

RECENT DEVELOPMENTS

Australia

- Victorian Premier, Mr Jeff Kennett has called an urgent review of the Victorian *FoI Act* after the names of 51 hospital staff were released to a person serving a prison sentence for a triple murder (see Comment and article in the last edition of the *FoI Review*, No. 79, February 1999).
- The South Australian Parliament Legislative Review Committee is continuing with its *Freedom of Information Act Inquiry*.

The Administrative Review Council has released its report on the Contracting Out of Government Services, Report No.42. Chapter 5 deals with Access to Information. See http://law.gov.au/aghome/other/arc/arc42_report/arc42.htm

The Commonwealth government has still not proposed any timetable for the implementation of any or all of the Australian Law Reform and Administrative Review Council Report No. 77, 'Open Government' released in January 1996.

South Africa

Work on the Open Democracy Bill has been going for the past four years. A new draft became available early in 1998. News from South Africa suggests that because Parliament's program is over-loaded, this Bill is once again being put aside and that it is possible the Bill will

only be passed late in 1999. Until national legislation is enacted, the Interim Constitution's clause, which is more restrictive than the current Constitution's clause on access to information, prevails.

Calls for further submissions, by 25 January 1999, on the draft bill were made by the Chair of the Justice Committee who has suggested that the extent to which access to private sector information should be included in the Bill should be addressed.

United Kingdom

Statement from the UK Campaign for Freedom of Information

The government has been promising to publish a draft Freedom of Information (FoI) Bill for consultation since June 1997. The draft Bill was originally promised for the beginning of 1998 but has been repeatedly delayed. It is currently being promised by the end of February 1999, but only if 'good progress' with the drafting work is made.

A Freedom of Information Bill drafted by the Campaign was introduced into Parliament, by Andrew Mackinlay MP, with cross-party support, as a 10-minute rule Bill on 18 November 1998. The same Bill, with minor amendments, has been introduced in the House of Lords by the Conservative peer, Lord Lucas of Crudwell, and will receive a second reading in February 1999. The promised draft Bill is due for release on 13 May 1999.

Rick Snell

VICTORIAN FOI DECISIONS

AAT / VCAT

HULLS and VICTORIAN CASINO AND GAMING AUTHORITY (No. 1996/31342)

Decided: 15 July 1997 by His Honour Judge Fagan, President.

Power of Tribunal to quash a subpoena.

Background facts

Under s.45 of the now repealed *Administrative Appeals Tribunal Act 1984*, the former Administrative Appeals Tribunal had the power to issue subpoenas requiring a person to appear and give evidence before that Tribunal (the equivalent provision in the *Victorian Civil and Administrative Tribunal Act 1998* is s.104).

Procedural history

On 18 June 1996, Hulls made a request to the Victorian Casino and Gaming Authority (the Authority) for access to all documents concerning

probity checks conducted in relation to Mr Bruce Mathieson. This matter ultimately proceeded to a hearing before the Tribunal (see review of the Tribunal's decision following in this edition of the *FoI Review*).

Prior to the hearing, the Tribunal issued a subpoena directed to Mathieson. The Authority made an application to the Tribunal for an order quashing the subpoena on the ground that it was an abuse of process because there was no relevant evidence which Mathieson could give.

The decision

The Tribunal quashed the subpoena.

Reasons for the decision

The preliminary issue was whether the Tribunal had power to quash the subpoena. Counsel for the applicant submitted that the Tribunal did not have such a power because the *Administrative Appeals Tribunal Act*

1984 did not contain an express power to that effect. However, His Honour Judge Fagan held that 'I have no doubt that the power to issue a subpoena given by s.45 of the *Administrative Appeals Tribunal Act* also contains impliedly power to quash a subpoena issued where it constitutes an abuse of the process of the Tribunal'.

The main question, therefore, was whether the particular subpoena constituted an abuse of process. In this regard, the Tribunal stated that: '[t]he critical issue is whether or not there is evidence capable of being relevant to any of the issues involved in the case which can be extracted from Mathieson'.

Counsel for the applicant contended that the evidence proposed to be adduced from Mathieson related to: first, his place in the gaming industry in respect of the industry as a whole; second, the size