

133 in *Re Corrs Pavey Whiting and Byrne and Alphapharm and Collector of Customs* 11 ALD 312. With regard to s.45, the Tribunal referred at length to its discussion of the relevant cases in *Re Brennan (No. 2)* (1985) 8 ALD 10, 20 and to the conflicting views on the meaning of 'breach of confidence' expressed by the Full Court of the Federal Court in *Corrs Pavey Whiting & Byrne v Collector of Customs and Alphapharm Pty Ltd* 12 *Fol Review*.

The Tribunal concluded that the respondent had discharged the onus of proof imposed on it under s.61 in respect of two sets of material:

- those dates appearing in material received by the respondent from DHA; and
- a document containing marketing information supplied by DHA.

These materials were in its view exempt under s.45.

The remaining material, which comprised the dates appearing in material which originated from the respondent and the name of the product against which DHA's drug was tested, was not, in its view, exempt under s.45 as it could not be said to have been 'received under circumstances imparting an obligation of confidence'. The Tribunal, was, however, satisfied that the disclosure of this latter information 'would disclose . . . information . . . concerning a person [DHA] in respect of his business . . . affairs . . . being information the disclosure of which would, or could reasonably be expected to unreasonably affect that person adversely in respect of his lawful business affairs' in terms of s.43(1)(c)(i).

WISEMAN and DEFENCE SERVICE HOMES

No. N87/517

Decided: 23 December 1987 by B.J.

McMahon (Senior Member), C.J. Stevens and G.R. Taylor (Members) *Request for access to documents relating to transfer of applicant's interest in Defence Service Home — claims for exemption under ss.41 and 45 — documents relating to personal affairs of wife.*

The applicant and his former wife had obtained a loan from the respondent which was secured by a mortgage over their matrimonial home. On their divorce the applicant had been ordered to transfer title to his wife and she, in order to obtain the respondent's consent to the transfer, had furnished it with a number of documents relating to her affairs. The applicant had been denied access to these documents on the basis that they were exempt under ss.41 and 45.

Three of the documents in question related to the payment of rates on the matrimonial property. The Tribunal found in relation to these that there was no indication that they were supplied in confidence and that their disclosure would not constitute an unreasonable disclosure of the personal affairs of the wife. It commented that, even if the documents could be categorised as dealing with the financial or other personal affairs of the wife, they related the affairs of both the husband and wife and so came within the proviso in s.41(2).

The remaining documents contained information about the wife's financial circumstances, the use to which she intended to put the matrimonial home and her intentions with regard to remarriage. These clearly related in the wife's personal affairs so that the only question to be determined was whether their disclosure would be unreasonable.

The Tribunal referred to its earlier decision in *Re Chandra* 6 ALN 257 in which it had discussed two types of matters to be taken into account in determining whether such disclosure would be unreasonable. It commented that the nature of the information here was of a highly personal kind. Furthermore, the circumstances under which it was obtained were similar to those in *Re Corkin* 2 AAR 515 in that the information was supplied to the respondent in the belief that this was necessary to enable her to obtain title to the matrimonial home; it was not willingly published to the world. In addition, there was a clear and explicit wish on the part of the wife that the information should not be disclosed to the applicant and the information, being mainly more than six years old, could not, in the Tribunal's view, have been of any present relevance notwithstanding that there was litigation still pending between the husband and wife. The Tribunal therefore concluded that disclosure of the documents in question would be unreasonable, despite the applicant's legitimate interest in wanting to know what preceded the registration of the transfer of his interest.

The Tribunal also upheld an additional claim for exemption under s.45 on the basis that the documents contained confidential information which was provided and received in circumstances of confidentiality. (See *Re Maher* 7 ALD 731 and *Corrs Pavey Whiting and Byrne v Collector of Customs* 12 *Fol Review* 72.) It commented that the wife was under the impression that it was necessary to furnish these documents in order to secure title to her home; whether or not, she was in error, as a matter of law, was beside the point.

IN BRIEF

The Minister for Property and Services has recently released the final report on public records policy in Victoria titled 'Future Directions for Management of Public Records'. As readers will recall, a consultant's report examining public records policy recommended as a policy objective the immediate introduction of a 30-year rule for records which were at least 30 years old.

It is disappointing to report that the Minister recommended the implementation of the 30-year principle should be phased in to reflect resource implications. Some of the options canvassed include a phased introduction via stepwise reduction of the 85-year rule, a year

by year introduction of 30-year access, 31-year access, etc. Further information concerning the report can be obtained from Ms Carol Neumann, Manager, Planning and Review, Department of Property and Services, 35 Spring Street, Melbourne (ph. 651 3100).

- The Victorian Premier's persistent battle to extend protection of Cabinet documents continues unabated. On 20 January, 1988 the Legal and Constitutional Committee recommended that the Freedom of Information (Exempt Offices) Regulations 1987 and the Public Service (Unauthorised Disclosure) Regulations 1987 should be suspended until Parliament could

consider their validity in the autumn session. Two labour MPs, Mr Gordon Hockley and Ms Joan Coxedge voted with the conservative parties to suspend the regulations. Undeterred, the Cain Government on 28 January via the Governor-in-Council gazetted its rejection of the Committee's recommendations. Mr Cain also directed an all party committee to look at the operation of the *Fol Act* and the *Public Records Act*.

This action has been criticised by the *Fol Access Network* which has pointed out that the *Fol Act* and the *Public Records Act* have been reviewed by the Attorney-General's Department and the Department for Property and Services, respectively.