



## PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 40 of the SA Public Sector Newsletter, our first for 2021.

Young South Australian offenders will be offered more support to stay out of prison under the State Government's new community service order program. The not-for-profit organisation, SYC, will deliver the program in metropolitan South Australia from February, while the Department of Human Services will deliver the program in all regional and remote areas of the state.

In other news, South Australia's dedicated Court of Appeal has officially commenced operations, ushering in a new era in the state's justice system. Fourteen matters are already scheduled to be heard by the newly established court.

This issue of the Newsletter also provides the usual round-up of practice notes, cases and legislation assistance.

### 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

#### SYC to deliver new Community Service Order program

Increasing community contribution and providing a wider variety of programs and activities for young people in the justice system will be the focus of the State Government's new community service order program. (13 January 2021) <https://www.premier.sa.gov.au/news/media-releases/news/syc-to-deliver-new-community-service-order-program>

#### Beware of bitumen bandits

South Australians are again being warned against accepting unsolicited offers for bitumen work following a recent report being investigated by Consumer and Business Services. (13 January 2021) <https://www.agd.sa.gov.au/newsroom/beware-bitumen-bandits>

#### Data Privacy Day: Understanding COVID-19's Impact

Sponsored by the National Cyber Security Alliance (NCSA), Data Privacy Day is designed to "inspire dialogue and empower individuals and companies to take action" on the way personal information is collected, stored and used. (12 January 2021) <https://securityboulevard.com/2021/01/data-privacy-day-understanding-covid-19s-impact/>

#### New Partner Agency Portal

Coming in early 2021 and replacing the old Partner Agency Portal, the new portal will look similar to our partners but will have new functionality, including two factor authentication to improve security and protection against cyber-attacks, data breaches and malware. (06 January 2021) <https://www.cdpp.gov.au/news/new-partner-agency-portal>

#### Adelaide Remand Centre fined \$100,000 for prisoner Jason Burdon's clothes rope escape

The South Australian Government has fined the privately operated Adelaide Remand Centre \$100,000 over the escape of prisoner Jason Burdon. (02 January 2021) <https://www.abc.net.au/news/2021-01-02/adelaide-remand-centre-fined-100000-for-prisoner-escape/13027694>

#### Court of Appeal officially begins operations

South Australia's dedicated Court of Appeal has officially commenced operations, ushering in a new era in the state's justice system. (01 January 2021) <https://www.premier.sa.gov.au/news/media-releases/news/court-of-appeal-officially-begins-operations>

### Update to the joint statement on global privacy expectations of video conferencing companies

Moving forward, the joint signatories will undertake further engagement with these companies and will issue a more substantive public statement on their findings, learnings, and outcomes from this activity in 2021. (24 December 2020) <https://www.oaic.gov.au/updates/news-and-media/update-to-the-joint-statement-on-global-privacy-expectations-of-video-conferencing-companies/>

### Appointment of Acting Inspector-General of Intelligence and Security

The Hon Dr Christopher Jessup QC has been appointed as Acting Inspector General of Intelligence and Security. (23 December 2020) <https://www.attorneygeneral.gov.au/media/media-releases/appointment-acting-inspector-general-intelligence-and-security-23-december-2020>

## IN PRACTICE AND COURT

### Current Consultations

Legal and Constitutional Affairs Legislation Committee [Regulatory Powers \(Standardisation Reform\) Bill 2020 \[Provisions\]](#)

[Judges' Pensions Amendment \(Pension Not Payable for Misconduct\) Bill 2020](#)

Legal and Constitutional Affairs References Committee [Nationhood, national identity and democracy](#)

Select Committee on Foreign Interference through Social Media [Foreign Interference through Social Media](#)

Standing Committee for the Scrutiny of Delegated Legislation [Exemption of delegated legislation from parliamentary oversight](#)

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

### CDPP Publications and Guides

[Unfitness to be tried/to plead \[NLD\]](#) (11 January 2021)

[Guidelines for dealings between Investigators and the Commonwealth Director of Public Prosecutions](#) (06 January 2021)

### CDPP Alert: Hoax CDPP Emails

The Office of the Commonwealth Director of Public Prosecutions is warning members of the community to beware of scammers claiming to be from the CDPP. (15 January 2021)

### 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. 1/2021, 1 January 2021.

### [Digital Transformation Agency \(DTA\) Consultation: The Digital Identity Legislation Consultation Paper](#)

The paper outlines key issues surrounding the development of the legislation and poses specific questions about its design, scope and content.

### [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 closed on 29 November 2020. The submissions received in response to the issues paper are currently being considered.

