



PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 27 of the SA Public Sector Newsletter.

In this fortnight's issue, we see increased support for Victims of Crime, with the role of South Australia's Commissioner for Victims' Rights proposed to be expanded and Relationships Australia South Australia being appointed to provide therapeutic counselling services to South Australian victims of crime.

In other news, the Marshall Government has committed \$15 million to overhaul audio-visual link technology within South Australia's justice system.

We also have the usual summary of practice notes, calls for consultation, cases and new or amended 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

Police officer allegedly spat on by truck driver at SA COVID-19 checkpoint

A Victorian grain truck driver is charged with assault and other offences after allegedly spitting on a police officer at an SA border checkpoint which had been set up to stop the spread of COVID-19. (04 June 2020) <https://www.abc.net.au/news/2020-06-04/truck-driver-charged-after-allegedly-spitting-on-police-officer/12321200>

SA led the way for many reforms, so why is 'gay panic' still a defence?

South Australia is the only state not to have scrapped the so-called gay panic defence, and while the SA Government has committed to doing that, the situation is legally complex. (03 June 2020) <https://www.abc.net.au/news/2020-06-03/proposal-to-abolish-gay-panic-defence-in-sa/12311350>

Reducing red tape for businesses

National laws will govern the sale of gift cards in South Australia, under legislation introduced to Parliament. This legislation will repeal our laws, allowing the national scheme to continue to operate - reducing this layer of red tape, and eliminating any confusion as to which laws are in effect and how they operate. (03 June 2020) <https://www.agd.sa.gov.au/newsroom/reducing-red-tape-businesses>

'Act proven' to replace 'not guilty' in forensic mental health reforms

The NSW Government has listened to victims and their families and is introducing reforms to change the 'special verdict' for the defence of mental illness. "NSW will be the first state or territory in the country to empower its courts to hand down a finding of 'act proven but not criminally responsible'." (03 June 2020) <https://www.dcj.nsw.gov.au/news-and-media/media-releases/act-proven-to-replace-not-guilty-in-forensic-mental-health-reforms>

Increased supports for Victims of Crime

The role of South Australia's Commissioner for Victims' Rights will be expanded, to ensure greater supports are available to victims of crime as they make their way through the criminal justice system. (02 June 2020) <https://www.agd.sa.gov.au/newsroom/increased-supports-victims-crime>

Australian Government a world leader in eradicating modern slavery

The Australian Government has released a scoping paper on the Commonwealth Modern Slavery Statement. The Commonwealth Modern Slavery Statement will report on modern slavery risks in the Government's procurement and investment activities and explain the steps taken to identify and respond to these risks. (01 June 2020) <https://minister.homeaffairs.gov.au/jasonwood/Pages/australian-government-world-leader-eradicating-modern-slavery.aspx>

New parliamentary inquiry into family, domestic and sexual violence to include impact of COVID-19

News that the Federal Government is to set up a new parliamentary inquiry into family, domestic and sexual violence, and include the impact of the COVID-19 stay-at-home orders amongst [its terms of reference](#), is greatly welcomed. Particularly given the failure of the most recent senate inquiry into domestic violence. (01 June 2020) <https://www.lawsociety.com.au/news-and-publications/publications/monday-briefs-online/june-2020/presidents-message-1-june>

Marshall Government's stimulus to provide \$15 million for our Courts, Police and Corrections

The Marshall Liberal Government has committed \$15 million to overhaul audio-visual link technology within South Australia's justice system. Eighteen additional AVL units will also be rolled out across our prison system helping save costs associated with prisoner transport requirements and speed up the court processing wait time. (29 May 2020) <https://www.agd.sa.gov.au/newsroom/marshall-governments-stimulus-provide-15-million-our-courts-police-and-corrections>

Scott Morrison says National Cabinet here to stay, will replace COAG meetings in wake of COVID-19

The Council of Australian Governments (COAG) will be scrapped and replaced with National Cabinet meetings with a specific focus on creating jobs, Prime Minister Scott Morrison has announced. (29 May 2020) <https://www.abc.net.au/news/2020-05-29/coag-scrapped-national-cabinet-here-to-say-coronavirus-update/12300636>

High Court decides 'Palace letters' written during the Whitlam dismissal can be accessed by historian Jenny Hocking

Written correspondence between the Australian Governor-General and Her Majesty the Queen relating to the dismissal of the Australian Government in 1975, have been judged by the High Court to be Commonwealth records under the Archives Act 1983. (29 May 2020) <https://www.abc.net.au/news/2020-05-29/high-court-rules-palace-letters-released-historian-jenny-hocking/12299164>

Appointment of a new counselling service to support victims of crime

Relationships Australia South Australia (RASA) has been appointed to provide therapeutic counselling services to South Australian victims of crime over the next three years. (26 May 2020) <https://www.agd.sa.gov.au/newsroom/appointment-new-counselling-service-support-victims-crime>

