



## PUBLIC SECTOR NEWSLETTER - SOUTH AUSTRALIA

Welcome to Issue 49 of the SA Public Sector Newsletter.

A Bill to give South Australians the power to decide whether they want greater freedom of choice in shop trading has been introduced to the SA State Parliament. The "Referendum (Retail Trading) Bill" will enable SA electors to cast their vote on extending shop trading hours in an historic referendum to be held on the same day as next year's state election. It would be the first referendum held in SA in over 30 years and only the tenth in the state's history.

In other SA Parliamentary news, new laws have been passed to enable eligible South Australian public sector workers to choose their preferred superannuation fund, rather than mandatory investment in the State's Triple S Superannuation scheme.

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

**Chief entrepreneur's appearance at SA Liberal fundraiser cleared by commissioner**

South Australia's public sector employment commissioner says the state's chief entrepreneur did not breach public sector ethics by speaking at a Liberal Party fundraiser in Adelaide. (22 May 2021) <https://www.abc.net.au/news/2021-05-22/chief-entrepreneur-cleared-after-speaking-at-liberal-fundraiser/100157806>

### Factsheets address abuse in the workplace

Safe Work Australia and eSafety have produced fact sheets warning employers and employees of the dangers of online abuse in the workplace, and outlining measures to prevent it. The fact sheets define online abuse as "behaviour that uses technology to threaten, intimidate, bully, harass or humiliate someone". (20 May 2021) <https://www.safeworkaustralia.gov.au/online-abuse-workplace>

### ACSC lifts efforts to protect infrastructure

The Australian Cyber Security Centre (ACSC) has announced its new Critical Infrastructure Uplift Program (CI-UP) aimed at raising the security levels of critical infrastructure organisations. It noted the Government was assisting in this effort through proposed amendments to the Security of Critical Infrastructure Act 2018. (20 May 2021) <https://www.cyber.gov.au/acsc/view-all-content/news/critical-infrastructure-uplift-program-ci>

### Attorneys seek joint approach to violence laws

Attorney-General, Senator Michaelia Cash said the new multi-jurisdictional initiative, aimed at ensuring victims and survivors of sexual violence and coercive control, had similar protections and legal avenues throughout Australia. (20 May 2021) <https://www.attorneygeneral.gov.au/media/media-releases/leading-national-approach-justice-17-may-2021>

### Lycamobile pays \$600,000 penalty for public safety failures

Lycamobile Pty Ltd (Lycamobile) has paid an infringement notice of \$604,800 after the ACMA found prolonged and large-scale customer data failures, which could have put people in danger. ACMA Chair Nerida O'Loughlin said the Integrated Public Numbers Database (IPND) is used by emergency services when responding to Triple Zero (000) calls from the public. (19 May 2021) <https://www.acma.gov.au/articles/2021-05/lycamobile-pays-600000-penalty-public-safety-failures>

### South Australia's 36th Governor announced

Premier Steven Marshall has announced that Her Majesty The Queen has approved the appointment of Ms Frances Adamson as the next Governor of South Australia. (19 May 2021) <https://www.premier.sa.gov.au/news/media-releases/news/south-australias-36th-governor-announced>

### Comment invited on Family Law change

The Attorney General's Department is calling for feedback on a proposed new framework to simplify the property provisions in the Family Law Act 1975. The ALRC also recommended simplifying the list of matters that a court may take into account. (17 May 2021) <https://www.ag.gov.au/families-and-marriage/consultations/new-decision-making-framework-property-matters-family-law>

### Ombudsman tells Education Providers how to apologise

The Commonwealth Ombudsman's Office has issued a new factsheet to education providers on the correct way to deliver an apology. The Office said giving an effective apology can go a long way to putting things right, resolving disputes and shows your organisation is transparent, accountable and treats people with respect. (17 May 2021) [https://www.ombudsman.gov.au/\\_\\_\\_data/assets/pdf\\_file/0020/112484/Factsheet-How-to-deliver-an-effective-apology.pdf](https://www.ombudsman.gov.au/___data/assets/pdf_file/0020/112484/Factsheet-How-to-deliver-an-effective-apology.pdf)

