

PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 39 of the SA Public Sector Newsletter, our last for 2020.

In this issue we see a focus on privacy, with the launch of a new national campaign urging Australians to protect themselves against cybercrime, and consumers being reminded to safeguard personal information when making Christmas purchases online.

Further privacy related news includes the release of the Information and Privacy Commissioner's first report on the privacy protections in the COVIDSafe app; this is timely given the recent update to the COVIDSafe app to improve the rate of capture of close contacts.

At the State level, a change to Labour Hire Licensing laws has resulted in labour hire fees being refunded, putting money back into the pockets of more than 300 local businesses. Businesses that have successfully applied for refunds include; IT and engineering firms, caterers, recruitment firms and medical professionals, particularly those in regional areas.

We would like to take this opportunity to wish all our readers a happy and safe holiday period and a healthy 2021. We will resume again in early February, with an edition summarising any significant news arising over the holiday period.

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

Richardson Review: Government response to the Comprehensive Review into Intelligence Legislation

The Morrison Government released the unclassified version of the Comprehensive Review of the Legal Framework of the National Intelligence Community (Richardson Review), along with the Government's response to the review. (04 December 2020) <https://www.attorneygeneral.gov.au/media/media-releases/government-response-richardson-review-4-december-2020>

Eight new Senior Counsel appointed

Eight new Senior Counsel have been appointed and announced by the Chief Justice of South Australia. (04 December 2020) <https://indaily.com.au/news/local/2020/12/04/eight-new-senior-counsel-appointed/>

National Emergency Declaration Bill

The Australian Government will be better able to respond to major emergencies through a new legislated framework for declaring national emergencies. (03 December 2020) <https://www.attorneygeneral.gov.au/media/media-releases/national-emergency-declaration-bill-3-december-2020>

Enhancing domestic violence protections for Family Court users

The Morrison Government welcomes the launch of a \$13.5 million pilot program which will enhance protections for families entering the family law system who are at risk of domestic violence. (03 December 2020) <https://www.attorneygeneral.gov.au/media/media-releases/enhancing-domestic-violence-protections-family-court-users>

Boost to SA MPs' super recommended in exchange for lobbying ban

South Australian MPs would get more money in superannuation if a code of conduct and a ban on lobbying after public life are ratified by State Parliament. (03 December 2020) <https://www.abc.net.au/news/2020-12-03/sa-mps-recommended-extra-cash-for-code-of-conduct-rules/12942532>

South Australia becomes final state to abolish 'gay panic' murder defence

The defence can no longer be used to downgrade a charge of murder to one of manslaughter if a defendant claims they were provoked to violence by a homosexual advance. (02 December 2020) <https://www.abc.net.au/news/2020-12-01/gay-panic-defence-abolished-by-sa-parliament/12940296>

New rules to detect, trace and block scam calls

The ACMA has registered new rules that require telcos to detect, trace and block scam calls. The Reducing Scam Calls Code, developed by the telco industry, was a direct recommendation of the ACMA's Combating Scams Action Plan. (02 December 2020) <https://www.acma.gov.au/articles/2020-11/new-rules-detect-trace-and-block-scam-calls>

New campaign urges Australians to protect themselves against cybercrime

Australians are being urged to strengthen their cyber defences and be alert to online threats through a new national cyber security campaign. Australia's Cyber Security Strategy 2020 represents our nation's largest ever investment in cyber security and expands the cyber security capabilities and assistance provided through the Australian Signals Directorate and the ACSC. (02 December 2020) <https://minister.homeaffairs.gov.au/peterdutton/Pages/new-cybercrime-campaign.aspx>

For information on how to protect yourself and your business from cyber threats, report a cyber incident, learn how to become an ACSC partner, and find the latest help and advice – visit cyber.gov.au.

