



## PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 42 of the SA Public Sector Newsletter.

South Australia's identity theft laws are set for an overhaul, with reforms proposed to ensure the relevant legislation meets modern standards and can better target and prosecute perpetrators, including by creating a new offence of identity theft. The Attorney-General has encouraged members of the public to have their say in relation to the proposed reforms.

In other law reform news, people charged with causing death by dangerous driving, or reasonably believed to have committed the offence, will have their licences disqualified or suspended on the spot, under new laws introduced to Parliament on 3 February, with a view to better protect road users.

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

#### Consultation begins on Royal Commission reforms

South Australians are being encouraged to have their say on changes to the state's Royal Commission laws. Attorney-General Vickie Chapman said the move would ensure South Australia had a modern, robust scheme to manage important, investigations and inquiries into the future. (12 February 2021) <https://www.premier.sa.gov.au/news/media-releases/news/consultation-begins-on-royal-commission-reforms>

#### Australian Senate endorses News Media Bargaining Code

Latest approval takes bargaining code between news media companies and Google and Facebook a step closer to law. Australia's controversial and internationally debated News Media Bargaining Code is a step closer to being enacted into legislation following the Senate's decision to pass the Media and Digital Platforms Mandatory Bargaining Code Bill 2020. (12 February 2021) <https://www.cmo.com.au/article/686261/australian-senate-endorses-news-media-bargaining-code/>

View the [Treasury Laws Amendment \(News Media and Digital Platforms Mandatory Bargaining Code\) Bill 2020](#)

#### Health sector targeted for cyber-crime

The Australian Cyber Security Centre (ACSC) has published a security snapshot of key cyber threats in the health sector, advising hospitals, research organisations and others on how to protect themselves from cyber security threats. (11 February 2021) <https://www.cyber.gov.au/acsc/view-all-content/news/health-sector-snapshot>

#### New era for South Australia's judicial system

South Australia's new Court of Appeal held a Special Sitting, marking the start of a new era in the State's judicial history. Five judges have been appointed to the Court of Appeal with Justice Trish Kelly named the Court's President. (09 February 2021) <https://www.premier.sa.gov.au/news/media-releases/news/new-era-for-south-australias-judicial-system>

#### Proposed voluntary assisted dying laws could create hurdles for regional South Australians

Voluntary assisted dying is set to be debated in the South Australia Parliament, but there are concerns the process could prove difficult for regional people with limited access to doctors. (09 February 2021) <https://www.abc.net.au/news/2021-02-09/voluntary-assisted-dying-regional-sa-could-be-locked-out/13135166>

### Research finds teens in online danger

Australia's eSafety Commissioner, Julie Inman Grant said the research, The Digital Lives of Aussie Teens, showed that while the teens' increased use of technology offered many benefits, there was a distinct downside – "dealing with negative online experiences such as unwanted contact and cyber-bullying". (09 February 2021) <https://www.esafety.gov.au/about-us/newsroom/safer-internet-day-three-ten-teens-contacted-online-strangers>

### Energy suppliers to face tougher laws

Ms Savage said the new and stronger penalties were introduced provide greater incentives for businesses to comply with laws designed to protect Australian electricity and gas consumers, and provides a significant scaling up of the penalties available to the courts and the AER. (08 February 2021) <https://www.aer.gov.au/news-release/stronger-penalties-demand-energy-businesses-prioritise-compliance-with-the-law>

### Ombudsman makes call on telecommunications

The Commonwealth Ombudsman has called for greater overall awareness from some public service Agencies relating to their obligations when intercepting communications under the Telecommunications (Interception and Access) Act and other compliance controls. (08 February 2021) [https://www.ombudsman.gov.au/\\_\\_\\_data/assets/pdf\\_file/0014/112235/2018-19-Chapter-Annual-Report.pdf](https://www.ombudsman.gov.au/___data/assets/pdf_file/0014/112235/2018-19-Chapter-Annual-Report.pdf)

### Record domestic violence funding in SA

The safety of at-risk women and children remains a Marshall Liberal Government top priority, with record funding committed to supporting South Australians experiencing domestic, family and sexual violence, as well as new prevention measures. (07 February 2021) <https://www.premier.sa.gov.au/news/media-releases/news/record-domestic-violence-funding-in-sa>

### Have 'Your Say' on identity theft law reform

South Australia's identity theft laws are set for an overhaul, with reforms proposed to ensure our legislation meets modern standards and can better target and prosecute perpetrators. (05 February 2021) <https://www.premier.sa.gov.au/news/media-releases/news/have-your-say-on-identity-theft-law-reform>

