

RECENT DEVELOPMENTS IN FREEDOM OF INFORMATION IN VICTORIA

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Introduction

As the title of my paper suggests, I propose to provide an outline of recent developments in freedom of information in Victoria. I will be focussing on four main aspects:

- the recent, highly publicised Frankston Hospital case;
- the review of the *Freedom of Information Act 1982* (Victoria) ("FOI Act");
- whether concluded contracts can contain information acquired by an agency from a business, commercial or financial undertaking under section 34(1) of the FOI Act; and
- some other recent decisions of the Victorian Civil and Administrative Tribunal ("VCAT") under the FOI Act.

Frankston Hospital case

The Frankston Hospital case¹ was heard and decided by the VCAT on 23 November 1998. The case was extensively reported in the daily newspapers in January 1999. The case involved an attempt by a convicted triple murderer, Coulston, to obtain from the Frankston Hospital copies of nursing

rosters for a particular ward of the Hospital. The reason he sought the documents was to assist in supporting his alibi that he was visiting his partner in the hospital in July 1992, around the date of the murder of three people. This would then be used in an attempt to reopen his case. The case involving his conviction had gone right up to the High Court where his appeal had been rejected.

According to a report in *The Age* newspaper², Coulston had contacted the Peninsula Health Care Network, which administers the Hospital, on 5 August 1997 requesting the names of the nurses on duty on the relevant date. His request was refused. This was followed by a request under the FOI Act to the Frankston Hospital and the Victoria Police on 13 October 1997 for access to this information. The request was denied by the Hospital. Internal review was sought and access refused on the basis of section 33 of the FOI Act, namely, that the disclosure of the documents sought would result in the unreasonable disclosure of information relating to the personal affairs of a person.

An application for review was lodged with the Administrative Appeals Tribunal and the matter came on for hearing before the VCAT on 23 November 1998. Mr Coulston appeared in person by video link from Barwon Prison. The Hospital was not legally represented; it was represented by a doctor. The Tribunal pointed out that the Hospital was required to put its case first. There was no evidence from the Hospital. No witness statements had been filed and served. The doctor representing the Hospital (or more correctly the Network) made the following statement:

The network wishes to claim an exemption under the FOI Act under

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section 33 because the disclosure of this information would be unreasonable disclosure in relation to peoples' personal affairs. We consider that although the rosters are not necessarily totally private documents the information relates to the personal affairs of these people and that no person needs to be publicly accountable for their whereabouts on any particular day and...we regard this information as being exempt because it is an unreasonable disclosure of their affairs.³

The Tribunal then clarified the documents in dispute and turned to consider written material which had been filed with the Tribunal by Mr Coulston. When it became apparent that the material had not been served on the Hospital, the doctor representing the Hospital was given an opportunity to read the material. After having seen Mr Coulston's documents, the doctor was asked whether he had anything further to add. He replied, "No, I don't have any further comments". When asked if he had any submissions on the law the doctor replied, "No".⁴

The Tribunal provided a decision and oral reasons on the spot. The Tribunal ordered the release of the documents. It found that the documents did not fall within section 33 of the FOI Act as they could not be characterised as relating to the personal affairs of any person. It came to this conclusion after considering two interstate decisions. The first was the decision of the New South Wales Court of Appeal in *Commissioner of Police v the District Court of New South Wales and Other*.⁵ That case involved the release of the names of police officers and employees involved in the preparation of certain reports. The second was the decision of De Jersey J of the Queensland Supreme Court in *State of Queensland v Albeitz*.⁶ That case involved the disclosure of names of departmental officers involved in investigations.

The Hospital released the documents shortly after the order was made by the VCAT. I do not, in this paper, propose to address the correctness or otherwise of the decision of the Tribunal. What I propose to do is deal with a number of

practical issues that arise about handling freedom of information cases, particularly where s33 of the FOI Act is involved.