Health leaders warn over 'failing' environmental laws

More than 180 health professionals have signed an open letter to environment minister, Sussan Ley, warning the government to strengthen Australia's weak environment laws, or risk the future health of the nation. (25 May 2020) <http://medicalrepublic.com.au/health-leaders-warn-over-failing-environmental-laws/29376>

IN PRACTICE AND COURTS

OAIC: COVID-19

The OAIC have developed advice and guidance on privacy and freedom of information in the context of the COVID-19 outbreak for individuals, Australian Government agencies and organisations covered by the Privacy Act 1988. (01 June 2020)

Commonwealth Modern Slavery Statement Paper

This would report on modern slavery risks in the Government's procurement and investment activities and explain the steps taken to identify and respond to those risks, and link with Australia's Modern Slavery Act 2018, the only legislation in the world requiring a Government to report on modern slavery risks in its procurement activities. (04 June 2020)

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.

[Inquiry into the exemption of delegated legislation from parliamentary oversight](#)

The Senate Standing Committee for the Scrutiny of Delegated Legislation raised significant concerns about the increasing exemption of delegated legislation from parliamentary oversight in the 2019 report. Such concerns are also relevant to the exemption of delegated legislation made in response to the COVID-19 pandemic from parliamentary oversight. The closing date for submissions is 25 June 2020.

[Intelligence and Security Legislation Amendment \(Implementing Independent Intelligence Review\) Bill 2020](#)

The Parliamentary Joint Committee on Intelligence and Security is calling for submissions on the Intelligence and Security Legislation Amendment (Implementing Independent Intelligence Review) Bill 2020. On 23 March 2020 the Senate extended the committee's reporting date to 14 October 2020. The closing date for submissions is 25 June 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. 16/2020, 1 June 2020.

South Australia

[South Australia ICAC: Prosecution pending](#)

As a result of an investigation, a 73 year old man from Felixstow has been charged with one count of abuse of public office. As an Estates Services Officer at the Public Trustee, he failed to perform or discharge an official duty or function whilst handling an estate valued at \$14 million.

[Law Society of SA: Submissions](#)

Surveillance Devices (Prescribed Circumstances) Variation Regulations 2020 and Motor Vehicle (Audio Visual Recordings) Variation Regulations 2020. (28 May 2020)

[Judgment provides clarity for psychological work injury claims](#)

The Department argued that the legal requirement that a workplace needs to be “the significant contributing cause” of an injury meant that a person who suffers a psychiatric injury can only be eligible for compensation if their work was the only cause of their psychiatric injury. In welcome news for workers, this extremely narrow interpretation of the law was dismissed by the Supreme Court. (29 May 2020)

South Australia Courts

Court Notifications

[All matters before Supreme Court Masters from 9 June 2020](#)

[All matters before District Court Masters from 1 June 2020](#)

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Vindication of Professional Reputation Arising from Defamatory Online Publications](#)

Beijing Law Review, Ian Freckelton QC.

This article identifies the growing phenomenon of professionals suing their clients/patients for online defamation of their professional status and reputation. It reviews the phenomenon of ratings websites and scrutinises the growing popularity of such forms of feedback, identifying benefits but also detriments of such sites.

[Implementation of the Commonwealth Scientific and Industrial Research Organisation \(CSIRO\) Property Investment Strategy](#)

ANAO Performance audit (Auditor-General Report No.39 of 2019–20): 04 June 2020

The objective of this audit was to assess whether the Commonwealth Scientific and Industrial Research Organisation (CSIRO) designed and is implementing its property investment strategy in a way that is delivering the intended benefits, and how any lessons learned are being reflected in a new strategy that is being developed.

[Interim Report on Key Financial Controls of Major Entities](#)

ANAO Financial statement audit (Auditor-General Report No.38 of 2019–20): 28 May 2020

This report focuses on the results of the interim financial statements audits, including an assessment of entities’ key internal controls, supporting the 2019–20 financial statements audits. This report examines 24 entities, including all departments of state and a number of major Australian government entities.

[Faster, Further, Fairer: Putting people at the heart of tackling the climate and nature emergency](#)

IPPR Environmental Justice Commission; Institute for Public Policy Research: 27 May 2020

This interim report of the IPPR Environmental Justice Commission finds that to act with the ambition and at the scale that the climate and nature emergency demands, requires a new approach.

[Justice tempered](#)

John Bottomley, Brendan Byrne, John Flett Finance Sector Union: 26 May 2020

This report finds that the Australian finance sector’s concentration on profits at all costs compromises the ethical integrity of workers in the industry.

