process. (05 May 2020)

[AAT: COVID-19: New special measures practice directions – 28 April 2020](#)

The AAT President has issued five special measures practice directions that set out how the AAT will operate while COVID-19 impacts its services. The special measures practice directions may take precedence over other directions that deal with the same matter. These directions are in effect from 29 April 2020 for the following divisions: [General, Freedom of Information and Veterans' Appeals](#).

[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. 14/2020, 4 May 2020.

Australian Standards

[AS/NZS 62676.1.1:2020](#)

Video surveillance systems for use in security applications - System requirements - General (IEC 62676-1-1:2013, MOD) Standards Australia.

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 Courts

[Forthcoming Uniform Civil Rules](#)

The Uniform Civil Rules 2020 have been made by the Supreme, District and Magistrates Courts. They have not yet come into operation. It is anticipated that they will come into operation on 18 May 2020 to coincide with the introduction of CourtSA Civil.

PUBLISHED - ARTICLES, PAPERS, REPORTS

[First interim report of the Joint Select Committee on implementation of the National Redress Scheme April 2020](#)

The establishment of the National Redress Scheme in 2018 has made a symbolic and practical contribution to the pursuit of justice for survivors of institutional child sexual abuse. However, as this interim report demonstrates, much more needs to be done to improve.

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](#)

Australian Bureau of Statistics

06/05/2020 [Public Consultation - How do you use Census data, 2020](#)

Tell us about how your use of Census data has resulted in better outcomes for individuals, families and communities at www.consult.abs.gov.au

01/05/2020 [Household Impacts of COVID-19 Survey, 14-17 April 2020](#)

CASES

[CXXXVIII v Honourable Justice Richard Conway White \[2020\] FCAFC 75](#)

JUDICIAL REVIEW – application for judicial review of a decision of the first respondent to issue an arrest warrant under s 31 of the Australian Crime Commission Act 2002 (Cth) (the Act) – where applicant claims that the arrest warrant is invalid – whether the first respondent had reasonable grounds to believe the applicant was likely to commit an offence against s 30(1)(b) of the Act – where applicant claims the second, third and fourth respondents failed to comply with their duty on an ex parte application to disclose all material facts – where applicant claims that the first respondent took into account evidence which was not on oath in deciding to issue the warrant such that the warrant was issued in breach of s 31(1) of the Act – interpretation of s 30(1)

CONSTITUTIONAL LAW – where applicant claims s 31 of the Act is invalid because it purports to confer a duty, power and/or function on judges of the Federal Court of Australia, acting as persona designata, which is incompatible with their commissions as judges of the Court and/or with the proper performance of their judicial functions as judges of the Court

Australian Crime Commission Act 2002 (Cth), ss 31, 30, 24A, 7C, 28, 7, 20, 21, 22

Judiciary Act 1903 (Cth), s 78B

[Boomerang Investments Pty Ltd v Padgett \(Liability\) \[2020\] FCA 535](#)

COPYRIGHT – musical works – identification of copyright work – whether sound of lyrics as sung forms part of musical work – ‘love is in the air’ as both lyric carrying meaning and phonetic instruction to vocalist – objective similarity between copyright work and allegedly infringing works – consideration of ordinary, reasonably experienced listener – relevance of expert evidence and chambers’ heightened familiarity with

works – causal connection – whether conscious or unconscious copying – consideration of process of creation of allegedly infringing works – whether part taken a substantial part of copyright work – originality – whether sung lyric ‘love is in the air’ and accompanying music ‘essential air’ of copyright work – whether part taken ‘too short’ to be substantial

COPYRIGHT – musical works – where allegedly infringing works created outside Australia – where reproduction and communication rights alleged to have been infringed by streaming, downloading and telephone hold music – effect of assignment and licensing arrangements – whether authorisation infringement possible without primary infringement

COPYRIGHT – literary works – whether lyric reproduced in allegedly infringing works a substantial part of literary work – originality of lyric taken – whether ‘love is in the air’ an obvious, commonplace or prosaic expression

COPYRIGHT – moral rights – right not to have work subjected to derogatory treatment – meaning of ‘reputation’ and ‘honour’ – consideration of territoriality requirements

CONTRACTS – construction of assignment and licensing arrangements concerning rights in copyright work and allegedly infringing works involving Fourth and Fifth Applicants – relevance of extrinsic materials – effect on standing of First Applicant to sue

DAMAGES – whether sufficient prospect of entitlement to real pecuniary award to justify inquiry for damages or account of profits – entitlement to additional damages – whether copying flagrant – where further hearing as to relief necessary

EVIDENCE – standard of proof in civil proceedings – allegations of conscious copying and falsified evidence – gravity of allegations – Evidence Act 1995 (Cth) s 140

PRACTICE AND PROCEDURE – application for leave to file rejoinder submissions – where various complaints made about nature and quality of Reply submissions – consideration of standard for leave to be granted

[Comcare v Stefaniak \[2020\] FCA 560](#)

PRACTICE AND PROCEDURE – appeal from decision of the Administrative Appeals Tribunal – appeal allowed by consent. Administrative Appeals Tribunal Act 1975 (Cth) s 44(1); Safety, Rehabilitation and Compensation Act 1988 (Cth) s 5B(1)(b).