### Telcos dial TIO for trouble

A systemic investigation by the Telecommunications Industry Ombudsman's (TIO) has found poor sales practices, hidden costs and unclear information led consumers to sign up for telco products or services they didn't understand or need. (17 May 2021) <https://www.tio.com.au/reports-updates/investigation-finds-poor-sales-practices-hidden-costs-and-unclear-information>

### New cameras keep an eye on Hutt Street

Workers, traders and customers along Hutt Street are benefitting from increased security, with a State Government grant providing for the installation of more CCTV cameras. (15 May 2021) <https://www.agd.sa.gov.au/newsroom/new-cameras-keep-eye-hutt-street>

### DTA offers Agencies latest website tool

The Digital Transformation Agency's (DTA) gov.au Observatory Team has launched a tool to help Government Agencies test and implement changes to their websites. DTA said that as user needs and community expectations changed, Agencies needed to continually revitalise their digital services to keep pace. (13 May 2021) <https://www.dta.gov.au/blogs/website-personalisation-and-testing-made-easy>

### New super laws to provide public servants choice

Eligible South Australian public sector workers, including nurses and teachers, will be able to choose their preferred superannuation fund under new laws that have passed State Parliament. (13 May 2021) <https://www.premier.sa.gov.au/news/media-releases/news/new-super-laws-to-provide-public-servants-choice>

### ACCC saves Art Gallery from tender scam

The Australian Competition and Consumer Commission (ACCC) has instituted civil proceedings in the Federal Court over an alleged attempted cartel for a National Gallery of Australia (NGA) tender. (13 May 2021) <https://www.accc.gov.au/media-release/accc-takes-action-over-alleged-attempted-cartel-for-national-gallery-of-australia-tender>

### Funding boost welcome for legal services supporting women and those experiencing mental health issues

The Law Council of Australia is pleased that the Australian Government has announced additional funding for Australia's legal assistance sector, with a focus on improving access to justice for women and those experiencing mental health issues. Key funding measures in the 2021-22 Budget will provide a range of further legal assistance resourcing under the National Legal Assistance Partnership. (13 May 2021) <https://www.lawcouncil.asn.au/media/media-releases/funding-boost-welcome-for-legal-services-supporting-women-and-those-experiencing-mental-health-issues>

### Retail Referendum Bill to be introduced to Parliament

A Bill to give South Australians the ultimate power to decide whether they want greater freedom of choice in shop trading will be introduced to State Parliament. (13 May 2021) <https://www.premier.sa.gov.au/news/media-releases/news/retail-referendum-bill-to-be-introduced-to-parliament-today>

### The Courts to receive \$100 million in Government funding announced in the 2021-22 Budget

The Family Court of Australia (FCoA) and Federal Circuit Court of Australia (FCC) welcome significant funding as part of the 2021-22 Budget, together with other recent funding, which allows for the appointment of 2 additional FCoA judges, and 8 additional FCC judges. It also provides for important judicial support and reform measures. (12 May 2021) <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/media-releases/2021/mr110521>

### OAIC welcomes additional funding for data protection and FOI

The OAIC welcomes additional funding for privacy and access to information functions announced in the 2021-22 Federal Budget. (12 May 2021) <https://www.oaic.gov.au/updates/news-and-media/oaic-welcomes-additional-funding-for-data-protection-and-foi/>

### Enhanced legal and workplace services to support Australians

The Morrison Government is boosting investment in important legal and workplace services, keeping Australian families safe and supporting businesses as part of our plan to secure Australia's recovery. Funding announced in the 2021-22 Budget will boost family law services, and provide more legal and social support for people experiencing domestic and family violence. (11 May 2021) <https://www.attorneygeneral.gov.au/media/media-releases/enhanced-legal-and-workplace-services-support-australians-11-may-2021>

## IN PRACTICE AND COURT

### Attorney General Appointments – 13 May 2021

#### [Reappointment of Commonwealth Director of Public Prosecutions](#)

The reappointment of Ms Sarah McNaughton SC as Commonwealth Director of Public Prosecutions for a period of two years.