Australia continues to combat foreign cybercriminals

Through an operation being led by the Australian Signals Directorate (ASD), ASD is using its offensive cyber capabilities to attack the cybercriminals' tools – disrupting their operations and interrupting their ability to exploit Australians. (02 December 2020) <https://minister.homeaffairs.gov.au/peterdutton/Pages/australia-combat-foreign-cybercriminals.aspx>

COVIDSafe app captures closer contacts

The Digital Transformation Agency (DTA) has released an update to the COVIDSafe app to improve Bluetooth communication across a wide range of mobile devices. (30 November 2020) <https://www.dta.gov.au/news/covidsafe-captures-close-contacts-new-herald-protocol>

Labour Hire fees refunded, saving businesses hundreds of dollars

A change to Labour Hire Licensing laws is putting money back into the pockets of more than 300 local businesses, according to the latest Consumer and Business Services statistics. (29 November 2020) <https://www.premier.sa.gov.au/news/media-releases/news/labour-hire-fees-refunded,-saving-businesses-hundreds-of-dollars>

Gambling advertising monitoring program

The ACMA did not identify any major issues with the operation of the broadcasting code restrictions. However, because of some inconsistencies in providers notifying scheduled start times, and issues with record-keeping obligations, the ACMA decided to keep monitoring how the Online Content Service Provider Rules (the Online Rules) operated for another year. (27 November 2020) <https://www.acma.gov.au/articles/2020-11/monitoring-online-gambling-advertising-restrictions-during-live-sport>

Independent National Security Legislation Monitor appointed

Attorney-General Christian Porter announced the substantive appointment of Mr Grant Donaldson SC as Australia's fourth Independent National Security Legislation Monitor (INSLM). (27 November 2020) <https://www.attorneygeneral.gov.au/media/media-releases/inslm-appointed-27-november>

Shopping up a storm? Be aware of what you share

As we head into the holiday shopping season, consumers are being reminded to safeguard personal information when making purchases online. (27 November 2020) <https://www.oaic.gov.au/updates/news-and-media/shopping-up-a-storm-be-aware-of-what-you-share/>

Addressing sexual harassment in the legal profession

Acting Equal Opportunity Commissioner Emily Strickland has been appointed to conduct a review into harassment, including sexual harassment, within the legal profession. (26 November 2020) <https://www.premier.sa.gov.au/news/media-releases/news/addressing-sexual-harassment-in-the-legal-profession>

ACCC reports on COVID-19 complainers

The Australian Competition and Consumer Commission (ACCC) has released new figures that show COVID-19-related consumer reports make up the majority of the 109,446 complaints it received in the first 10 months of this year. (25 November 2020) <https://www.accc.gov.au/media-release/travel-problems-top-list-of-covid-19-related-reports>

Training on track for APS and Ministers staff

The Australian Public Service Commission (APSC) has announced it is developing guidance and training to increase understanding about the roles played by Ministerial offices and those played by the Australian Public Service (APS). (24 November 2020) <https://www.apsc.gov.au/news/media-releases/reference-panel-strengthening-ministerial-and-aps-partnerships>

COVID-19 app privacy report good medicine

The Australian Information Commissioner and Privacy Commissioner Angelene Falk, has released her first report on the privacy protections in the COVIDSafe app. She said her office had received 11 enquiries about COVIDSafe during the reporting period, seven raising

general issues or concern. (23 November 2020) <https://www.oaic.gov.au/updates/news-and-media/oaic-issues-first-6-month-covidsafe-privacy-report/>

The Office of the Australian Information Commissioner's COVIDSafe Report May-November 2020 can be accessed [here](#).

Census planners brought to their senses

Plans being made for the national Census in 2021 has been declared 'partly effective' by the Australian National Audit office following a performance audit, implementing past Census recommendations and ensuring timely delivery of the 2021 Census. (19 November 2020) <https://www.anao.gov.au/work/performance-audit/planning-for-the-2021-census>

IN PRACTICE AND COURTS

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. 29/2020, 30 November 2020.

[The Family Court of Australia and Federal Circuit Court of Australia - Lighthouse Project update](#)

The Family Law Amendment (Risk Screening Protections) Bill 2020 legislation provides an important framework and enables the Courts to progress the very important new family-violence and risk screening initiative, the Lighthouse Project. For enquiries please email the Courts at: LighthouseProject@familycourt.gov.au. (updated 03 December 2020)

Commonwealth Integrity Commission: Consultation draft

The Australian Government has released an exposure draft of legislation to establish the new Commonwealth Integrity Commission (CIC) and make other consequences legislative amendments. A [fact sheet](#) about the key features of the CIC has also been released. The [consultation page](#) includes links to the draft legislation and further information about other issues under consideration. Closing date 12 February 2021.

[Attorney General Reminder: Privacy Act Review Issues Paper](#)

Public submissions on the Issues Paper would be accepted until 29 November 2020.

