

FREEDOM OF INFORMATION

Effect of Secrecy Provision on Right of Access

Key decisions of the Federal Court and the AAT illustrate how limited is the range of documents which are protected from disclosure by section 38 of the FOI Act. That section provides, in effect, that a person has no right of access to a document where a law prohibits persons from disclosing specific information of a kind contained in the document. The landmark case of News Corporation Ltd v National Companies and Securities Commission (1984) 52 ALR 277 has now been applied to a draft report of the Ombudsman (Kavvadias v Commonwealth Ombudsman, Federal Court, 27 March 1984) and to commercial information submitted by television stations to the Australian Broadcasting Tribunal (Re Actors' Equity Association of Australia and Australian Broadcasting Tribunal, AAT, 7 May 1984). In both cases it was held that the secrecy provisions respectively binding the Ombudsman and the ABT did not meet the strict criteria established by the News Ltd case.

Inspection of 'Exempt' Documents

The AAT has ruled that the right of a party to a proceeding to inspect a document relevant to the proceeding (AAT Act, s.39) does not apply in relation to a document claimed to be exempt under the FOI Act. In Re Arnold Bloch, Leibler and Co and Commissioner of Taxation (18 March 1984) the Tribunal relied on section 64 of the FOI Act in holding that counsel for an applicant was not entitled to inspect documents claimed to be 'exempt'.

Use

Use of the FOI Act is undoubtedly increasing but at the same time there is concern that too few people know how to seek access or have even heard of the Act. Measures being undertaken by the Government to boost awareness include informing individuals of their rights to access under the Act in:

- . the 1984 Form S and Form A tax guides;
- . pension and benefit cheques issued by the Departments of Social Security and Veterans' Affairs;
- . pamphlets on student allowances issued by the Department of Education; and
- . telephone directories.

ADMINISTRATIVE LAW WATCH

GIVING OF REASONS

With the passing of the Acts Interpretation Amendment Act 1984, some government decision makers will now be required to give more detailed statements of reasons. The Act amends the Acts Interpretation Act 1901 to provide that where an Act requires a tribunal, body or person making a decision to give written reasons for the decision, the instrument giving reasons shall also set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

PUBLIC SERVICE APPEALS

A new appeals system has been established to settle disputes between the Federal Government and its employees. A new authority, the Merit Protection and Review Agency, will be empowered to review government employment decisions where a right of review is provided in the terms and conditions of employment of staff. The Agency will also have investigative, supervisory and advisory functions. In his Second Reading Speech to the Parliament, the Minister for Finance and Minister Assisting the Prime Minister for Public Service Matters, the Hon John Dawkins, stated that the Bill 'will not provide further avenues of appeal and grievance for staff'. However, he said that it allowed for appeals and grievances to be considered independently of departmental management and the Public Service Board.

The legislation establishing the Agency, the Merit Protection (Australian Government Employees) Act 1984, raises a number of administrative review issues, including -

- . whether sufficient reasons existed to justify the establishment of a new specialist tribunal, rather than use being made of the AAT and the Ombudsman at least in respect of some of the Agency's functions;
- . whether it is desirable to mingle in the one agency review functions as well as investigative, supervisory and advisory functions; and
- . whether the proposed manner of vesting jurisdiction in the Agency (appropriate inclusions in terms and conditions of