#### [Appointment to the Family Court of Australia](#)

Judge Terrence McGuire has been appointed as a judge of the Family Court of Australia.

#### [Reappointments to the Administrative Appeals Tribunal](#)

Thirteen reappointments to the Administrative Appeals Tribunal.

#### [Appointments to the Federal Circuit Court of Australia](#)

Ms Sandra Taglieri SC and Mr Marcus Turnbull SC have been appointed as judges of the Federal Circuit Court of Australia (FCC).

#### [Commonwealth Parliamentary Review now open for submissions and interviews: Sex Discrimination](#)

The AHRC will commence inviting contributions for its Independent Review into Commonwealth Parliamentary Workplaces, accepting written contributions from groups covered by the Review's Terms of Reference.

The Review aim is to ensure all Commonwealth Parliamentary workplaces are safe and respectful and that our national Parliament reflects best practice in the prevention and handling of bullying, sexual harassment and sexual assault. Make a written submission via [humanrights.gov.au/cpwreview](https://humanrights.gov.au/cpwreview).

The Department said it would receive submissions on its Consultation Paper until 9 July. The Department's 17-page Consultation Paper, including information on how to have a say, can be accessed [here](#). (20 May 2021)

#### [Safe Work Australia: Online abuse in the workplace – new fact sheets](#)

New fact sheets providing practical steps to support persons conducting a business or undertaking (PCBUs) (such as employers) and workers to prevent online abuse in the workplace have been developed by Safe Work Australia and eSafety. (18 May 2021)

View [Online abuse fact sheet – Information for employers](#) and [Online abuse fact sheet – Information for workers](#).

### Attorney General Consultations

#### [National Register of Enduring Powers of Attorney](#)

Closing date 30 June 2021

Attorneys-General from each Australian jurisdiction have agreed to consult on possible arrangements for a National Register of Enduring Powers of Attorney. A consultation paper has been prepared to seek your views.

#### [AAT Bulletin](#)

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions. Issue No. 10/2021, 17 May 2021.

#### [AHRC: Independent Review into Commonwealth Parliamentary Workplaces](#)

The Commission will not be investigating nor making findings about individual allegations of bullying, sexual harassment or sexual assault as part of the Review. The Commission will report on its findings and recommendations in a report to be tabled in Parliament in November 2021. The Terms of Reference outline the scope of the Review in more detail.

### OAIC Consultations

#### [National Health \(Privacy\) Rules 2018 review](#)

The closing date for submissions is 4 June 2021.

#### [Consultation on Data-Matching Program Guidelines](#)

In May 2021, a public consultation process on the [Data-Matching Program \(Assistance and Tax\) Guidelines 1994](#) (the Guidelines) to ensure they are fit for purpose. The current Guidelines sunset on 1 October 2021. The closing date for comments closed on 19 May 2021.

#### [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): updated 13 May 2021.

#### [ALRC Judicial Impartiality Consultation Paper 2021](#)

The Inquiry would look at judges in the High Court, Federal Court, Family Court and Federal Circuit Court. Submissions are open until 30 June. The ALRC was expected to deliver its report to the Attorney-General by 30 September.

#### [Regulator Performance Guide For Consultation](#)

The guide will empower regulators to demonstrate and report on best practice performance that is in line with the Government's expectations and supports investment and growth. Submissions open until 21 May 2021.

### ANAO Consultations

Due to table: May 2021 Open for contribution - [Administration of the National Bushfire Recovery Agency](#)  
The objective of this audit is to assess the effectiveness of the National Bushfire Recovery Agency and its administration of the National Bushfire Recovery Fund.

Due to table: May 2021 Open for contribution - [Australian National University's Governance and Control Frameworks](#)

The objective of this audit is to examine the effectiveness of the Australian National University's governance and control frameworks.

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

On 18 March 2021, the Senate granted an extension of time for reporting until 20 May 2021.

