



PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 26 of the SA Public Sector Newsletter.

The new electronic court management system in the South Australian civil jurisdiction, CourtSA, was launched by Chief Justice Kourakis on 18 May 2020. The move to online is part of the Courts Administration Authority's strategy to modernise the courts and improve access to justice for all South Australians. Users of the CourtSA system can initiate, access, and enquire about their civil matters online 24/7. The system provides information about what to do at every stage of the civil process.

At the federal level, the COVIDSafe App remains in focus, including the passage of legislation which enshrines in law the privacy protections for users of the App and potential changes to the App prompted by Apple and Google's "exposure notification" technology.

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

Elite police officers wearing balaclavas to coronial inquests 'likely to attract more attention'

Allowing elite South Australian police officers to don balaclavas or masks as they enter and exit a coronial inquest in a bid to protect their identity is "likely to attract more attention", the Supreme Court says. (25 May 2020) <https://www.abc.net.au/news/2020-05-24/police-commissioner-calls-for-elite-officers-identity-protection/12281022>

COVIDSafe may need privacy changes to use new Apple and Google tool

The new "exposure notification" technology rolled out by Apple and Google could help solve the technical troubles experienced by the federal government's COVIDSafe App, but may also require changes to the way the App collects personal data. (21 May 2020) <https://www.smh.com.au/technology/covidsafe-may-need-privacy-changes-to-use-new-apple-and-google-tool-20200521-p54v36.html>

Ex-bikie compensated for 20 minutes' worth of 615 days unlawfully detained in SA

A judge finds that a former bikie gang member was put in immigration detention unlawfully for almost two years but has only compensated him for 20 minutes of his time in custody. (21 May 2020) <https://www.abc.net.au/news/2020-05-21/ex-bikie-wins-compensation-for-unlawful-immigration-detention/12272130>

Launch of CourtSA in the Civil jurisdiction in SA

The Honourable Christopher Kourakis, Chair of the State Courts Administration Council and Chief Justice of South Australia launched CourtSA, the Courts Administration Authority's electronic court management system, in the civil jurisdiction. (18 May 2020) <http://www.courts.sa.gov.au/Information/Pages/General-News-Release.aspx?IsDlg=1&Filter=73>

New purchasing rules for COVID-19

The Department of Finance has unveiled new arrangements for procurement and contracting to support Australian businesses providing goods and services to Government. The Finance Department has released a Policy Note to assist entities considering procurements or addressing contractual matters with affected suppliers. (18 May 2020) <https://www.finance.gov.au/government/procurement/covid-19-procurement-policy-note>

Tax Inspector invites program feedback

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) is inviting feedback on a Register of potential review topics as identified by stakeholders, its own complaints service and other sources. (18 May 2020) <https://www.igt.gov.au/sites/default/files/2020-04/Register%20of%20Potential%20Review%20Topics%20-%20April%202020.pdf>

Govt style manual updated for digital age

The government is updating its official Style Manual to bring public servants' communication skills into the digital age. The Australian Government Style Manual provides rules and guidance for writing and editing with the aim of ensuring clarity and consistency in government communications. (18 May 2020) <https://www.governmentnews.com.au/government-style-manual-updated-for-digital-age/>

OAIC: COVID-19

The OAIC understands Australian Government agencies and organisations covered by the Privacy Act 1988 are facing unprecedented challenges in combating the spread of COVID-19. (16 May 2020) <https://www.oaic.gov.au/updates/news-and-media/covid-19/>

New rules for staff changes in pandemic

The APSC has issued a new Circular dealing with staffing mobility arrangements in response to COVID-19. The focus of Agencies and employees should be on the continued delivery of critical functions to the Australian public, as well as ensuring workplaces are safe for all employees, the Circular says. (18 May 2020) <https://www.apsc.gov.au/circular-20206-temporary-mobility-arrangements-part-continued-response-covid-19>

