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Freedom of Information

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Restriction on Publication of Reasons for Decision

The AAT found that there were not reasonable grounds for the claim that all documents covered by a conclusive certificate were exempt from access in the case Re Bracken and Minister of State for Education and Youth Affairs (7 November 1984). However, Deputy President A.N. Hall interpreted paragraphs 58C(3)(b) and 63(2)(a) of the FOI Act as preventing him from publishing the Tribunal's full reasons for decision in the case. But when the Minister subsequently accepted the Tribunal's recommendation and revoked the conclusive certificate, the restriction on the publication of the Tribunal's reasons for decision was lifted.

In the case Re Anderson and Department of Special Minister of State (26 October 1984) the AAT found, except in relation to one document, that reasonable grounds existed for the claim that the documents covered by the conclusive certificates were exempt from access. The Tribunal also prohibited publication of the full reasons to the applicant (but allowed publication to his legal advisers). However, the AAT directed that various minor amendments be made to the reasons for decision in order that they could be published generally.

Access to University Records

A decision was handed down in James & Others and Australian National University (23 November 1984) in favour of five former history honours students who had sought access to their assessment documents. The Tribunal held that there was a public interest in the right of the individual to have access to documents relating not only to the affairs of government but also to the affairs of the individual making the request.

Victorian Ombudsman's Investigation Documents

The Victorian County Court in Deasey-v-Geschke (1 November 1984) held that documents relating to the investigation of a complaint were exempt from access under the confidentiality exemption of the Victorian FOI Act. Judge Hasset distinguished the Commonwealth and

Victorian FOI Acts and, consequently, the Federal Court's decision in Kavvadias-v-Commonwealth Ombudsman (1984) 54 ALR 285 was inapplicable.

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A D M I N I S T R A T I V E   L A W   W A T C H

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Update on Victorian AAT

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The Victorian Bill which was described in the last issue of Admin Review has, with some amendments, been enacted as the Administrative Appeals Tribunal Act 1984. The Tribunal will hold its inaugural sitting on 1 February 1985. Judge Alwynne R. O. Rowlands was appointed on 12 December as the President of the Tribunal, and three part-time members were appointed for a period of 12 months from 1 February 1985. They are: Ms Elizabeth H. Curtin, barrister; Mr Michael D. Higgins, solicitor; and Mr Brian P. McCarthy, solicitor. The Registry of the Tribunal is located at 9th floor, 471 Little Bourke Street, Melbourne, Victoria, 3000, G.P.O. Box 4703, Melbourne, Victoria, 3001, ph. (03)606 9584.

The Victorian AAT Act departs from the Bill in the following major respects:

The President. The President must be a Judge of the County Court (sub-s.7(1)), instead of merely being qualified to be appointed as a Judge of that Court.

Statement of Policy. The Tribunal is required under the Act (sub-s.25(3)) to comply with Ministerial statements of policy, to the extent that they are within power, where in the review of a decision:

- the Minister certifies the existence (at the time of making the decision) of the statement of policy;
- the applicant was aware, or could reasonably have been expected to be aware, of the statement of policy, or the statement was published in the Government Gazette; and