
From: SACAT Governance
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OFFICIAL



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Issue 20

Upcoming Events

Working Effectively with High Conflict People

Places are limited!

COAT SA has arranged a presentation on Working Effectively with High Conflict People on Wednesday 22 November 2023 at **1.30pm**. The training will be presented by Megan Hunter from the High Conflict Institute.

Please be aware that this presentation has been moved to 1.30pm.

Megan Hunter is the CEO and co-founder of the High Conflict Institute which provides training to courts, tribunals, businesses, and other organisations which deal with “high-conflict personalities”.

The training will be held in person at the SACAT Offices at Level 8, 100 Pirie Street, Adelaide. Places are limited and priority will be given to COAT SA Members. The Membership Fee Invoice form (existing members) and Membership application form (new members) are **attached** for those who wish to renew their membership or become members.

The Committee will provide drinks and nibbles for all attendees of the seminar from 4.00pm.

Please RSVP to Elle at elle.spyrou@sa.gov.au

Please also note that for those of you who are legal practitioners, CPD points are likely to be applicable.

Notice of Annual General Meeting

The COAT SA chapter will be holding its Annual General Meeting on Wednesday 22 November 2023 at 4.45pm. The meeting will be held at the SACAT Offices, Level 8, 100 Pirie Street, Adelaide.

Iurp #7rxwk#Dxvwdd#

Re LOR & Ors [\[2023\] SACAT 59](#)

The Public Advocate sought internal review of three orders of the Tribunal authorising the detention of three protected persons at their places of residence (“special powers orders”) under ss 32(1)(a) and 32(1)(b) of *Guardianship and Administration Act 1993* (“The Act”). The Public Advocate contended that the Tribunal had misdirected itself as to what is meant by ‘detain’ in s 32(1)(b) of the Act and applied the wrong test to the circumstances of each of the protected persons, thereby wrongly reached the conclusion that each is detained. It submitted that the special powers orders are unnecessary and ought to be revoked.

The Public Advocate is the appointed guardian for all three protected persons. The protected persons varied in the way in which their disabilities affected their mobility and the extent to which they could communicate their wishes.

The Tribunal first considered whether each protected person is being detained as a matter of fact; if they were, it would then consider whether that detention is required for the protected person’s safety or the safety of others, such that the authorisation for detention should remain in place as the least restrictive way of ensuring their welfare. The Tribunal found whilst it cannot be said that there are no circumstances in which it can be envisaged that authority to detain might be acted upon in respect of any of the three protected persons, it cannot be established that detention is reasonably foreseeably needed for any of the protected persons. The evidence did not support the conclusion that any wish that the protected persons have had in the past to exercise freedom of movement has been refused or not acted upon.

As a matter of fact, the protected persons are not detained. Because the protected persons are not detained, it was not necessary to consider whether what each persons’ carers do is an incident of their care or an act of detention, or whether they are at serious risk of harm if an order authorising detention were not made. The power to direct that a protected person reside in a particular place or with a particular person pursuant to s 32(1)(a) may be required even where a detention order is not required. However, the Tribunal is satisfied that in these cases, the power is not required by the guardian. Orders pursuant to ss 32(a) and 32(b) were revoked.

Chief Executive, Attorney-General's Department v Montrose (No. 2) **[\[2023\] SAET 91](#)**

The Full Bench dismissed an application to restrict further publication and to vary content for reasons for judgment.

Section 55 of the *South Australian Employment Tribunal Act 2014* (the SAET Act) provides that proceedings before the Tribunal must be heard in public unless the Tribunal is satisfied that it is desirable to prohibit or restrict publication of evidence given before the Tribunal or of the contents of any document produced to the Tribunal.

The conduct of hearings in public is an aspect of the principle of open justice. That principle exposes proceedings to public and professional scrutiny and criticism in order to avoid abuses and to maintain confidence in the integrity and independence of the courts. It is recognised that the principle of open justice may result in embarrassing, damaging and even dangerous facts occasionally to come to light.

The principle of open justice relates to the court process and does not require exposure to the general public of the subject matter of the judicial process except in so far as it is necessary for the public to be able to scrutinise the court process itself.