[Page v Sydney Seaplanes Pty Ltd \[2020\] FCA 537](#)

HIGH COURT AND FEDERAL COURT – jurisdiction of Federal Court – application concerning death of applicant’s daughter during intra-state seaplane flight – claim for damages pursuant to ss 28, 31 and 25 of the Civil Aviation (Carriers’ Liability) Act 1959 (Cth) “as incorporated by” s 5 of the Civil Aviation (Carriers’

Liability) Act 1967 (NSW) – whether federal jurisdiction arises in respect of a claim for damages relating to an intra-state flight – application dismissed for want of jurisdiction

Constitution, ss 75, 76, 77; Civil Aviation (Carriers' Liability) Act 1959 (Cth), ss 26, 27, 28, 31 and 35; Civil Aviation (Carriers' Liability) Act 1967 (NSW), ss 4, 5, 6A; Federal Court of Australia Act 1976 (Cth), s 19; Judiciary Act 1903 (Cth), ss 38, 39, 39B

[Rossi v Qantas Airways Limited \[2020\] FCA 573](#)

PRACTICE AND PROCEDURE – third party application for leave to inspect statement of claim – whether a document unrestricted under Federal Court Rules 2011 r 2.32(2), in advance of leave to make application to Federal Court under Australian Human Rights Commission Act 1986 (Cth) s 46PO(3A)(a) – application granted

[LIONIZE GROUP PTY LTD & ANOR v MINISTER FOR TRANSPORT AND INFRASTRUCTURE & ANOR \[2020\] SASCFC 29](#)

ADMINISTRATIVE LAW - JUDICIAL REVIEW - GROUNDS OF REVIEW

ADMINISTRATIVE LAW - JUDICIAL REVIEW - GROUNDS OF REVIEW - FAILURE TO OBSERVE STATUTORY PROCEDURE

ADMINISTRATIVE LAW - JUDICIAL REVIEW - GROUNDS OF REVIEW - IRRELEVANT CONSIDERATIONS

ADMINISTRATIVE LAW - JUDICIAL REVIEW - GROUNDS OF REVIEW - RELEVANT CONSIDERATIONS

ADMINISTRATIVE LAW - JUDICIAL REVIEW - GROUNDS OF REVIEW – UNREASONABLENESS

LEGISLATION

[\[Exposure Draft \] Privacy Amendment \(Public Health Contact Information\) Bill 2020](#)

Will reinforce the protections set out in the Determination made by the Minister for Health under the Biosecurity Act 2015 on 25 April 2020, placing the protections into primary legislation through amendments to the Privacy Act 1988.

Note: Under the determination, it is a criminal offence to collect, use or disclose COVIDSafe App data for a purpose that is not related to contact tracing. A maximum penalty of 5 years imprisonment or \$63,000 applies to breaches of the determination.

[Corporations \(Coronavirus Economic Response\) Determination \(No. 1\) 2020](#)

05/05/2020 - This instrument modifies the Corporations Act 2001 to enable Annual General Meetings to be run electronically, and to enable electronic signatures to be used, to address the impacts of the Coronavirus.

South Australia

Acts

2020-9 [COVID-19 Emergency Response \(Bail\) Amendment Act 2020](#) 7 May 2020

2020-10 [Summary Offences \(Trespass on Primary Production Premises\) Amendment Act 2020](#) 7 May 2020

Proclamations – 07 May 2020

30.4.2020 p 836 [Administrative Arrangements \(Administration of Married Persons \(Separate Legal Status\) Act\) Proclamation 2020](#)

30.4.2020 p 837 [Married Persons \(Separate Legal Status\) Act \(Commencement\) Proclamation 2020](#)

30.4.2020 p 838 [Statutes Amendment \(Legalisation of Same Sex Marriage Consequential Amendments\) Act \(Commencement\) Proclamation 2020](#)

Regulations and Rules

2020-50 [Gaming Machines Regulations 2020](#) 30 April 2020

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