The chairman of the Mornington Peninsula Health Care Network which administers the Hospital was reported in *The Age* newspaper as having said that on its earlier legal advice, the Hospital had been supremely confident of winning the case and had not bothered to send a lawyer to the hearing. The Hospital was shattered when the Tribunal ruled against it and did not seek further legal advice before releasing the roster to Coulston.⁷

I must state at the outset that I am not aware of the exact nature of the advice provided to the Hospital, nor from whom it obtained the advice. However, this comment raises a number of questions and issues:

- Why was s33 the only exemption relied upon?
- Were any parts of s31 considered relevant?
- Did the legal advice address any other exemptions?
- Although the Hospital, relying upon its advice, was "supremely confident" of victory, did the advice justify non-legal representation of the Hospital by a person apparently unfamiliar with VCAT procedures in such sensitive circumstances as these? (Remember, no submissions whatsoever were made on the law other than to assert that s33 of the FOI Act applied to the documents and that their disclosure would be unreasonable.)

Then there is the issue of lack of involvement of the nurses. According to a series of newspaper articles in January 1999 the nurses were informed by memorandum sent only to a charge nurse at the Hospital. She apparently discovered the memorandum in her "in-tray" after returning from being on leave. In any event, apparently the memorandum

purported to inform the nurse about the release **after the event**. This raises some other issues including:

- Why were the nurses involved not consulted well before the hearing at the Tribunal in case they wished to raise objections to the release of their names?
- Why were the nurses informed only after the event, and even then, apparently only one charge nurse was supposedly informed by way of a memorandum left in her "In tray"?
- Why could the Hospital not have notified each nurse affected individually? One nurse was reported as saying:

We feel we have been denied any control about how our names will be used. We feel betrayed by the Hospital, and scared about what the future may hold.⁸

The Australian Nursing Federation reportedly accused the Hospital of not properly protecting the privacy of its nurses by failing to send legal representation to the appeal, instead relying on a doctor.⁹ By doing so, the Hospital in effect did not allow the nurses the opportunity to mount their own legal defence.¹⁰

Where an agency makes a decision to release a document containing information relating to the personal affairs of an individual the agency is to advise the individual of that decision only if it is practicable to do so. The individual must also be informed of the right to appeal against such a decision: section 33(3) of the FOI Act. It is clear, however, that there is no legal requirement to inform individuals whose information is the subject of a request for access to documents where the agency decides to claim exemption under s33 of the FOI Act. Nevertheless, as a matter of prudence, it is generally advisable to seek the views of third party

individuals about the release of information about them wherever practicable. This is regardless of whether the third parties are external or internal to an agency. This consultation process provides additional material upon which an FOI officer can determine whether disclosure of any information relating to the personal affairs of the individual would in all the circumstances be unreasonable. It should be noted that such consultation is mandatory under the Commonwealth FOI Act, where there is even provision to enable an agency to extend the period within which to make a decision about a request because it is consulting third parties.¹¹

Where the third parties are officers or employees of an agency, there is the additional reason of good staff management to consider in deciding whether to consult such third parties.

- Why did the Hospital not seek written reasons for the decision as it is entitled to do under section 117(2) of the *Victorian Civil and Administrative Tribunal Act 1998* ("VCAT Act"). Where oral reasons are provided by the Tribunal, a party has 14 days within which to request written reasons.
- If the Hospital was "shattered" by the VCAT decision, why did it not seek legal advice about its options? Instead of seeking further legal advice, the Hospital merely released the documents sought without even informing the nurses before doing so. With the benefit of hindsight, one can see from the reaction of the nurses and the Nursing Federation that if they had been involved in the matter, and an adverse decision was made, they may have sought to appeal the decision to the Supreme Court.