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

[BP Refinery \(Kwinana\) Pty Ltd v Tracey \[2020\] FCAFC 89](#)

ADMINISTRATIVE LAW – application for judicial review – where writ of certiorari sought – jurisdictional error – Full Bench of the Fair Work Commission alleged to have misconceived its appellate function – could only set aside decision of Deputy President if satisfied there was an error as identified in *House v The King* – Deputy President’s conclusion that meme constituted valid basis for dismissal not reasonably open as conclusion was outside the legally permissible range of conclusions – no error by Full Bench of the Fair Work Commission – where alleged failure to consider question of fact – s 400(2) of the Fair Work Act 2009 (Cth) is a basal pre-condition to an exercise of power – no error by Full Bench of the Fair Work Commission – application dismissed. Fair Work Act 2009 (Cth) ss 385, 385(b), 387, 396, 400(2), 604, 607(3)

[Brett Cattle Company Pty Ltd v Minister for Agriculture \[2020\] FCA 732](#)

In accordance with the practice of the Federal Court in some cases of public interest, importance or complexity, the following summary has been prepared to accompany the orders made

ADMINISTRATIVE LAW – validity of delegated legislation – test for validity – representative proceeding under Pt IVA of the Federal Court of Australia Act 1976 (Cth) – livestock export industry – where public affairs broadcast revealed inhumane treatment of Australian cattle exported to Indonesian abattoirs – where broadcast resulted in public outcry and political pressure on Government – where the Minister made two control orders under s 7 of the Export Control Act 1982 (Cth) in short succession – where second control order prohibited the export of all livestock from Australia to the Republic of Indonesia for a period of 6 months – where first control order did, but second control order did not, provide power to grant exceptions – where purpose of second control order was to enable Australian Government to develop a regulatory and compliance regime to address concerns regarding slaughter of livestock in Indonesian abattoirs – where various exporters were already capable of ensuring livestock exported to the Republic of Indonesia would remain within a closed loop system and not be subject to inhumane conditions up to the time of slaughter – whether second control order was valid exercise of Minister’s power under s 7 of the Export Control Act – whether second control order invalid on basis of unreasonableness – application of proportionality tool of analysis to evaluate validity of delegated legislation – whether second control order was suitable, necessary and appropriate and adapted to achieve a legitimate end within power conferred on Minister by s 7 of the Export Control Act – second control order was unreasonable, capricious, unnecessary and inadequate in its balance – second control order invalid

TORTS – misfeasance in public office – whether Minister committed tort of misfeasance in public office by making second control order

DAMAGES – compensatory damages

EVIDENCE – where Minister did not give evidence – no direct evidence of Minister’s state of mind or of what he would have done had he exercised his power validly – where impugned decision made after Cabinet meeting – where Minister put no documents before Cabinet – whether inference open that any evidence the Minister would have given would not have assisted the respondents

Australian Meat and Live-Stock Industry Act 1997 (Cth), ss 3, 4, 10, 17

Evidence Act 1995 (Cth), s 140

Export Control Act 1982 (Cth), ss 3, 7, 25

Federal Court of Australia Act 1976 (Cth), Part IVA

Judiciary Act 1903 (Cth), s 39B

Legislative Instruments Act 2003 (Cth), ss 4, 17, 26, 38, 42

[Roadshow Films Pty Limited v Telstra Corporation Limited \(No 2\) \[2020\] FCA 769](#)

PRACTICE AND PROCEDURE – site blocking application pursuant to s 115A of the Copyright Act 1968 (Cth) – form of final orders. Copyright Act 1968 (Cth) s 115A

[Alpert and Secretary, Department of Defence \(Freedom of information\) \[2020\] AATA 1632](#)

FREEDOM OF INFORMATION – Confidentiality Order – Legal Professional Privilege – Claim of Legal Professional Privilege – Whether Legal Professional Privileged Waived – Confidentiality Order Granted

Administrative Appeals Tribunal Act 1975 (Cth);
Freedom of Information Act 1982 (Cth)

[LIONIZE GROUP PTY LTD & ANOR v MINISTER FOR TRANSPORT AND INFRASTRUCTURE & ANOR \(No 2\) \[2020\] SASCFC 44](#)

ADMINISTRATIVE LAW - JUDICIAL REVIEW - PROCEDURE AND EVIDENCE - COSTS

ADMINISTRATIVE LAW - JUDICIAL REVIEW – PROCEDURE

[THE STATE OF SOUTH AUSTRALIA \(IN RIGHT OF THE DEPARTMENT FOR EDUCATION\) v VAN HATTEM \(No 2\) \[2020\] SASCFC 45](#)

WORKERS’ COMPENSATION - ENTITLEMENT TO COMPENSATION - EMPLOYMENT RELATED INJURY, DISABILITY OR DISEASE - EMPLOYMENT SUBSTANTIAL OR SIGNIFICANT CONTRIBUTING FACTOR - TO INJURY

[EUSTICE v CHANNEL SEVEN ADELAIDE PTY LTD & ORS \[2020\] SASC 94](#)

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

LEGISLATION

Commonwealth

Act Compilation

[Privacy Act 1988](#)

29/05/2020 - Act No. 119 of 1988 as amended

South Australia

Regulations and Rules

2020-201 [Warden’s Court \(Miscellaneous\) Variation Rules 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](#)



[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.