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

Attorney-General, Christian Porter, announced the substantive appointment of the Hon Dr Christopher Jessup QC as the Inspector General of Intelligence and Security. (04 February 2021) <https://www.attorneygeneral.gov.au/media/media-releases/appointment-inspector-general-intelligence-and-security-4-february-2021>

### Australian-first OMCG exit and prevention program launched

Minister for Police and Corrective Services and Minister for Fire and Emergency Services, the Honourable Mark Ryan MP, joined Commissioner Katarina Carroll to officially launch Australia's first exit program for former outlaw motorcycle gang members wanting a lasting way out of gang life. (04 February 2021) <https://statements.qld.gov.au/statements/91413>

### Better protections for road users

People charged with causing death by dangerous driving, or reasonably believed to have committed the offence, will have their licences disqualified or suspended on the spot, under new laws to be introduced to Parliament. Attorney-General Vickie Chapman said the move would better protect road users from the dangers posed by people who kill others by driving recklessly. (03 February 2021) <https://www.agd.sa.gov.au/newsroom/better-protections-road-users>

### Medicinal cannabis driving bill removes injustice

Current drug driving laws are not fair to drivers who can lose their license for taking prescribed cannabis when there is no evidence of impaired driving, says the Australian Lawyers Alliance (ALA) in response to the Road Traffic (Medicinal Cannabis) Amendment Bill 2021 being introduced into parliament in South Australia. (03 February 2021) <https://www.lawyersalliance.com.au/news/medicinal-cannabis-driving-bill-removes-injustice>

### Consumers let down as Govt fails to action Banking RC two years after findings released

Super fund members, bank customers and insurance policy holders have all been let down by the Federal Government's failure to implement the recommendations of the Financial Services Royal Commission at the second anniversary of the release of Commissioner Hayne's findings, says the Australian Lawyers Alliance (ALA). (01 February 2021) <https://www.lawyersalliance.com.au/news/consumers-let-down-as-govt-fails-to-action-banking-rc-two-years-after-findings-released>

### Marshall Government delivers to South Australians once again

The national 2021 Report on Government Services (RoGS) outlines a positive snapshot of the Marshall Liberal Government's delivery of important services to the South Australian community. (01 February 2021) <https://www.premier.sa.gov.au/news/media-releases/news/marshall-government-delivers-to-south-australians-once-again>

## IN PRACTICE AND COURT

### HCA Practice Directions

#### [Opening of the Registry](#)

High Court of Australia, 1 of 2021

This Practice Direction takes effect on 8 February 2021. 2. Practice Direction No 2 of 2020 is revoked. 3. The office hours of the Registry shall be from 9.00 am to 1.00 pm and from 2.00 pm to 5.00 pm.

## Federal Court of Australia - Updates

The February Full Court and Appellate sitting period commenced on Monday, 1 February 2021.

### *Streaming pilot*

The Court is preparing to roll out a streaming platform, to be piloted in some upcoming Full Court matters. The platform will enable the members of the public to live stream a hearing via a fixed link accessible on the Court list and the Court's website, avoiding the need to obtain access to a specific Teams link and reducing the complexity of admitting and managing numerous parties in a Teams meeting.

### [OAIC: FOI disclosure log](#)

The information described in the disclosure log has been released by the OAIC under the Freedom of Information Act 1982 (FOI Act) and is available for public access.

08 February 2021 - FOI request - A copy of NobleOak's Notifiable Data Breach Form

## Current Consultations

Environment and Communications References Committee

### [Press Freedom](#)

On 9 February 2021, the reporting date was extended from 17 February 2021 to 4 March 2021.

Finance and Public Administration Legislation Committee

### [Data Availability and Transparency Bill 2020 \[Provisions\] and Data Availability and Transparency \(Consequential Amendments\) Bill 2020 \[Provisions\]](#)

### [Operation and management of the Department of Parliamentary Services](#)

On 13 November 2020, the reporting date was extended to 11 March 2021.

### [Commonwealth Electoral Amendment \(Banning Dirty Donations\) Bill 2020](#)

Senate referred the Commonwealth Electoral Amendment (Banning Dirty Donations) Bill 2020 for inquiry and report by 16 March 2021.

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 \(APS\)](#)

### [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. 3/2021, 8 February 2021.

## 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.

### [ACMA reminder, NBN consumer experience rules](#)

ACMA has enhanced [NBN consumer experience rules](#) to protect Australians during the final phase of the NBN migration. The enhancements have been made to the following rules: [Service Continuity Standard](#); [Service Migration Determination](#); [Consumer Information Standard](#); [Complaints Handling Standard](#).

