Freedom of Information

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Comment

1997 promises to be a year when finally, like an aeroplane well overdue for maintenance, the stress factors start to play havoc with the efficacy of FoI legislation in Australia. The major sources of stress have been well documented and include the fallout from outsourcing, the persistence (or re-emergence) of a culture of governmental secrecy, overuse and abuse of exemption provisions, modifications to exemptions (like those to the Cabinet exemption in Victoria and Queensland) and the failure to act on reports (the Australian Law Reform Commission Report at the Commonwealth level, Commission for Government in Western Australia and the reforms put forward by David Landa when he retired as NSW Ombudsman) which suggested urgent remedial action.

In some jurisdictions such as Queensland, Victoria, Tasmania and the Commonwealth, the legislative scheme governing FoI resembles the patchwork on a pair of well worn jeans. The effective demise of the Commonwealth Attorney-General's FoI Unit during 1996, which had received such strong support in the ALRC Report, through resource and staffing cuts, and the loss of key staff is symptomatic of current problems facing FoI in Australia.

A recent speech in the South Australian Upper House (12 February 1997) captures the reality confronting most of those who want to use FoI legislation. The Honourable P. Holloway argued for a review of the South Australian Act citing his own experience of trying to access information about outsourcing, namely, blanket use of exemptions with inadequate reasons given. He cited the 1995-96 annual report of the South Australian Ombudsman which stated:

> apart from failing in their legislative duty under the Act, agencies which do not comply with the requirements of section 23(f) [adequate reason statements] ...deprive applicants of the ability to respond in any substantive or meaningful way in their requests for review.

The recently released review by the Upper House Select Committee of the *Freedom of Information Act 1991* (Tas.) is the harbinger of tough times for open government. The first article in this issue offers an initial analysis of the review and argues that the greatest damage, by a Committee which seems to have missed the point about open government, is not so much the immediate impact in Tasmania but the legitimacy many of its ill-considered proposals will lend to those seeking to 'deform' FoI legislation in other jurisdictions.

The second article in this issue provides an update on developments in open government taking place in South Africa.

In the Victorian AAT decisions, Jason Pizer reports on a very important recent decision, *Hulls and Victorian Casino and Gaming Authority*

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