[OAIC Consultation: Requirements to collect personal information for contact tracing purposes](#)

The OAIC and state and territory privacy regulators have produced the following draft guidelines to support a nationally consistent approach to requirements for businesses and venues to collect contact information.

[ACMA Consultation: Draft Broadcasting Services \(Australian Content and Children's Television\) Standards 2020](#)

The consultation focuses on practical implementation and drafting issues relating to the program standards, and closes on 7 December. Feedback will then be considered, with the new standards planned to begin on 1 January 2021. (19 November 2020)

Current Consultations

Finance and Public Administration References Committee
New [The current capability of the Australian Public Service \(APS\)](#)

Legal and Constitutional Affairs Legislation Committee
New [Judges' Pensions Amendment \(Pension Not Payable for Misconduct\) Bill 2020](#)

Legal and Constitutional Affairs References Committee
[Nationhood, national identity and democracy](#)
On 31 August 2020 the committee's reporting date was extended to 8 December 2020.

Finance and Public Administration Legislation
Committee Consultations

[Intelligence and Security Legislation Amendment \(Implementing Independent Intelligence Review\) Bill 2020](#)
On 6 October 2020 the Senate extended the committee's reporting date to 9 December 2020.

South Australia

Court Announcements

25/11/2020 [Announcement of the District Court 25 November 2020 - Jury Trials](#)

24/11/2020 [CAA COVID-19 Information](#)

20/11/2020 [Arrangements for Courts from Monday, 23 November 2020](#)

Law Society SA Submissions

25/11/2020 [Artificial Intelligence Action Plan for All Australians: Call for Views](#)

23/11/2020 [Questionnaire regarding online dispute resolution](#)

ICAC Statements

[ICAC University Integrity Survey 2020 - report published](#)
– 03 December 2020

The Independent Commissioner Against Corruption, the Hon. Ann Vanstone QC, has published a report on the findings of a survey of more than 3,200 public officers working in South Australia's public universities.

Some key findings of the [ICAC University Integrity Survey 2020](#) are outlined.

The *ICAC University Integrity Survey 2020* builds upon the ICAC Public Integrity Survey 2018.

The *ICAC University Integrity Survey 2020* is published on the ICAC's [website](#).

[Reminder: Abuse of Powers of Attorney under the spotlight: Consultation](#)

In the face of increasing concerns about the abuse of Powers of Attorney, legal experts are asking for submissions as part of their review of existing South Australian law. A Discussion Paper, primarily for legal practitioners, has also been prepared. SALRI will consider submissions and provide a report to the South Australian Government by the end of 2020 with recommendations about how the law can be improved.

PUBLISHED - ARTICLES, PAPERS, REPORTS[2019–20 Major Projects Report](#)

ANAO: 30 November 2020

Increased transparency and accountability on progress with major Defence equipment acquisitions has been a focus of parliamentary interest for some time. The objective of this report was to provide the Auditor-General's independent assurance over the status of the selected major projects.

[Australian Institute of Judicial Administration \(AIJA\) newsletter](#)

The AIJA produces a regular newsletter.

[Law Council Update](#)

The Law Council produces a fortnightly newsletter which highlights the Law Council's important activities and advocacy, along with any relevant media and events stakeholders would be interested in.

CASES[Melbourne City Council v Telstra Corporation Limited \[2020\] FCAFC 200](#)

COMMUNICATIONS LAW – whether New Payphone Cabinets are “low-impact facilities” within the meaning of clause 6 of Sch 3 to the Telecommunications Act 1997 (Cth) exempt from planning laws – where Telstra sought planning approval to display commercial advertising on New Payphone Cabinets – where New Payphone Cabinets to be installed only after planning approval to display commercial advertising obtained – whether primary judge erred in concluding that the New Payphone Cabinets are “low-impact facilities” – appeal allowed with costs

[Montenegro v Secretary, Department of Education \[2020\] FCAFC 210](#)

ADMINISTRATIVE LAW – decision of Administrative Appeals Tribunal – decision not made “in accordance with” published Guidelines PRACTICE AND PROCEDURE – application to amend notice of appeal – a new argument on appeal – leave granted ADMINISTRATIVE LAW – adequacy of reasons Administrative Appeals Tribunal Act 1975 (Cth) ss 43, 44

[Registered Organisations Commissioner v Australian Workers' Union \[2020\] FCAFC 202](#)