The circumstances surrounding the Frankston Hospital case serve to highlight, in my view, that proper thought and care must be put into dealing with every

request for access to documents and every case which may ultimately go before the Tribunal. More than just the legal niceties which may be involved in a particular case must be considered; as well, the context in which the request is made and what impact it may have on the agency as a whole must be considered. There needs to be an understanding of the possible overall consequences of release.

Review of the FOI Act

Once the Frankston Hospital matter came to light in early January, there was a scathing response from the Victorian Premier, Mr Kennett. According to reports in the press¹², Mr Kennett immediately ordered the Attorney-General to conduct a review of the FOI Act and its administration. He is reported as having expressed horror and vowed to rewrite Victoria's freedom of information laws. The way the FOI Act was being used and interpreted by the courts had, he was reported as saying, "gone beyond the pale of decency". He was also reported as saying that the State Government would not hesitate to scrap the FOI Act if this was the best way to provide absolute security for public servants and if the life of one citizen was put at risk.

After the heat of the initial reaction died down, Mr Kennett was reported as confirming that there was no program in place to get rid of the FOI Act, but the Government did not want to see a repeat of the Frankston Hospital case. *The Age* newspaper reported Mr Kennett as stating:

So my responsibility as head of government is to make sure that freedom of information works for the right reasons and that it doesn't in the process put anyone at risk...And unless I can develop the Act in that way, then that gives cause for the next jump, which is whether we need an FOI Act at all. We believe that we'll be able to fix the Act without getting rid of it.¹³

It was also reported in January that the review by the Government would be concluded in a matter of weeks and that

any resulting amendments would be introduced in the autumn session of Parliament to ensure that there would never be a repeat of the Frankston Hospital case.

The newspapers have speculated as to the nature of any changes that may be made. They suggest that the Government, after a careful comparison with freedom of information legislation of other States and the Commonwealth, is expected to consider replacing public hearings before the Tribunal with an FOI Ombudsman. Such a structure would be similar to the Queensland and Western Australian models, where an Information Commissioner exists.

I understand that the "review" of the FOI Act is currently with the Department of Justice. I have been unable to ascertain the precise extent of the review, but I suspect that it will not result in a comprehensive overhaul of the FOI Act, despite suggestions to the contrary by members of the Opposition. My guess is that the review will be quite limited in scope, probably confined to a consideration of s33 and how it is applied by agencies receiving requests for access to documents containing information of a personal nature.

This view is based on the comments of the Premier and a News Release from the Attorney General¹⁴ confirming that she is seeking legal advice and is looking at the FOI Act in relation only to issues raised in the Frankston Hospital case. If the review is limited to the scope and operation of s33 of the FOI Act, I believe that there are changes that could be made to maximise the possibility that the Frankston Hospital situation does not occur again.

First, the controversy and difficulty in determining whether the names of employees or officers of agencies contained in a document comprises information "relating to the personal affairs" of a person could be eliminated by adopting a more expansive approach similar to that adopted in the Commonwealth FOI Act. Section 41 of

that Act was amended in 1991 so that a document is an exempt document if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (including a deceased person). The term "personal information" is defined in identical terms to the definition in the Commonwealth *Privacy Act 1988*, namely:

information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

A similar approach might be adopted in Victoria if the draft Data Protection Bill is enacted in its current form and the FOI Act is amended to ensure consistency between the FOI Act and any *Data Protection Act*. It is important to note that the Data Protection Bill currently proposed by the Government includes a definition of personal information which is similar to that contained in the Commonwealth Privacy and FOI Acts. The draft Bill states that "personal information" means:

information (whether fact, opinion or evaluative material) about an identifiable individual that is recorded in any form but does not include information contained in a generally available publication.

If the Victorian FOI Act was amended to incorporate such a definition of "personal information", and s33 was amended to exempt the unreasonable disclosure of such personal information, it would mean that if the Frankston Hospital case circumstances arose again, the names of the Hospital staff would clearly be "personal information". The sole issue would then be whether release of the document was unreasonable. That alone would not guarantee non-disclosure.