The enhancements to the Service Continuity Standard and Service Migration Determination will start on 14 December 2020, while most enhancements to the Complaints Handling Standard and Consumer Information Standard will start on 1 April 2021.

## 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. See the [Legal Services Council website](#).

## South Australia

Under the proposed reforms, offences would be created to deal with failure to comply with either a Royal Commission or a Commission of Inquiry. To view the report of the Honourable Ann Vanstone QC, learn more about the changes and make a submission, visit <https://yoursay.sa.gov.au/royal-commissions-laws>.

SA Government are proposing a series of reforms that ensure laws are contemporary and adequately address this serious issue. [Click here](#) to have your say on the proposed reforms. Submissions close at 5pm on Friday, 26 February.

## Court Announcements

09/02/2021 [Arrangements for the Youth Court from 15 February 2021](#)

**PUBLISHED - ARTICLES, PAPERS, REPORTS****Commonwealth Ombudsman Reports**

[A report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the Telecommunications \(Interception and Access\) Act 1979](#)

For the period: 1 July 2018 to 30 June 2019  
(5 February 2021)

**[The digital lives of Aussie teens](#)**

eSafety Commissioner: 11 February 2021

New research has found that three in 10 teenagers have been contacted online by strangers, and spending around two hours a day online and on average used four different social media services. There is also a good chance they have had a negative experience online.

**CASES****[Oakey Coal Action Alliance Inc v New Acland Coal Pty Ltd \[2021\] HCA 2](#)**

Appeal allowed. Administrative law – Apprehended bias – Relief – Jurisdiction of inferior courts – Where first respondent applied for additional mining leases and amendment to existing environmental authority (“applications”) – Where appellant and others lodged objections to applications – Where first decision of Land Court of Queensland (“Land Court”) recommended that both applications be rejected – Where Supreme Court of Queensland rejected arguments by first respondent that recommendations made by Land Court affected by apprehended bias, but held recommendations involved errors of law and remitted certain matters to Land Court for reconsideration – Where second decision of Land Court constituted by different Member recommended applications be approved subject to conditions – Where amendment to environmental authority granted by delegate of second respondent – Where Court of Appeal allowed cross-appeal by first respondent and held that recommendations in Land Court’s first decision affected by apprehended bias – Whether open to Court of Appeal, after finding that recommendations in Land Court’s first decision affected by apprehended bias, not to refer matters to which recommendations related back to Land Court for full reconsideration, and instead to make consequential orders limited to declaration that procedural fairness not observed – Whether matters to which recommendations related should not be referred back to Land Court on basis of discretion to refuse relief. Environmental Protection Act 1994 (Qld), Ch 5. Judicial Review Act 1991 (Qld), s 30. Land Court Act 2000 (Qld). Mineral Resources Act 1989 (Qld), Ch 6.

**[Kingdom of Spain v Infrastructure Services Luxembourg S.a.r.l. \[2021\] FCAFC 3](#)**

ARBITRATION – international arbitration – applications for recognition and enforcement of awards of the International Centre for Settlement of Investment Disputes (ICSID) under s 35(4) of the International Arbitration Act 1974 (Cth) (‘Arbitration Act’)

PRIVATE INTERNATIONAL LAW – foreign state immunity – where foreign state respondent asserts sovereign immunity – interaction between s 9 of the Foreign States Immunities Act 1985 (Cth) (‘Immunities Act’) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) which is given the force of law by s 32 of the Arbitration Act – where s 9 of the Immunities Act provides that a foreign state is immune from the jurisdiction of the courts of Australia in a proceeding – where s 10 of the Immunities Act provides that a foreign state is not immune in a proceeding in which it has submitted to jurisdiction whether by agreement or otherwise – whether by Art 54(2) of the ICSID Convention the foreign state respondent has agreed to submit itself to the jurisdiction within the meaning of s 10 of the Immunities Act

PUBLIC INTERNATIONAL LAW – foreign state immunity – interpretation of the ICSID Convention – whether the ICSID Convention excludes any claim for foreign state immunity in proceedings for the recognition and enforcement of an award – meaning of recognition and enforcement in Art 54 and execution in Art 55 – where Art 55 provides that nothing in Art 54 shall be construed as derogating from the law in force in any Contracting State in relation to immunity from execution

Foreign States Immunities Act 1985 (Cth) Pts II, IV; ss 3, 7, 9, 10; International Arbitration Act 1974 (Cth) Pt IV; ss 32, 34, 35; Judiciary Act 1903 (Cth) s 39B; Federal Court Rules 2011 (Cth) r 36.32; Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