ADMINISTRATIVE LAW – Appeal from a decision of the primary judge to uphold an application for judicial review of a decision of a delegate of the Registered Organisations Commissioner to conduct an investigation as to whether civil penalty provisions had been contravened – consideration of the state of mind required in order to exercise the power to conduct an investigation pursuant to s 331(2) of the Fair Work (Registered Organisations) Act 2009 (Cth) – whether an exercise of the power in s 331(2) is conditioned on a state of mind of a suspicion that there has been a contravention of a civil penalty provision – whether

the delegate held the requisite state of mind in order to exercise the power in s 331(2) – delegate's state of mind was that there were reasonable grounds to conduct an investigation – delegate not required to suspect that there had been contraventions of civil penalty provisions

STATUTORY INTERPRETATION – whether possible contraventions which occurred prior to the amendment of the Act that established the Commissioner and changed the means of identifying civil penalty provisions could be the subject of an investigation under s 331(2) – where liability for a pecuniary penalty for a contravention of a civil penalty provision was not affected by the amendment of the Act – the power to investigate in respect of possible contraventions before the amendment of the Act was not affected by the amendment – the delegate did not exceed his jurisdiction by exercising the power to investigate in respect of possible contraventions which occurred before the amendment of the Act

ADMINISTRATIVE LAW – whether interaction between the Minister and the delegate before the delegate's decision gave rise to jurisdictional error – where there was no challenge to the primary judge's finding that referral letters from the Minister to the delegate were not a material and operative reason for the delegate's decision – s 329FA of the Act does not prohibit communication between the Minister and the Commissioner – the interaction between the Minister and the delegate did not give rise to jurisdictional error – appeal allowed

Acts Interpretation Act 1901 (Cth) ss 2, 7; Administrative Decisions (Judicial Review) Act 1977 (Cth) s 5

Evidence Act 1995 (Cth) s 38

[Herron v HarperCollins Publishers Australia Pty Ltd \(No 3\) \[2020\] FCA 1687](#)

DEFAMATION – alleged defamations arising from chapter in second respondent's book published by first respondent – where imputations relate to applicants' conduct in respect of the administration of deep sleep therapy at Chelmsford Private Hospital – where imputations based on findings of Royal Commission – whether defences of justification, qualified privilege, contextual truth and fair report/fair summary apply – defences applied to conveyed imputations – applications dismissed

Defamation Act 2005 (NSW) ss 8, 25, 26, 28, 28(1)(b), 28(4), 29, 29(1), 29(4), 30, 30(1)(a), 30(1)(b), 30(1)(c), 30(3), 30(3)(a), 30(3)(b), 30(3)(c), 30(3)(d), 30(3)(e), 30(3)(f), 30(3)(g), 30(3)(h), 30(3)(i), 30(3)(j), 30(4)

Evidence Act 1995 (Cth) s 135

[Wade v J Daniels and Associates Pty Ltd \[2020\] FCA 1708](#)

CONSUMER LAW – services supplied to a consumer facing foreclosure on a home loan mortgage – alleged breach of contract and failure to comply with consumer guarantees – alleged misleading and deceptive conduct – alleged unconscionable conduct – nature and scope of services supplied – where the consumer disclosed to the supplier that the purpose of seeking services was to retain her home – whether supplier agreed or represented that its services would provide consumer with a long term solution that would enable the consumer to retain her home – whether supplier agreed or represented that supplier would procure a refinance of the consumer’s home loan – whether supplier knew that consumer would be unable to maintain loan repayments and that the supplier’s services would not prevent the bank from taking possession of the consumer’s home – whether the removal of a credit impairment from the consumer’s credit file provided any benefit to the consumer in retaining her home

PRACTICE AND PROCEDURE – application to re-open case after judgment reserved – applicable principles – application refused

STATUTORY INTERPRETATION – meaning of the phrase “financial services” in s 12BAB of the Australian Securities and Investments Commission Act 2001 (Cth) – whether a service involving negotiations with a bank to defer recovery action and to agree temporary reductions in repayments is a financial service

[Plowman and Australian Securities and Investments Commission \(Freedom of information\) \[2020\] AATA 4729](#)

FREEDOM OF INFORMATION – access to conditionally exempt documents – where documents in relation to complaint made against Applicant – where no adverse findings made against Applicant – whether adequate searches were made – where release of documents would have adverse impact in managing employees – whether disclosure is in the public interest – decision under review affirmed