OAIC expands oversight role as privacy safeguards for COVIDSafe App made law

Australian Information Commissioner and Privacy Commissioner Angelene Falk has welcomed changes to the Privacy Act 1988 that enshrine strict privacy safeguards for COVIDSafe App data in law. (14 May 2020) <https://www.oaic.gov.au/updates/news-and-media/oaic-expands-oversight-role-as-privacy-safeguards-for-covidsafe-app-made-law/>

Auditor unveils targets for next year

The Auditor-General has issued a proposed program of performance audits for the coming financial year. Among the broader selection of possible audit targets in the year ahead are the efficiency of the Administrative Appeals Tribunal's Case Management and Implementation of Recommendations from the Independent Review of Whole-of-Government Internal Regulation. (14 May 2020) <https://www.anao.gov.au/work-program/draft>

Liquor licensing loophole to be shut

The South Australian Government will move to close a loophole that had the potential to allow alcohol to be sold in supermarkets. (14 May 2020) <https://www.agd.sa.gov.au/newsroom/liquor-licensing-loophole-be-shut>

COVIDSafe privacy protections now locked in law

The privacy protections behind Australia's COVIDSafe contact tracing App are now enshrined in law after the underpinning legislation passed through parliament with minor improvements. (14 May 2020) <https://www.itnews.com.au/news/covidsafe-privacy-protections-now-locked-in-law-548119>

Government statement [Privacy protections for COVIDSafe App enshrined in law](#)

Enterprise agreement changes to be limited to 12 months

The Morrison Government will issue a new Regulation under the Fair Work Act to limit any changes made to enterprise agreements in response to the COVID-19 pandemic to be effective for no more than 12 months. (14 May 2020) <https://www.attorneygeneral.gov.au/media/media-releases/enterprise-agreement-changes-be-limited-12-months-14-may-2020>

Improving justice outcomes for class action members

Ensuring Australians get their fair share of legal settlements will be the focus of a parliamentary committee inquiry which will examine all aspect of the class action system, including the enormous profits being made by litigation funders. (13 May 2020) <https://www.attorneygeneral.gov.au/media/media-releases/improving-justice-outcomes-class-action-members-13-may-2020>

ACMA issues formal warning to phone directory publisher

The ACMA has issued a formal warning to digital marketer Localsearch Operations Pty Ltd (Localsearch) after it published an unlisted 'silent' number in one of its phone directories. An ACMA investigation found Localsearch breached the conditions of its use of the IPND under the Integrated Public Number Database Scheme 2017. (13 May 2020) <https://www.acma.gov.au/articles/2020-05/acma-issues-formal-warning-phone-directory-publisher>

Unconscionable conduct finding against real estate agent

The Supreme Court has upheld an appeal made by South Australia's consumer watchdog, finding that a Grange-based real estate agent engaged in unconscionable conduct in his dealings with a vulnerable aged pensioner seeking to sell his property. (13 May 2020) <https://www.agd.sa.gov.au/newsroom/unconscionable-conduct-finding-against-real-estate-agent>

Safeguards needed in arrangements with overseas partners in digital era

The Law Council of Australia acknowledges the enormous challenges facing law enforcement agencies when requiring access to crucial data stored in foreign countries. These agreements need a domestic legal framework that contains adequate safeguard. (12 May 2020) <https://www.lawcouncil.asn.au/media/media-releases/safeguards-needed-in-arrangements-with-overseas-partners-in-digital-era>

ACCC can submit evidence from BlueScope criminal investigation in civil case

The ACCC has been given the green light to use witness statements prepared during its criminal cartel investigation of BlueScope Steel in the civil penalty proceedings launched by the regulator, but a fight with the steel giant over the admissibility of the evidence still looms. (12 May 2020) <http://classic.austlii.edu.au/au/cases/cth/FCA/2020/625.html>

IN PRACTICE AND COURTS

Current APH Inquiries and Consultations

Legal and Constitutional Affairs Legislation Committee

[Migration Amendment \(Prohibiting Items in Immigration Detention Facilities\) Bill 2020 \[Provisions\]](#)

[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.