The second change that may occur would be in relation to assisting a decision-maker to determine whether disclosure would be "unreasonable" in all the circumstances. This would involve requesting consultation with persons who are the subject of the personal information. Such an approach is

similar to section 27A of the Commonwealth FOI Act. That section applies where an agency receives a request for a document which contains personal information about a person and it appears to the decision-maker¹⁵ that the person concerned might reasonably wish to contend that the document is an exempt document under s41 (the equivalent to Victoria's s33). In that situation, the decision-maker is in effect obliged, where it is reasonably practicable in all the circumstances to do so, to give the person a reasonable opportunity to make a submission about the release of the document.

If a decision is then made to release the document, the person consulted must be informed of that decision and of his or her right to seek review of that decision by the Administrative Appeals Tribunal ("AAT"). The applicant is also required to be informed of the decision to release and that the third party the subject of the information has review rights which might be exercised. If such consultation takes place, the agency is given power to extend by up to thirty days the time within which to make a decision about a request in order to enable this reasonable consultation to occur.

Accordingly, this mechanism ensures that the individual the subject of the personal information has the opportunity to raise any concerns and they may be taken into account by the decision-maker when considering whether to release the document. Even if the decision-maker decides to refuse access, it is nevertheless open to the person the subject of the personal information to seek to be a party to any review of the decision by the AAT. I believe there is merit in a similar approach being introduced in Victoria.

If an approach similar to that I have suggested is adopted, it will still not guarantee non-disclosure of documents such as those in the Frankston Hospital case, but it will maximise the possibility that all persons affected by the matter have the opportunity to be heard.

Concluded contracts and section 34(1)(a)

There exists an unresolved issue as to whether a concluded contract between a government agency and a third party business can be said to contain (or would result in the disclosure of) information of a business, commercial or financial nature acquired by the agency from the third party business. This unresolved question has resulted in conflicting decisions before the VCAT. There is a very recent decision of the VCAT that is the subject of a current appeal to the Supreme Court of Victoria in relation to that precise issue. That decision was made by Senior Member Megay in the case *Re Thwaites and the Department of Human Services*.¹⁶

In that case, Mr Thwaites sought access to various documents associated with the decision of the Government to have a private consortium build, own and operate the Latrobe Regional Hospital. By the time the matter came before the VCAT, there were seven documents, part or all of which were claimed to be exempt under, among other things, s34(1)(a) of the FOI Act. That was on the basis that the documents, if disclosed, would disclose information of a business, commercial or financial nature acquired by an agency from a business, commercial or financial undertaking.

The seven documents in dispute comprised various contractual documents including some between the Minister and various companies. They included agreements in relation to the provision of maintenance services, transitional health services (as the old Hospital closed) and the arrangement of finance.

After considering some of the conflicting authorities on this issue, the Tribunal adopted the view that the concluded contracts did not contain information acquired by the Department. The documents claimed to be exempt under section 34(1)(a) were, according to the Tribunal:

nothing more than a record of concluded negotiations between the parties. I concur with the reasoning of Ms Preuss and Mr Levine in the *Thwaites and MAS* case – that is, at the time the consortium was negotiating the agreement it disclosed terms upon which individual members would do business, but the information changed its character when the negotiated terms became embodied in legally enforceable documentation.¹⁷ (emphasis added)

Accordingly, each of the seven documents was found not to be exempt. Senior Member Preuss also adopted this approach three days later in another case involving the same parties. It related to documents about the tendering and contracting and sale of the Bairnsdale Regional Health Service.¹⁸ This same approach had also been applied in a number of earlier cases.¹⁹

The alternative approach, which was dismissed by the Tribunal in the *Thwaites* case, was that espoused by Deputy President Macnamara of the Administrative Appeals Tribunal in *Re Holbrook and Department of Natural Resources and Environment*.²⁰ In that case Deputy President Macnamara disagreed with the general proposition that records of transactions entered into by government cannot by their very nature be the subject of a section 34(1)(a) exemption. He stated:

To make out the exemption it is not necessary to show that the text of the relevant document is information acquired by the government agency from a business undertaking – only that the revelation of that piece of text would reveal information acquired by the agency from a business undertaking. Where an agreement records the price payable as between a government agency and a business undertaking for a good, service, concession or other right, revelation of the figure may reveal the price at which the business undertaking is prepared to do business.²¹

In the *Thwaites* case, the Tribunal reasoned that to suggest that the formal contracts represent information acquired by the agency is tantamount to saying that all government contracts relating to matters of a business, commercial or

financial nature (and that would cover most commercial contracts) will be exempt. Ms Megay went on to say:

That of course flies in the face of the purpose of the legislation which is underpinned by a predisposition towards disclosure. A different view might of course be taken in the instance of a contract to manufacture some product which, for instance, required the exposition of some chemical formula. To my mind, that is the type of information Mr Macnamara had in mind in the *Holbrook* case.²²

Justice Wood has espoused a similar view to that of Mr Macnamara in two recent decisions. The first is the case of *Hulls v Department of Treasury and Finance*²³. In that case, Wood J referred to two earlier cases (which were later relied upon by Ms Megay in the *Thwaites* case) and stated:

Both of these cases concern the agency as party to the concluded contract and hence, presumably, some of the information contained in the contract would not have been 'acquired' by the agency but rather would have been its own information. The exemption is attracted in respect of information acquired by an agency...from a business, commercial or financial undertaking and relates to...matters of a business, commercial or financial nature'. In my view, the fact that the document constitutes a concluded contract does not disqualify it from exemption under s.34(1). To do so would be to read down the sub-section considerably because the information of a business nature is capable of including a term of a concluded contract.²⁴ (emphasis added)

In that particular case, there was no evidence as to the source or sources of the information contained in the document in question.

Ms Megay, in considering the decision of Woods J, also seemed to place some emphasis on the fact that in that case, the respondent agency was not a party to the agreement in question. This appears to have been in the context of seeking to distinguish that case from the case before her.

Interestingly, it seems that neither the Tribunal nor any of the parties was aware of the subsequent second decision of Wood J which clearly involved the situation where the respondent Department (or at least one of the Ministers responsible for that Department) was a party to the agreements to which access was sought. In *Bracks and Department of State Development* Judge Wood considered two agreements. The first was an agreement between the Minister for Regional Development and an abattoir under which the Minister made various grants on various conditions to be met by the abattoir. The second was a deed of guarantee between the Minister and the abattoir and an associated company. In finding that the documents were exempt under s34(1)(a) of the FOI Act, Justice Wood stated:

It is irrelevant that the information acquired is later reproduced in a concluded contract between the parties. The test is simply whether the information was provided by the third party to the respondent. I discussed this question in *Hulls v Department of Treasury and Finance*...²⁵

With respect, I believe that the views of Wood J and Mr Macnamara are correct. Provided the evidence is sufficient to support a conclusion that disclosure of the document would reveal information of the relevant kind acquired by the agency from a business, commercial or financial undertaking, the fact that the information is reproduced in a concluded contract or that the text of the concluded contract would reveal that information is irrelevant.

The decisions of Ms Megay and Ms Preuss are the subject of current applications for leave to appeal to the Supreme Court. So, it is a question of "watch this space".

Other recent cases

I turn now to 3 other recent cases which raise or remind us of some interesting legal and procedural issues.

The first is the decision of the VCAT in July 1998 in *Re Kosky v Department of Human Services*.²⁶ In that case the Tribunal provided a timely reminder about a point which is often forgotten by agencies in relation to who is an "officer" under section 30 of the FOI Act. Provided certain other features are present in documents, that section exempts from access documents which would disclose matter in the nature of opinion, advice or recommendation prepared by an officer, or consultation or deliberation that has taken place between officers of an agency or between an officer and a Minister.