Freedom of Information Act 1982 (Cth) s 11A, 31B, 47E, 47F

[Virginia Plowman and Australian Securities and Investments Commission \(Freedom of information\) \[2020\] AICmr 59](#)

Freedom of Information – Whether reasonable steps taken to locate documents – Whether disclosure would have a substantial adverse effect on the management or assessment of personnel – Whether contrary to public interest to release conditionally exempt documents – Whether material in document irrelevant to the request – (CTH) Freedom of Information Act 1982 ss 11A(5), 22, 24A and 47E(c)

[AGIUS v THE PAROLE BOARD OF SOUTH AUSTRALIA \[2020\] SASC 225](#)

ADMINISTRATIVE LAW - JUDICIAL REVIEW - GROUNDS OF REVIEW - UNREASONABLENESS

CRIMINAL LAW - SENTENCE - POST-CUSTODIAL ORDERS - PAROLE - ELIGIBILITY AND RELEASE

LEGISLATION**Commonwealth****Acts**[Services Australia Governance Amendment Act 2020](#)

26/11/2020 - Act No. 104 of 2020 as made

[National Disability Insurance Scheme Amendment \(Strengthening Banning Orders\) Act 2020](#)

26/11/2020 - Act No. 103 of 2020 as made

[Family Law Amendment \(Risk Screening Protections\) Act 2020](#)

25/11/2020 - Act No. 98 of 2020 as made

Bills[Australia’s Foreign Relations \(State and Territory Arrangements\) \(Consequential Amendments\) Bill 2020](#)

HR Consideration of Senate message - House disagreed to Senate amendment 03 Dec 2020

Consequential on the Australia’s Foreign Relations (State and Territory Arrangements) Bill 2020, the bill amends the Administrative Decisions (Judicial Review) Act 1977 to provide that decisions made under the Australia’s Foreign Relations (State and Territory Arrangements) Act 2020 are not subject to judicial review; and Foreign Acquisitions and Takeovers Act 1975 to authorise the disclosure of protected information.

[Australia’s Foreign Relations \(State and Territory Arrangements\) Bill 2020](#)

Finally passed both Houses 03 Dec 2020

Introduced with the Australia’s Foreign Relations (State and Territory Arrangements) (Consequential Amendments) Bill 2020, the bill establishes a legislative scheme for Commonwealth engagement with arrangements between State or Territory governments and foreign governments, and their associated entities.

[Electoral Amendment \(Territory Representation\) Bill 2020](#)

Senate 03 December 2020 - The Electoral Amendment (Territory Representation) Bill 2020 amends the Commonwealth Electoral Act 1918 to provide more equitable representation, through changes to the method for determining the number of House of Representatives members for the Northern Territory and the Australian Capital Territory.

Regulations

[Commonwealth Procurement Rules](#)

02/11/2020 - The updated Commonwealth Procurement Rules reflect the Australian Government's commitment to sustainable procurement practices; emphasise the importance of paying suppliers on time, particularly small businesses; and includes a new Appendix A exemption that allows for the direct engagement of a Small and Medium Enterprise for procurements up to \$200,000.

This update also includes a number of minor amendments comprising: acknowledgment of the Australian Governments reporting obligations under the Modern Slavery Act 2018

[Law Enforcement Integrity Commissioner Amendment \(Law Enforcement Agencies\) Regulations 2020](#)

27/11/2020 – This instrument amends the Law Enforcement Integrity Commissioner Regulations 2017 to expand the jurisdiction of the Australian Commission for Law Enforcement Integrity over four additional Commonwealth government agencies.

South Australia

Acts

2020-41 [Defamation \(Miscellaneous\) Amendment Act 2020](#)
Assented 26/11/2020

Proclamations

26.11.2020 p 5371 [Legal Practitioners \(Senior and Queen's Counsel\) Amendment Act \(Commencement\) Proclamation 2020](#)

26.11.2020 p 5372 [Statutes Amendment \(Licence Disqualification\) Act Commencement Proclamation 2020](#)

Regulations

2020-307 [Work Health and Safety \(Miscellaneous\) Variation Regulations 2020](#)

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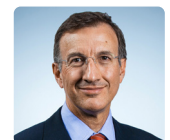
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