[Native Title Legislation Amendment Bill 2019 \[Provisions\]](#)

Legal and Constitutional Affairs References Committee

[Inquiry into domestic violence with particular regard to violence against women and their children](#)

[Nationhood, national identity and democracy](#)

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

[APSC Circular 2020/5: Preparing for a COVID-safe transition for APS workplaces](#)

The APSC says that in developing their transition plans, Agency heads need to review the balance between working from home and returning to usual workplaces, ensuring the health and wellbeing of their staff along with Agency productivity, and the delivery of essential services. (14 May 2020)

[Aged Care Visitor Access Code](#)

The Aged Care Visitor Access Code, developed in conjunction with consumer peak bodies sets out a nationally consistent, principles-based approach to maintaining residents' visitation and communication. (13 May 2020)

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

Draft legislation, the *Privacy Amendment (Public Health Contact Information) Bill 2020*, will 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.

View the [Privacy Amendment \(Public Health Contact Information\) Bill 2020](#). (13 May 2020)

The Committee will be asked to report back to Parliament by 7 December and its work will complement the work already done in this area by the Australian Law Reform Commission. The Government will shortly release its response to the ALRC inquiry. View [House of Representatives – Notice of Motion](#)

LCA Submissions

13 May 2020 - Inquiry into Telecommunications Legislation Amendment (International Production Orders) Bill 2020. You can read the Law Council's submission [here](#) and media release [here](#).

[OAIC Privacy guidance](#)

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.

Revised [detailed advice](#) helps regulated entities assess the privacy risks involved in changed working environments, as many organisations implement or expand remote working arrangements. Organisations and agencies can also download our new [step-by-step tool](#) to help guide them through the Privacy Impact Assessment process. (16 May 2020).

[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. 15/2020, 18 May 2020.

South Australia

[ICAC Report: Public Administration in a Pandemic: Unique Challenges in the Current Climate](#)

Published on 11 May 2020 - The report addresses some of the unique risks to integrity in public administration in the current climate and offers some suggestions as to how some of those risks might be managed.

[Law Society of SA: The new Uniform Civil Court Rules explained](#)

The South Australian Courts are introducing a new Electronic Court Management System (ECMS), and with it a new set of Uniform Civil Rules The new Uniform Civil Court Rules explained.

Law Society of SA: Submissions

[COVID-19 Emergency Response \(Further Measures\) Amendment Bill 2020](#) (14 May 2020)

[Announcement of important innovations in child abuse, family violence and risk notification, screening and assessment, and update on the COVID-19 Lists](#) (13 May 2020)

[COVID-19 Emergency Response \(Further Measures\) Amendment Bill 2020](#) (12 May 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. The Rules came into operation on 18 May 2020 to coincide with the launch of CourtSA in the Civil Jurisdiction. The Uniform Civil Rules and the individual forms will be displayed on the webpage "[Rules, Forms and Fees](#)" and [History of changes](#).

[Launch of CourtSA in the Civil jurisdiction](#)

CourtSA in the Civil jurisdiction on 18 May was launched on 18 May 2020. CourtSA provides clear information about what to do at every stage of the civil process. CourtSA will be rolled out in the criminal jurisdiction in 2021.

COVID-19 Court Notifications

[Jury trials - District Court of South Australia](#) (18 May 2020)

[Arrangements for the Magistrates Court of South Australia regarding criminal proceedings during the COVID-19 pandemic](#) (15 May 2020)

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Australian Competition and Consumer Commission](#)

The ACCC has released this concepts paper seeking views on each of the issues to be covered in a mandatory code to address bargaining power imbalances between Australian news media businesses and Google and Facebook. (19 May 2020)

[Issues paper: Constitutional framework for the declaration of a State of National Emergency](#)

Royal Commission into National Natural Disaster Arrangements: 08 May 2020

This issues paper explores legal and constitutional questions surrounding the concept of a declaration of a 'state of national emergency' by the Commonwealth of Australia, and how this might operate and interact with existing state and territory emergency management frameworks.