### [Family Law Amendment \(Federal Family Violence Orders\) Bill 2021 \[Provisions\]](#)

#### South Australia

##### Law Society SA: Point of Law Articles

[Prioritising privacy to close the door on identity theft](#)  
(17 May 2021)

##### Law Society SA Submissions

[Review of direct cross-examination ban in family law proceedings](#)  
(10 May 2021)

### **PUBLISHED - ARTICLES, PAPERS, REPORTS**

#### [The factsheet – How to deliver an effective apology](#)

Ombudsman: May 2021

The Ombudsman's Office advised entities to avoid apologies that were inaccurate; misguided; generalised; avoidant; conditional; or partial.

#### [Assessing credibility in the virtual court room](#)

Daniel Tynan; Bar News Autumn 2021

The growing body of research shows that while most people think they are good at detecting deceit they are not. It also raises a question about how well we perform the task of determining whether someone is lying in a profession that assumes that seeing and hearing a witness in person is crucial to fair judicial decision making.

### **CASES**

#### [Angel Flight Australia v Civil Aviation Safety Authority \[2021\] FCA 469](#)

STATUTORY INTERPRETATION – Civil Aviation Safety Authority made instrument designated as CASA 09/19 – Civil Aviation (Community Service Flights – Conditions on Flight Crew Licences) Instrument 2019 – Applicant seeks orders quashing the instrument and other declaratory relief – whether the instrument is ultra vires in that it fell beyond power conferred by regulation 11.068 of the Civil Aviation Safety Regulations 1998 (Cth) – whether the “class of authorisation” specified in the instrument is not a “class of civil aviation authorisation” specified by the Civil Aviation Safety Regulations 1998 (Cth) – whether the instrument was not authorised by regulation 11.068 of the Civil Aviation Safety Regulations 1998 (Cth) – whether the instrument is expressed to apply in relation to a type of aviation operation (“community service flights”) and not a class of persons – whether the instrument is properly a “legislative instrument”

ADMINISTRATIVE LAW – unreasonableness and reasonable proportionality – whether the instrument is unreasonable or not reasonably proportionate – whether the Civil Aviation Safety Authority's assessment of risks was not justified on any reasonable ground – whether

that assessment was irrational – whether the conditions imposed by the instrument had an insufficient connection to the power conferred by regulation 11.068 of the Civil Aviation Safety Regulations 1998 (Cth)

Held: relevant instrument not ultra vires or unreasonable

#### [Australian Competition and Consumer Commission v Campbell \(No 3\) \[2021\] FCA 528](#)

CONSUMER LAW – application for remedies under the Australian Consumer Law (Schedule 2 to the Competition and Consumer Act 2010 (Cth)) – consideration of the relevant principles to the assessment of pecuniary penalties, non-party consumer redress orders, declaratory and injunctive relief

STATUTORY INTERPRETATION – proper construction of s 227 of the Australian Consumer Law – meaning and effect of the requirement to give preference to making an order for compensation – whether orders proposed by the applicant satisfy that requirement

#### [Shell Energy Holdings Australia Limited v Commissioner of Taxation \[2021\] FCA 496](#)

TAXATION - appeal against objection decision of Commissioner of Taxation - where applicant party to joint venture agreements in relation to natural gas project - where participants in project held statutory titles which conferred authority to explore for petroleum - where applicant increased its proportional interest in each of statutory titles through purchase of additional proportional interest pursuant to Asset Exchange Agreement

CONSTITUTIONAL LAW - whether rights and title vested in each State by Coastal Waters (State Title) Act 1980 (Cth) prohibit exploration or exploitation of natural resources - consideration of breadth of authority to explore conferred by statutory titles - consideration of extent of activities requiring permission from the Commonwealth or relevant State

#### [MCDONALD v REGISTRAR OF THE SUPREME COURT OF SOUTH AUSTRALIA \[2021\] SASC 57](#)

PROCEDURE - STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY - OTHER MATTERS - REGISTRARS AND OTHER OFFICERS  
PROCEDURE - MISCELLANEOUS PROCEDURAL MATTERS - REFERENCE AND REMOVAL OF PROCEEDINGS AND APPEAL AND REVIEW WITHIN COURT - DECISIONS OF REGISTRAR