"Officer" of an agency is defined in s5 of the FOI Act to include a member of the agency, a member of staff of the agency, and any person employed by or for the agency.²⁷

The Tribunal confirmed that for the purposes of section 30 an "officer" can include an external consultant. Justice Wood referred to the decision of *O'Connor v State Superannuation Board of Victoria*²⁸ which was expressly approved of by the Full Court of the Supreme Court in *Ryder v Booth*²⁹ In the *O'Connor* case, the County Court stated that the expression "a member of staff of the agency" in the definition of "officer";

covers all persons who are employed by the agency under a contract of service with the agency or by the government for the agency. The remaining words are wide enough to cover consultants employed by the agency...and indeed would seem to have as their main area of application, consultants and other independent contractors.³⁰

The second case I wish to mention is *Re Garbutt and Department of Natural Resources and Environment*.³¹ This case addressed two important procedural points in the context of processing FOI matters. First, it reiterated that where an applicant is of the view that the respondent agency has not dealt with each document it had in its possession relevant to a request, that was a matter for the Ombudsman. The Tribunal may not investigate the matter further.

Secondly, the VCAT concluded that if an exempt document is inadvertently released to the applicant by the respondent, the document loses its exempt status. As the Tribunal stated:

It would be a ridiculous situation, if, if the applicant so desired, he could legally copy such document and distribute it to every household in Victoria on the one hand and it remained an exempt and confidential document on the other. The law must realise the reality of the situation...

The Tribunal distinguished this from the situation where, for example, a Cabinet document is known to exist and may contain matters that are in the public knowledge, however that comes about. In that situation, the document is not deprived of its exempt status as a Cabinet document. Public knowledge of the existence of the document also does not exclude it from exemption.

The third case I would like to mention is the VCAT decision in *Re Hulls and Parks Victoria*.³² It has to do with how documents which may be irrelevant to a request are treated by the VCAT if inadvertently included within the exempt documents properly before the Tribunal.

In that case, the applicant sought access to various documents. The respondent identified six documents that it thought might fall within the request. It made a decision to grant access to two documents and refused access to four documents. The original decision was confirmed on internal review and so the applicant applied to the VCAT for review in respect of the four remaining documents.

The respondent's legal adviser formed the view that the remaining documents fell outside the scope of the request.³³ Accordingly, an application was made by the respondent to have the proceeding dismissed for want of jurisdiction. The Tribunal has jurisdiction under section 50(2)(a) of the FOI Act to review "a decision refusing to grant access to a document **in accordance with a request.**" (emphasis added) The

respondent submitted that the Tribunal could only review refusals to grant access to documents that actually fell within the scope of the request by reason of the operation of the words, "in accordance with a request". Since the documents did not fall within the terms of the request, there was no decision to refuse access to documents in accordance with a request.

The Tribunal rejected that argument and agreed with the applicant's submissions that the jurisdiction of the Tribunal is to review a decision refusing access to documents where the request for access complied with s17 of the FOI Act.³⁴ The jurisdiction was enlivened by the decision to refuse access, not the request. The words "in accordance with a request" merely limited the class of decisions that may be the subject of an application for review to those decisions made in response to a valid request. The applicant had also argued that it was not part of the Tribunal's function to enter into an inquiry as to whether the original decision to the effect that the documents fell within the scope of the request was the correct one, but rather simply to review the decision to refuse access.

The Tribunal considered that it had jurisdiction to hear the application for review, notwithstanding the formulation of a view by the respondent, after the application for review was lodged, that the documents in fact fell outside the scope of the request and had been mistakenly taken into account in the two refusals to grant access.