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

[Public Consultation - How do you use Census data](#)
(6 May 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.

CASES

[Australian Brumby Alliance Inc v Parks Victoria Inc \[2020\] FCA 605](#)

ADMINISTRATIVE LAW - Environment Protection and Biodiversity Conservation Act 1999 (Cth) Act s 15B(5) – action to prevent removal of brumbies from the Bogong High Plains and Eastern Victorian Alps within the Australian Alps National Parks and Reserves - whether removal will have or is likely to have a significant impact on the National Heritage values of the Australian Alps National Parks and Reserves - whether prohibiting the removal is reasonably appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention – whether brumbies are part of the National heritage values of the Australian Alps National Parks and Reserves – whether the Biodiversity Convention protects cultural and social values - proper construction of s 15B(5) and (6)

Competition and Consumer Act 2010 (Cth); Environment Protection and Biodiversity Conservation Act 1999 (Cth)

[Cantor v Audi Australia Pty Limited \(No 6\) \[2020\] FCA 658](#)

THE COURT ORDERS THAT: Pursuant to s 37AF and s 37AG(1)(a) of the Federal Court of Australia Act 1976 (Cth) (Federal Court Act), on the ground that it is necessary to prevent prejudice to the proper administration of justice, until further order, the information specified in the schedule below not be disclosed (by publication or otherwise) to any person other than: (a) The Court; (b) The applicant; and (c) The legal representatives of the applicant for the purpose of this proceeding only.

[Clark v National Australia Bank Limited \(No 2\) \[2020\] FCA 652](#)

REPRESENTATIVE PROCEEDINGS – where order sought pursuant to ss 22, 23 or s 33ZF of the Federal Court of Australia Act 1976 (Cth), r 1.32 of the Federal Court Rules 2011 (Cth) and/or the Court's implied jurisdiction dismissing the proceeding – consideration as to how s 33ZB operates to bind group members to a settlement not the dismissal of the class action

REPRESENTATIVE PROCEEDINGS – application for approval of settlement pursuant to s 33V of the Federal Court of Australia Act 1976 (Cth) – settlement approved

PRACTICE AND PROCEDURE – where applicant sought confidentiality orders pursuant to Pt VAA of the Federal Court of Australia Act 1976 (Cth) in respect of extensive material put before the Court on the settlement application – consideration of threshold for the grant of such an order – consideration of principles of open justice as fundamental to the operation of the judicial power of the Commonwealth

[ZOLLO v COMMISSIONER FOR CONSUMER AFFAIRS \[2020\] SASCFC 39](#)

APPEAL AND NEW TRIAL - APPEAL - PRACTICE AND PROCEDURE - SOUTH AUSTRALIA

APPEAL AND NEW TRIAL - APPEAL - GENERAL PRINCIPLES - RIGHT OF APPEAL - WHEN APPEAL LIES - ERROR OF LAW - WHAT IS - DISTINCTION BETWEEN QUESTION OF LAW AND QUESTION OF FACT

[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

[FOOD AND BEVERAGE AUSTRALIA LIMITED v P J NASH PTY LTD & ANOR \(NO 2\) \[2020\] SASC 82](#)

PROCEDURE - STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY - INHERENT AND GENERAL STATUTORY POWERS - TO STAY OR DISMISS ORDERS OR PROCEEDINGS GENERALLY

APPEAL AND NEW TRIAL - PROCEDURE - SOUTH AUSTRALIA - SECURITY FOR COSTS

[R v GJERGJI \[2020\] SADC 51](#)

