

# FREEDOM OF INFORMATION DECISION RELEASED BY FULL FEDERAL COURT

On 1st March, 1984, the Full Federal Court released its first decision concerning a case under the Freedom of Information Act. This was in the case of **News Corporation Limited -v- National Companies and Securities Commission** (unreported, No. G312 of 1983).

The proceedings arose out of an investigation by the National Companies and Securities Commission ("the NCSC") into transactions by News Limited in the shares of Thomas Nationwide Transport Limited. News Limited sought access to documents received and compiled pursuant to the investigation under the Freedom of Information Act 1982 ("the FOI Act"). The NCSC refused access to the documents and the News Limited appealed to the Administrative Appeal Tribunal.

The Tribunal had held that the documents were exempt from disclosure as section 47 of the National Companies and Securities Commission Act 1979 (the "NCSC Act"), was an enactment of the kind referred to in section 38 of the FOI Act. Section 47 provides as follows:

(1) A document is an exempt document if it is, or is a copy of or of a part of, or contains an extract

from:

- (a) a document for the purposes of the Ministerial Council for Companies and Securities prepared by, or received by an agency or Minister from, a State or an authority of a State;
- (b) a document the disclosure of which would disclose the deliberations or decisions of the Ministerial Council for Companies

and Securities, other than a document by which a decision of that Council was officially published;

- (c) a document furnished to the National Companies and Securities Commission by a State or an authority of a State and relating solely to the functions of the Commission in relation to the law of a State or the laws of 2 or more States; or
  - (d) a document, other than a document referred to in paragraph (c) that is in the possession of the National Companies and Securities Commission and relates solely to the exercise of the functions of that Commission under a law of a State or the laws of 2 or more States.
- (2) This section has effect as if the Northern Territory were a State.

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## SATELLITES AND THE LAW ACLA SEMINAR

"Satellites and the Law" was the subject of a day seminar organised by the Australian Communications Law Association (ACLA) in Sydney's Sebel Town House on May 4, 1984. The speakers and their topics were as follows:

Mr. Graham Gosewinckel, managing director, Aussat Pty. Ltd. ...

"AUSSAT - AN INTRODUCTION AND UPDATE"

Mr. David Jones, chairman, Australian Broadcasting Tribunal...

"REGULATION OF THE USE OF SATELLITE PROGRAMME SERVICES BY BROADCASTERS"

Mr. David Major, marketing director, Aussat Pty. Ltd. ...

"SATELLITE TRANSPONDER LEASE CONTRACT"

Mr. Peter Banki, Australian Copyright Council\* ...

"COPYRIGHT ISSUES RELATED TO SATELLITE DISSEMINATION OF MATERIAL AND SIGNAL PIRACY"

Mr. Henric Nicholas, QC ...

"DEFAMATION & PRIVACY"

Mr. Douglas Lindquist, Oak Systems of Aust. ...

"LEGAL ISSUES RELATING TO ENCODEMENT"

Mr. Malcolm Turnbull, Consolidated Press Holdings ...

"DIRECT BROADCASTING SATELLITE ISSUES"

Published papers of principal speakers and commentators now available from ACLA c/- Martin Cooper & Co., 13th Floor, 100 William Street, Kings Cross, N.S.W., 2011. Delegates who attended symposium \$nil, ACLA members \$35.00, non-members \$45.00.

The Tribunal also found that a corporation could have personal affairs as contemplated by section 12(2)(A) of the FOI ACT, in relation to the type of documents to which access could be provided pursuant to that Act.

A Full Federal Court consisting of Bowen C. J., St John and Fisher J. J., upheld both the appeal and the cross appeal. They said that Section 38 of the FOI Act expressly directed attention to the nature or quality of the information contained in documents, and not to the capacity of the person who had received the information. Section 47 of the NCSC Act was directed to the capacity of the person who received the information. Accordingly, section 47 was not one of the type of enactments referred to in section 38 of the FOI Act and the documents were not exempt from disclosure.

In relation to the cross appeal, the Full Court held that only natural persons could have "personal affairs", and corporations could not.

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