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Contents

Article

- Section 38: A provision of first or last resort?
by *Tim Moe* 26
- Victorian AAT decisions** 31
Atkins 31, Thwaites 31
- Federal AAT decisions** 32
Weetangera 32, S 33, Warren 35, Proudfoot 37, Advocacy for Aged Assn 38
- Overseas developments** 39
UK open government: code of practice

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Comment

In this issue Tim Moe tackles the operation of s.38 of the Commonwealth *Fol Act*. Section 38 allows exemption of documents where disclosure would contravene secrecy provisions in other legislation. The use of s.38 and its equivalent under state *Fol Acts* has been a growing concern. Tim Moe argues that these secrecy provisions are often turned to as a first resort in response to an *Fol* request. He maintains that such provisions should be a last resort. Liza Carver, from the Public Interest Advocacy Centre, in a paper delivered at the 1993 Info One Conference gave a number of examples of the use of secrecy provisions by the Commonwealth Health Department in recent times.

My concern about the use of secrecy exemptions is the point that Liza Carver raised in her paper that where an agency is hostile to the underlying objectives of *Fol* legislation these types of provisions can be exploited to undermine those objectives. The UK *White Paper on Open Government* identified 93 pieces of primary legislation and 76 pieces of subordinate legislation prohibiting the disclosure of official information. Australian *Fol* legislation has gone some of the way to remedy this problem but not far enough.

In the overseas developments section of this issue of *Fol Review* I outline some changes that have recently taken place in the United Kingdom with the introduction of a Code of Practice in regard to open government. It is interesting to note that in July 1993 the government blocked the Campaign for Freedom of Information's *Right to Know Bill*. In many ways this Bill provides fresh and interesting ideas for Australian *Fol* legislation. The Campaign for Freedom of Information has an annual Freedom of Information Awards ceremony where it recognises individuals who have campaigned for greater openness and authorities and companies which have taken important initiatives in releasing more information. I would like to see the development of a similar set of awards in Australia. If anyone has any ideas or wishes to support this concept, please contact me. I would particularly like to see some sort of recognition for Australian individuals, groups or agencies who have tried to move us towards that ultimate objective of *Fol* — open government.

In part, my favourable reception of this idea has been triggered by a recent conversation with a Tasmanian journalist. The journalist has been one of a few (probably less than five) who have used the Tasmanian Act to get information. He is the only journalist to use the Act with any degree of frequency. However, a couple of weeks ago he faxed me expressing a desire to stop using the Act. He had encountered endless obstacles (maximum time limits, etc.) and his employer was less than supportive. The final straw was over a request seeking information relating to the replacement of the Abel Tasman. After spending much time and effort consulting and refining his request, not a single document or sentence was released (the Tasmanian Act allows access to information contained in a document). He had the option of external review but was so disenchanted with the whole process he had allowed time to drift by so he had only four hours left to lodge an external review request.

I think there is a need to hear about some of the victories and to reward those who continue in the face of daunting odds to use *Fol* to chip away at the walls of secrecy. It is interesting to note that the UK awards are also given to public servants and agencies who practise open government.

Rick Sn II