**[Ashby v Commonwealth of Australia \[2021\] FCA 40](#)**

ADMINISTRATIVE LAW – application for review of decision to refuse application for an act of grace payment under s 65(1) of the Public Governance, Performance and Accountability Act 2013 (Cth) – where act of grace payment sought for the purpose of satisfying legal fees incurred in litigation relating to alleged conduct by a member of the Parliament of Australia – where previous litigation discontinued before trial by the applicant due to purported financial pressure – where the Member of Parliament was granted an act of grace payment in relation to his legal fees – whether there was an error by the delegate of the Minister in failing to assess the claim in support of the act of grace application that the applicant was a whistle-blower, alternatively that this claim was not assessed to the requisite level of detail –

whether the delegate's finding that there was no basis for an argument that the previous act of grace payment to a litigant had an influence over the litigation was irrational – whether the delegate failed to have regard to relevant evidence that the proceeding was not highly politicised – whether there was any error in the delegation rendering the decision-making power of the delegate void – held: the delegate did not fail to assess the whistle-blower claims made by the applicant and was not required to give further or better consideration to these claims – the delegate's finding that the act of grace payment made to the Member of Parliament did not influence the litigation was not irrational and was not outside of the exercise of their jurisdiction – there was no failure to deal with evidence relating to the claims that the proceeding was highly politicised – the applicant's construction of the delegation power was not sensible or pragmatic and the conduct of the delegate in this case was clearly contemplated by the delegation's authorising Act – application dismissed with costs

Administrative Decisions (Judicial Review) Act 1977 (Cth) ss 5, 16)

Fair Work Act 2009 (Cth)

Financial Management and Accountability Act 1997 (Cth) s 33

Secretary of the Department of Finance (Cth), Public Governance, Performance and Accountability (Finance Secretary to Finance Officials) Delegation 2020 (No 1) (22 January 2020) sch 1A pt 11

Members of Parliament (Staff) Act 1984 (Cth)

Judiciary Act 1903 (Cth) s 39B

Public Governance, Performance and Accountability Act 2013 (Cth) ss 65(1), 107, 109

Public Governance, Performance and Accountability Rule 2014 (Cth) s 24

Safety, Rehabilitation and Compensation Act 1988 (Cth)

#### Department of Home Affairs privacy determination

This matter is the first representative action where we have found compensation for non-economic loss payable to individuals affected by a data breach. It recognises that a loss of privacy or disclosure of personal information may impact individuals and depending on the circumstances, cause loss or damage. The full determination can be found [here](#).

#### ['WP' and Secretary to the Department of Home Affairs \(Privacy\) \[2021\] AICmr 2](#)

Privacy – Privacy Act 1988 (Cth) – Information Privacy Principles – IPP 4 – Data security failure – IPP 11 – Unauthorised disclosure of personal information – Breaches substantiated – Compensation awarded – s 52(4)(a) – Manner in which the amount of compensation

payable to class members is to be calculated – s 52(5)(b) – Process for determining any dispute regarding the entitlement of a class member to the payment

#### [FLOWERS v FINLAYSON \[2021\] SASCFC 3](#)

Supreme Court - Full Court 3/02/2021

PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND DISCIPLINE - DISCIPLINARY PROCEEDINGS - SOUTH AUSTRALIA - APPEALS

PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND DISCIPLINE - DISCIPLINARY PROCEEDINGS - SOUTH AUSTRALIA - PROCEEDINGS IN TRIBUNALS

## LEGISLATION

### Commonwealth

#### Act Compilation

##### [Administrative Appeals Tribunal Act 1975](#)

02/02/2021 - Act No. 91 of 1975 as amended

#### Regulation

##### [Australian Security Intelligence Organisation Amendment \(Permitted Disclosure\) Regulations 2021](#)

05/02/2021 - This instrument amends the Australian Security Intelligence Organisation Regulation 2016 to make consequential and technical updates following the commencement of Schedule 1 to the Australian Security Intelligence Organisation Amendment Act 2020.

#### Bills

##### [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.

### South Australia

#### Acts

##### 2021-1 [COVID-19 Emergency Response \(Expiry\) Amendment Act 2021](#)

##### 2021-2 [South Australian Employment Tribunal \(Costs\) Amendment Act 2021](#)

##### 2021-3 [Statutes Amendment \(National Energy Laws\) \(Omnibus\) Act 2021](#)

##### 2021-4 [Radiation Protection and Control Act 2021](#)

#### Regulations

##### 2021-11 [Fair Trading \(Fuel Pricing Information\) Regulations 2021](#)

### Proclamations and Notices

##### 11.2.2021 p 345 [Fire and Emergency Services \(Miscellaneous\) Amendment Act \(Commencement\) Proclamation 2021](#)

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