### **LEGISLATION**

#### Commonwealth

##### [Biosecurity Amendment \(No Crime to Return Home\) Bill 2021](#)

13/05/2021 - The Bill amends the Biosecurity Act 2015 to prohibit the Minister for Health from determining requirements under section 477, or giving directions under section 478 of the Act, during a human biosecurity emergency that prevent Australians from returning to Australia. A failure to comply with such a direction can also result in a fine or imprisonment for up to five years under section 479.

### [Mutual Recognition Amendment Bill 2021](#)

HR 12/05/2021 Message from Senate reported

To introduce a uniform scheme of automatic mutual recognition (AMR) by enabling an individual who is registered for an occupation in their home state to carry on those activities in other states and territories; enable a state minister to exempt a registration in their state from being subject to AMR for a renewable period of up to five years because of a significant risk to consumer protection, the environment, animal welfare or the health or safety of workers or the public; and enable a state minister to exempt a registration in their state for a temporary period.

### Regulations

#### [Inspector-General of the Australian Defence Force Amendment Regulations 2021](#)

18/05/2021 - This instrument amends the Inspector-General of the Australian Defence Force Regulation 2016 to expressly allow the Inspector-General of the Australian Defence Force to disclose information relating to the conduct of an inquiry (including the report about an inquiry) to law enforcement agencies and other agencies such as regulatory bodies and State and Territory courts including coroners' offices.

#### [Marriage \(Celebrant Fees\) Determination 2021](#)

14/05/2021 - This determination sets out the fees to be charged for applicants to be registered as a marriage celebrant and for exemptions from relevant requirements and repeals the Marriage (Celebrant Fees) Determination 2014.

#### [Fair Work and Other Legislation Amendment Regulations 2021](#)

14/05/2021 - This instrument amends the Fair Work Regulations 2009 and the Federal Court and Federal Circuit Court Regulation 2012 and specifies the ways in which the Casual Employment Information Statement may be delivered to employees and a manner in which applicants may indicate that they want the small claims dispute resolution process to apply to a casual conversion dispute, and sets the applicable filing fee in the Federal Circuit Court of Australia for such disputes.

#### [Marriage \(Celebrant Registration Charge\) Determination 2021](#)

14/05/2021 - This determination sets the amount of the annual celebrant registration charge payable by Commonwealth-registered marriage celebrants at \$170 from 1 July 2021 and repeals the Marriage (Celebrant Registration Charge) Determination 2020.

### South Australia

#### Acts

2021-14 [Statutes Amendment \(Recommendations of Independent Inquiry into Child Protection\) Act 2021](#)

2021-15 [Fire and Emergency Services \(Governance\) Amendment Act 2021](#)

2021-17 [Statutes Amendment \(Transport Portfolio\) Act 2021](#)

2021-18 [Disability Inclusion \(Restrictive Practices—NDIS\) Amendment Act 2021](#)

2021-19 [COVID-19 Emergency Response \(Expiry\) \(No 2\) Amendment Act 2021](#)

#### Regulations

20.5.2021 p 1398 [Defamation \(Miscellaneous\) Amendment Act \(Commencement\) Proclamation 2021](#)

20.5.2021 p 1398 [Statutes Amendment \(National Energy Laws\) \(Stand-Alone Power Systems\) Act \(Commencement\) Proclamation 2021](#)

20.5.2021 p 1399 [Oaths \(Appointments\) Proclamation 2021](#)

20.5.2021 p 1403 [South Australian Civil and Administrative Tribunal \(Designation of Magistrate as Member of Tribunal\) Proclamation 2021](#)

20.5.2021 p 1404 [Youth Court \(Designation and Classification of Magistrate\) Proclamation 2021](#)

#### Proclamations and Notices

6.5.2021 p 1279 [Statutes Amendment and Repeal \(Budget Measures\) Act \(Commencement\) Proclamation 2021](#)

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