Section 55(2) of the SAET Act provides a discretion to the Tribunal, notwithstanding the principle of open justice, to prohibit or restrict the publication of evidence given before the Tribunal or the contents of any document produced to the Tribunal if it is satisfied that it is desirable to do so. Whilst this indicates a broad discretion, it must be exercised judicially and in the context of established principles related to the open administration of justice. It is the party that seeks to restrict publication that bears the onus of persuading the Tribunal not only that the criteria in s 55(2) are satisfied, but that, in addition, in balancing the interests of open justice with the potential effect upon the person making application if there were to be unrestricted publication, that the discretion should be exercised in the manner sought. The respondent failed to discharge the onus upon her. Whilst the respondent may be embarrassed or upset by further disclosure, the circumstances are insufficient for the Full Bench to be satisfied that it is desirable to prohibit or restrict further publication.

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**Sunaust Properties Pty Ltd t/as Central Sydney Realty v The Owners
– Strata Plan No 64807 [\[2023\] NSWCA 188](#)**

The Court of Appeal granted leave to appeal but dismissed an appeal from a decision of the Appeal Panel. The Appeal Panel's reliance on s 63 of the *Civil and Administrative Tribunal Act 2013* (NSW) to reopen a decision by issuing a second substantive decision was an immaterial error warranting a grant of leave to appeal. However, the Appeal Panel was correct to reopen its earlier decision where it had failed to deal with issues raised before it. That power fell within the broad procedural powers conferred on NCAT by s 38 of the NCAT Act.

Wojciechowska v Secretary, Department of Communities and Justice; Wojciechowska v Registrar, Civil and Administrative Tribunal [\[2023\] NSWCA 191](#)

The Court of Appeal made a declaration that NCAT has no jurisdiction to determine claims under the *Privacy and Personal Information Protection Act 1998* (NSW) (PPIP Act) where the matter is of a kind falling within ss 75-76 of the Constitution and if and where an order is sought under s 55(2)(a). Otherwise, NCAT is not exercising judicial power under the PPIP Act. Further, NCAT does not exercise judicial power in determining claims under the Government Information (Public Access) Act 2009 (NSW) and so it will have jurisdiction even where the matter is of a kind falling within ss 75-76 of the Constitution. The Court otherwise dismissed the appeal.

Krongold Constructions (Aust) Pty Ltd v Thurin [\[2023\] VSCA 191](#)

The Victorian Court of Appeal determined that a referral of a matter by VCAT to the Supreme Court under s 77 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) invoked the Court's jurisdiction, without the need for the filing of a fresh application. However, s 77 cannot give legal effect to an invalid exercise of federal judicial power. Where VCAT had invalidly joined parties to VCAT proceedings by an invalid exercise of judicial power, it could not make an incidental order to transfer a matter concerning those parties to the Supreme Court.

Mourched v Chief Commissioner of State Revenue [\[2023\] NSWSC 668](#)

The Supreme Court dismissed an appeal from the Appeal Panel concerning a land tax assessment notice. The Court held that the Commissioner is able to assess the land tax payable on any parcel of land entered into the Register by the Valuer-General, even if it is less than a single lot of land. Further, the appellants had failed to satisfy the Tribunal at first instance that the land in the second lot was used solely for a septic system indispensable to childcare services provided in the first lot. Any appeal from this finding was on a question of fact, not law, and the Appeal Panel was correct to refuse leave in

circumstances where the appellants adduced no further evidence to prove what the parcel was used for.

Nu-Stone Building Pty Ltd v McInerney [\[2023\] NSWSC 940](#)

The Supreme Court granted leave to appeal and allowed an appeal from the Appeal Panel. The Court found that the Appeal Panel had failed to provide any, or any adequate, statement of its reasoning process that led to its conclusions on the appeals, and thus had failed to comply with the requirements of s 62(3) of the *Civil and Administrative Tribunal Act 2013* (NSW). The Court remitted the matter for determination.



COAT SA Committee:

Barbara Johns, Convenor; Anne Lindsay, Vice-Convenor; Joanna Richardson, Treasurer; Elle Spyrou, Secretary; Brenton Illingworth; Marten Kennedy; Kath McEvoy; Jodie Carrel; Peter Kassapidis

Do you have something to share across COAT SA? Let us know for the next newsletter at governance@sacat.sa.gov.au