CRIMINAL LAW - EVIDENCE - MATTERS RELATING TO PROOF - PRIMA FACIE CASE OR CASE TO ANSWER

CRIMINAL LAW - EVIDENCE - MATTERS RELATING TO PROOF - STANDARD OF PROOF - CIRCUMSTANTIAL EVIDENCE - REASONABLE HYPOTHESIS CONSISTENT WITH INNOCENCE

CRIMINAL LAW - PROCEDURE - TRIAL HAD BEFORE JUDGE WITHOUT JURY

LEGISLATION**Commonwealth****Regulations**[Marriage \(Celebrant Registration Charge\) Determination 2020](#)

19/05/2020 - This determination sets the celebrant registration charge payable by Commonwealth-registered marriage celebrants at \$0 for the 2020-2021 financial year and repeals the Marriage (Celebrant Registration Charge) Determination 2014.

[Remuneration Tribunal Amendment Determination \(No. 3\) 2020](#)

18/05/2020 - This instrument amends the Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2019 and Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2019.

[Australian Postal Corporation \(Performance Standards\) Amendment \(2020 Measures No. 1\) Regulations 2020](#)

15/05/2020 - These regulations amend the Australian Postal Corporation (Performance Standards) Regulations 2019 to provide urgent and temporary change to performance standards for the delivery of letters to enable Australia Post to effectively manage any COVID-19 impacts on its operations, including by optimising the use of its workforce. The amendment regulations will also give Australia Post an exemption from its retail outlet requirements, should temporary closures be necessary due to workforce impacts by COVID-19.

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

Finally passed both Houses - 14 May 2020

The purpose of the Bill is to assist in preventing and controlling the entry, emergence, establishment or spread of the coronavirus known as COVID-19 into Australia or any part of Australia, by amending the Privacy Act 1988 (Privacy Act) to provide stronger privacy protections for users of the Commonwealth's COVIDSafe App and data collected through the App (COVID App data) than the protections that would otherwise apply under Australian law.

Update

The *Privacy Amendment (Public Health Contact Information) Bill* cleared the senate without amendments on 14 May 2020. The legislation seeks to allay privacy concerns within the community, replacing an interim [determination](#) issued under the Biosecurity Act when [COVIDSafe was launched](#). It introduces strict penalties of up to five years jail for those that collect, use, disclose (include outside of Australia) or decrypt COVIDSafe data for any purpose other than contact tracing.

[Fair Work Amendment \(COVID-19\) Bill 2020](#)

Introduced Senate - 12 May 2020

The Bill provides 14 days paid COVID-19 leave to all workers, including part-time, casual and gig economy workers. Paid COVID-19 leave will be added to the National Employment Standards which sets out minimum standards that cannot be displaced.

South Australia**Acts**[2020-14 COVID-19 Emergency Response \(Further Measures\) Amendment Act 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

2020-58 [Legal Practitioners \(Fee Notices\) Variation Regulations 2020](#)

2020-59 [Taxation Administration \(Information Disclosure\) Variation Regulations 2020](#)

2020-65 [Legal Practitioners \(Foreign Lawyers\) Variation Regulations 2020](#)

2020-66 [Summary Offences \(Variation of Schedule 2\) Regulations 2020](#)

2020-70 [Summary Offences \(Variation of Schedule 2\) Regulations 2020](#)

2020-71 [Liquor Licensing \(General\) \(Miscellaneous\) Variation Regulations 2020](#)

2020-73 [Child Safety \(Prohibited Persons\) Variation Regulations 2020](#)

2020-74 [Youth Justice Administration Variation Regulations 2020](#)

2020-75 [Disability Services \(Assessment of Relevant History\) Variation Regulations 2020](#)

Proclamations and Notices made

21.5.2020 p 2451 [Legal Practitioners \(Foreign Lawyers and Other Matters\) Amendment Act \(Commencement\) Proclamation 2020](#)

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