### [Consultation on proposed new conduct rule](#)

The Law Council of Australia has released a consultation paper proposing that a new rule 11A be added to the Australian Solicitors' Conduct Rules. The proposed rule clarifies how existing ethical principles relating to conflicts of interest may be applied when providing short-term legal assistance services.

### [Stay Safe Online: Data Privacy Day](#)

Millions of people are unaware of and uninformed about how their personal information is being used, collected or shared in our digital society. Data Privacy Day aims to inspire dialogue and empower individuals and companies to take action. (13 January 2021)

### [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. The new standards began on 1 January 2021.

### [ACMA position paper: Misinformation and news quality on digital platforms in Australia](#)

A position paper to guide code development—includes a model code framework for consideration, including objectives and outcomes to be achieved for the benefit of Australian users of digital platforms.

### [LSC: Regulation of litigation funding schemes](#)

The Legal Services Council has amended the Legal Profession Uniform General Rules 2015 with effect from 22 August 2020 so the prohibitions in s 258(1) and (3) of the Legal Profession Uniform Law do not apply in relation to litigation funding schemes now regulated as managed investment schemes. The new rule will operate for 12 months to allow for consultation.

## Guiding those experiencing family violence and other safety risks through the family law system

The Lighthouse Project Pilot commences in Brisbane and Parramatta on 11 January 2021. The Pilot introduces risk screening, triage and case management, and the Evatt List to the Federal Circuit Court (FCC). The FCC released [Practice Direction No. 3 of 2020 – Lighthouse Project and Evatt List](#) which sets out the procedure for Lighthouse Project related family law proceedings in the Court.

### South Australia

#### Court Announcements

##### [Magistrates Court of SA: Arrangement for Magistrates Court Civil and Criminal from 12 January 2021](#)

Consistent with SA Government guidelines relating to the management of public places during the COVID-19 health emergency, the Magistrates Court issues the following revised directives to parties and practitioners regarding appearances in Court from 12 January 2021. These measures will be in operation until further notice.

#### Court of Appeal

From the 18 January 2021, all practitioners must use CourtSA to lodge Court of Appeal proceedings (where the functionality to do so exists). Self Represented Litigants can choose to continue to lodge over the counter or use CourtSA.

#### Law Society SA Submissions

14/12/2020 [COVID-SAFE Check-In](#)

#### Law Society SA: Advocacy Notes

17/12/2020 [Advocacy Notes - December 2020](#)  
Advocacy Notes is a monthly newsletter providing the latest news and advocacy from the Law Society

## PUBLISHED - ARTICLES, PAPERS, REPORTS

### [Administering Regulation](#)

ANAO: 14 January 2021  
This edition of audit insights summarises key messages for all Australian Government entities from a series of recent Australian National Audit Office (ANAO) performance audits assessing the planning and implementation of regulation activities. It discusses the importance of using available data and intelligence information to develop and execute risk-based regulatory activities targeted in proportion to the impacts of non-compliance.

### [PGPA Act Flipchart and List](#)

Released 04 January 2021  
Flipchart of Commonwealth entities and companies - The Flipchart is a reference of all non-corporate and corporate Commonwealth entities and companies. Commonwealth entities and companies are government bodies that are subject to the [Public Governance, Performance and Accountability Act 2013](#) (the PGPA Act).

### [OAIC 2020 highlights infographic](#)

OAIC: 15 December 2020  
See OAIC's infographic to learn more about how they worked to increase public trust and confidence in access to government-held information and protection of personal information in 2020.

### [The law on judicial bias: A primer](#)

ALRC: 14 December 2020  
The first background paper provides an introductory summary and overview of key aspects of the law on judicial bias as it relates to the Australian federal judiciary.

### [Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2020](#)

ANAO: Report No 25, 17 December 2020  
This report complements the Interim Report on Key Financial Controls of Major Entities financial statement audit report published in May 2020. It provides a summary of the final results of the audits of the Consolidated Financial Statements for the Australian Government and the financial statements of Australian Government entities for the period ended 30 June 2020.

### [The Australian Taxation Office's Management of Risks Related to the Rapid Implementation of COVID-19 Economic Response Measures](#)

ANAO: Report No 24, 14 December 2020  
The objective of the audit was to assess whether the Australian Taxation Office (ATO) has effectively managed risks related to the rapid implementation of COVID-19 economic response measures.

### [COVID-19 Hotel Quarantine Inquiry final report and recommendations](#)

COVID-19 Hotel Quarantine Board of Inquiry;  
Government of Victoria: 21 December 2020  
The second wave of COVID-19 cases in Victoria led to a series of strict restrictions in the state and had devastating impacts on peoples' lives, livelihoods and mental health. This inquiry final report finds that there were serious failings, in terms of provision of pandemic.