The effect of the Tribunal's decision is that it is absolutely imperative for FOI officers and internal review officers (usually the CEO of an agency) and their legal advisers to be sure that there is no ambiguity in a request and that they are satisfied that they understand fully the scope of the request. They must be satisfied that only documents relevant to a request are the subject of any decision about access. If access to irrelevant documents which have been inadvertently included is refused, those documents may nevertheless be the subject of review

by the VCAT if the applicant appeals, even though they do not fall within the scope of the original request.

Endnotes

- 1 The proper name of the case is *Re Coulston and Mornington & Peninsula District Hospital*, VCAT, Senior Member Megay, 22 November 1998, unreported.
- 2 "Names released after long battle", *The Age*, 15 January 1999, page 2.
- 3 Transcript of proceedings, 23 November 1998, page 1.
- 4 Transcript of proceedings, 23 November 1998, page 3.
- 5 (1993) 31 NSWLR 606.
- 6 [1996] 1 Qd R 21.
- 7 "Fol nurses blast hospital", *The Age*, 15 January 1999, page 1.
- 8 *Id.*
- 9 *Id.*
- 10 "Names released after long battle", *The Age*, 15 January 1999, page 2.
- 11 Section 27A, *Freedom of Information Act 1982* (Cth).
- 12 "Fol nurses blast hospital", *The Age*, 15 January 1999, page 1; "Names released after long battle", *The Age*, 15 January 1999, page 2; "Kennett threat to scrap Fol after row", *The Age*, 16 January 1999, page 3; "FOI under threat", *The Age*, 16 January 1999, page 9; "New Fol loss for the Government", *The Age*, 20 January 1999, page 5; "Convicted murderer reassures Premier", *The Age*, 21 January 1999, page 5; "Act contains disclosure protection: institute", *The Age*, 23 January 1999, page 2; "Fol a safeguard, says press council", *The Age*, 26 January 1999, page 4.
- 13 "Convicted murderer reassures Premier", *The Age*, 21 January 1999, page 5.
- 14 14 January 1999.
- 15 Whether the original decision maker or the internal review officer.
- 16 VCAT, Senior Member Megay, 12 January 1999, unreported.
- 17 *Ibid.*, 24.
- 18 *Re Thwaites and Department of Human Services*, VCAT, Senior Member Preuss, 15 January 1999, unreported page 25.
- 19 *Re Ventura Motors and Metropolitan Transit Authority* (1988) 2 VAR 277; *Re Thwaites and Metropolitan Ambulance Service* (1996) 9 VAR 427; *Re Thwaites and Metropolitan Ambulance Service*, AAT, Ms Preuss and Mr Levine, 13 June 1997, unreported; *Gillespie v Melbourne Parks and Waterways*, AAT, Mr Davis, 27 March 1998, unreported.
- 20 (1998) 13 VAR 1.
- 21 *Ibid.*, 8.
- 22 *Ibid.*, 24.
- 23 AAT, Wood J, 30 June 1998, unreported.
- 24 *Ibid.*, 26-7.
- 25 *Ibid.* 15.

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- 26 VCAT, Wood, J, 30 July 1998, unreported.
- 27 Whether or not the provisions of the *Public Sector Management Employment Act 1998* apply to that person.
- 28 County Court, Dixon J, 27 August 1984, unreported.
- 29 [1985] VR 869.
- 30 *O'Connor v State Superannuation Board of Victoria*, County Court, Dixon J, 27 August 1984, unreported, 16. It should be noted that subsequent cases have found that a corporation can also be an officer: *Re Thwaites and Department of Health & Community Services*, AAT, Ball DP, 9 May 1994, unreported; *Re Mildenhall and Vic Roads* (1996) 9 VAR 362, 370.
- 31 VCAT, Mr Davis, 14 December 1998, unreported.
- 32 VCAT, Ms Davis, 10 February 1999, unreported.
- 33 The Tribunal ruled that the documents did, in fact, fall within the terms of the request. The matter is continuing before the VCAT.
- 34 Which sets out the formal requirements to be met before there is a valid request.