

handicap to existing employment or any future employment.

The Tribunal also expressed the view that the streamlining of the public service, introduced by the Public Service Legislation (Streamlining) Act 1986, had the effect of limiting the prospects of an officer with a serious disability being transferred from one department to another. It emphasised the urgency in this case of implementing a satisfactory rehabilitation program for the applicant, and granted liberty to apply generally to give the applicant an opportunity to seek further more specific recommendations or directions to the respondent if necessary.

Freedom of Information

Inquiry by the Legal and Constitutional Committee of the Victorian Parliament

The Legal and Constitutional Committee, an all party Committee of the Parliament of Victoria, is currently reviewing the operation of the Victorian Freedom of Information Act. The terms of reference for this inquiry direct the Committee to examine four major issues:

- (i) whether provision should be made to exempt agencies from the ambit of the Freedom of Information Act;
- (ii) the means of overcoming the problems posed by voluminous and expensive Freedom of Information applications;
- (iii) the means of safeguarding the confidentiality of Cabinet documents; and
- (iv) the relationship between the Freedom of Information Act and the Public Records Act.

The Governor in Council directed the Committee to report by 31 December 1988. The Committee invites submissions from interested persons on all matters relevant to the terms of reference. The closing date for submissions has been moved back to the end of August 1988, but persons wishing to make submissions after this date should check with the Committee's Secretary, Mr Marcus Bromley, on (03) 650 3506 or (03) 650 3407.

A discussion paper has been prepared and copies may be obtained by contacting the Secretary as above.

Information relating to personal affairs

Department of Social Security v Dyrenfurth (5 May 1988) was an appeal against a decision of the Administrative Appeals Tribunal concerning access to documents showing the assessment of applicants for public service appointment. The full Court of the Federal Court allowed the appeal, and remitted the matter to

the Tribunal.

Mr Dyrenfurth was an applicant for a Senior Executive Service position in the Department of Social Security, and was one of the two applicants not selected for interview. The selection panel decided that none of the applicants should be appointed, and the position was not re-advertised at the time. Mr Dyrenfurth then applied for the papers relating to the interviews under the Freedom of Information Act. The Department claimed exemption for a comparative assessment and the interview assessments of the two persons interviewed, under section 41(1) of the Act, which exempts documents where disclosure would involve the unreasonable disclosure of information relating to the personal affairs of any person, and under section 40(1)(c) concerning the effect on management. The AAT held that the documents were not exempt under either section of the Act.

The Tribunal had considered itself bound by the reasoning of Justice Beaumont in the Federal Court in Young v Wicks (1966) 11 ALN N176. The Court, however, referred inter alia to the earlier reasoning of Justice Beaumont in the decision of the Tribunal in Williams and Registrar of the Federal Court of Australia (1985) 8 ALD 219; 3 AAR 529; and expressed the view that 'it cannot be laid down by way of definition that an assessment of the capacity or previous work performance of an employee or prospective employee necessarily contains "information relating to the personal affairs" of that person'. Equally, however, it was not permissible to regard the term 'personal affairs' as not applicable to information contained in an assessment of capacity or work performance. The Court concluded that 'information relating to the personal affairs of a person such as information concerning his or her state of health, the nature or condition of any marital or other relationship, domestic responsibilities or financial obligations may legitimately be regarded as affecting the work performance, capacity or suitability for appointment or promotion of that person...an assessment of work performance, capacity or suitability for appointment or promotion might contain such information. If it did, it would be necessary to consider whether disclosure of that information would be unreasonable so as to render the assessment an exempt document by virtue of s.41(1) of the FOI Act'. The Court concluded that the AAT had made an error of law in denying the exemption under this section.

The Court also considered the Tribunal's interpretation of section 40(1)(c), which refers to disclosure which would have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency. It was not persuaded that the Tribunal had erred in law with regard to the application of section 40(1)(c). Although some undesirable consequences could flow from disclosure, these did not amount to 'a substantial adverse effect'.

Automated passenger identification

In Owen and Collector of Customs (29 April 1988) the applicant, an accountant, requested access to 'documents which indicate a connection with or involvement in "Bottom of the Harbour" schemes'. He subsequently modified the request to data held on

him on the Passenger Automatic Selection System (PASS), which enables identification of persons entering or leaving Australia. The respondent agency, under section 25 of the Freedom of Information Act, refused either to confirm or deny the existence of the material sought, on the grounds that such information could prejudice the enforcement or proper administration of the law or could disclose a confidential source of information.

The Tribunal, citing Jephcott and Department of Community Services (29 August 1986), concluded that a document would not be exempt under section 37(1)(a) or (b) merely because it included information about the existence or non-existence of a document answering the terms of the applicant's request. It established, through information it held confidential, that on the relevant date the PASS document sought did not exist; and ordered the respondent to advise the applicant of this. It also directed the respondent to advise the applicant whether or not any document concerning him at any other date existed.

Amended tax assessment

Saunders and Commissioner for Taxation (26 July 1988) was an application for review of the Commissioner's refusal of the applicant's request for 'all records and documents relating to the...amended assessment and all decisions taken about that amended assessment including departmental memoranda, reports, submissions, recommendations and general information relating thereto to the extent to which such information is not exempted under the Act'. The Commissioner had formed the view, under section 170(2)(a) of the Tax Act, that the applicant was involved in large-scale tax avoidance and evasion; and he therefore had issued an amended assessment for a period more than 6 years earlier. The applicant sought documents revealing the basis of this opinion.

The respondent claimed release of the material would be contrary to the public interest with regard to two broad classes of material. The first related to whether the applicant was entitled to know whether the amended assessment was based on fraud or evasion or both. The second was whether the applicant was entitled to know the basis, including any particular provision of the Tax Act, from which the respondent arrived at the necessary opinion to proceed after expiry of the 6 year period; and whether he was also entitled to know the legal authority upon which the respondent relied in arriving at that opinion. On all these questions the Tribunal concluded that the answers were in the affirmative, and that release was not contrary to the public interest.

The Courts

Danger from hostile forces of the enemy

In Repatriation Commission v Thompson (24 June 1988) the full Federal Court considered an appeal against the judgment of Justice Einfeld (Admin Review 16:26-7) with regard to