### [Commonwealth Ombudsman's activities in monitoring controlled operations: 2019-20](#)

Ombudsman: 09 December 2020

## CASES

### [Gerner v Victoria \[2020\] HCA 48](#)

Constitutional law (Cth) – Implications from Constitution – Where directions made under s 200(1)(b) and (d) of Public Health and Wellbeing Act 2008 (Vic) restricted movement of persons within Victoria – Where plaintiffs sought declarations that directions and s 200(1)(b) and (d) of Public Health and Wellbeing Act were invalid as an infringement of a freedom to move wherever one wishes for whatever reason ("freedom of movement") said to be implicit in Constitution – Where

defendant demurred on ground that Constitution did not imply freedom of movement – Whether freedom of movement implicit in federal structure of Constitution – Whether freedom of movement protected by implied freedom of political communication – Whether freedom of movement implicit in s 92 of Constitution

#### [Onus v Minister for the Environment \[2020\] FCA 1807](#)

ADMINISTRATIVE LAW – application for judicial review challenging the lawfulness of the Minister’s decision dated 6 August 2020 not to make declarations under ss 10 and 12 of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth) (Act) in relation to the effect on an area and certain trees claimed to be of particular significance for Aboriginals relating to the construction and alignment of a section of the Western Highway between Ararat and Buangor in Victoria – six grounds of judicial review raised – challenge to the lawfulness of the Minister’s decision in relation to the application for a declaration under s 10 of the Act dismissed – Minister’s decision in respect of the application for a declaration under s 12 of the Act found to be invalid in law and set aside – whether the Minister’s decision regarding ss 10 and 12 was severable – Minister directed to refer the s 12 application for reconsideration and determination according to law by another Minister with responsibility for administering the Act

#### [Repatriation Commission v Fill \[2020\] FCA 1812](#)

ADMINISTRATIVE LAW – appeal against decision of Administrative Appeals Tribunal to set aside decision of Repatriation Commission affirming decision that respondents were ineligible for service pension – whether Tribunal made errors of law in assessing rate of service pension under Veterans’ Entitlement Act 1986 (Cth) – appeal allowed – matter remitted to be heard and determined according to law

#### [Pitman and Commissioner of Taxation \(Taxation\) \[2020\] AATA 5308](#)

TAXATION – whether bankrupt person charged with criminal offences relating to a tax debt may apply to the Tribunal for an extension of time within which to lodge an application for review of a reviewable objection decision – whether dissatisfied with reviewable objection decision – no standing to make an application. Acts Interpretation Act 1901; ss 29 and 33(2A); Administrative Appeals Tribunal Act 1975; ss 25(6), 29(1)-(8), 42A, 42B, 43 and 69BA

#### [‘WI’ and Attorney-General’s Department \(Freedom of information\) \[2020\] AICmr 66](#)

Freedom of Information – Whether reasonable steps taken to locate documents – (CTH) Freedom of Information Act 1982 s 24A - Documents explaining and justifying the rationale for prohibiting a patient from access to the treatment recommended by licenced medical practitioners

#### [‘WJ’ and Services Australia \(Freedom of information\) \[2020\] AICmr 67](#)

Freedom of Information – Whether disclosure of personal information unreasonable – Whether contrary to public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5), 47F

#### [‘WN’ and Inspector General of Taxation \(Freedom of information\) \[2020\] AICmr 71](#)

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 and 47E(d)

#### [AMACA PTY LTD v WERFEL \[2020\] SASCFC 125](#)

APPEAL AND NEW TRIAL - APPEAL - GENERAL PRINCIPLES - INTERFERENCE WITH JUDGE’S FINDINGS OF FACT - FUNCTIONS OF APPELLATE COURT - FINDINGS ON ISSUE OF NEGLIGENCE - GENERALLY

APPEAL AND NEW TRIAL - APPEAL - GENERAL PRINCIPLES - RIGHT OF APPEAL - WHEN APPEAL LIES - ERROR OF LAW - PARTICULAR CASES INVOLVING ERROR OF LAW - FAILURE TO GIVE REASONS FOR DECISION - ADEQUACY OF REASONS

#### [KIRSTEN v MILLER \[2020\] SASCFC 129](#)

SUCCESSION - PROBATE AND LETTERS OF ADMINISTRATION - PROCEDURE

SUCCESSION - CONSTRUCTION AND EFFECT OF TESTAMENTARY DISPOSITIONS - PARTICULAR TESTAMENTARY DISPOSITIONS - CONDITIONS AND GIFTS OVER - DISPUTING WILL OR BRINGING ACTION AGAINST EXECUTOR OR TRUSTEE

APPEAL AND NEW TRIAL - APPEAL - PRACTICE AND PROCEDURE - SOUTH AUSTRALIA - WHEN APPEAL LIES - BY LEAVE OF COURT

The Judge heard the application for advice and directions ex parte after the appellant had said that he sought to be heard on the application. The appellant contends that the Judge erred by hearing and determining the application without giving him the opportunity to be heard in opposition to it. The appellant also contends that he should have been given access to the affidavits filed in support of the application

Held by the Court: 1. The application for leave to appeal is to be heard at the same time as the appeal

#### [WILSON PASTORAL INTERNATIONAL PTY LTD v GEORGE STREET STEEL PTY LTD \(No 2\) \[2020\] SASCFC 126](#)

PROCEDURE - CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS - JUDGMENTS AND ORDERS - AMENDING, VARYING AND SETTING ASIDE JUDGMENTS AND ORDERS

**PROCEDURE - CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS - JOINDER OF CAUSES OF ACTION AND OF PARTIES - PARTIES**

Held per Tilmouth AJ (Kourakis CJ and Parker J agreeing), dismissing the application:

Recalling or setting aside the judgment against WPA would infringe the fundamental principles of finality and consequently, the due administration of justice. To do so in the circumstances would perpetuate a triumph of form over substance

**LEGISLATION****Commonwealth****Bills**[National Emergency Declaration \(Consequential Amendments\) Bill 2020](#)

Assent Act no: 129 15 December 2020  
Introduced with the National Emergency Declaration Bill 2020 to implement a recommendation of the Royal Commission into National Natural Disaster Arrangements, the bill amends: 24 Acts, four regulations and four ordinances that contain powers that are used by the Commonwealth when responding to, or supporting the recovery from, emergencies to enable the use of alternative or simplified statutory tests to streamline the exercise of those powers where a national emergency has been declared; and National Emergency Declaration Act 2020 and Radiocommunications Act 1992 to make amendments contingent on the commencement of the Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020.

[Regulatory Powers \(Standardisation Reform\) Bill 2020 \[Provisions\]](#)

On 10 December 2020 the Senate referred the provisions of the Regulatory Powers (Standardisation Reform) Bill 2020 to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 19 February 2021. The deadline for submissions to the inquiry was 13 January 2021.

[National Emergency Declaration Bill 2020](#)

Assent Act no: 128 15 December 2020  
Introduced with the National Emergency Declaration (Consequential Amendments) Bill 2020 to implement a recommendation of the Royal Commission into National Natural Disaster Arrangements, the bill: establishes a framework for the declaration of a national emergency by the Governor-General, on the advice of the Prime Minister; enables ministers to suspend, vary or substitute administrative requirements in legislation they administer in certain circumstances; and enables the Prime Minister to require Commonwealth entities to report on available stockpiles, assets and resources, and options and recommendations to respond to a national emergency.

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

Assent Act no: 127 15 December 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**[Electoral and Referendum Amendment \(AUSTRAC\) Regulations 2020](#)

22/12/2020 - This instrument amends the permitted purpose in the Electoral and Referendum Regulation 2016 for which the Australian Transaction Reports and Analysis Centre (AUSTRAC) may use electoral Roll information.

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

21/12/2020 - This instrument repeals and replaces the Broadcasting Services (Australian Content) Standard 2016 and the Children's Television Standards 2009 to reduce and simplify the Australian content obligations that apply to commercial television broadcasting licensees, while retaining important safeguards for the protection of children.

**South Australia****Acts**[2020-42 Spent Convictions \(Decriminalised Offences\) Amendment Act 2020](#)

No 42 of 2020 assented to 10.12.2020

[2020-43 Statutes Amendment \(Abolition of Defence of Provocation and Related Matters\) Act 2020](#)

No 43 of 2020 assented to 10.12.2020

[2020-45 Evidence \(Vulnerable Witnesses\) Amendment Act 2020](#)

No 45 of 2020 assented to 10.12.2020

**Proclamations**[17.12.2020 p 5744 Statutes Amendment \(Bail Authorities\) Act \(Commencement\) Proclamation 2020](#)[17.12.2020 p 5744 Statutes Amendment \(Screening\) Act \(Commencement\) Proclamation 2020](#)[17.12.2020 p 5745 Youth Court \(Designation and Classification of Cross border Magistrates\) Proclamation 2020](#)[17.12.2020 p 5746 Youth Court \(Designation and Classification of Magistrate\) Proclamation 2020](#)**Regulations**[2020-317 Bail \(Bail Authorities\) Variation Regulations 2020](#)[2020-318 Cross-border Justice \(Bail Authorities\) Variation Regulations 2020](#)

No 318 of 2020 published in Gazette 17.12.2020 p 5776

## 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](http://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.