

training. Under the auspices of the Royal Institute for Public Administration Australia, an FoI Coordinators Network was established, through which those interested could continue to meet, to receive legal updates and to discuss problems and issues of common concern. FoI training was left in the hands of the original consultant to the Unit to conduct on a purely private basis.

Annual reporting on FoI activity was devolved to each agency, with Ministers' Offices reports being consolidated in the Premier's Department Annual Report. Recently, the Network has decided to collect statistics

informally from its members so that an aggregated picture of FoI activity can be maintained.

**David Roden**

*David Roden is former Director, FoI Unit, New South Wales Premier's Department.*

#### Reference

- 1 Letter from the Ombudsman to the Director, FoI Unit, 11 September 1990.

## Indiana Smith and the Annual Report Treasure Trove

Readers may recall in the June 1992 *FoI Review* a report of efforts to obtain details of the operations of the NSW Victims Compensation Tribunal.

Two responses were received to this article and one is published with this second part of the article. In the last episode, our quest for any Annual Report of the NSW Victims Compensation Tribunal was going nowhere: but we have since found gold, albeit buried in an unlikely location.

### The story so far

I had sought a copy of the Victims Compensation Tribunal's (VCT) annual reports for 1988-89 and 1989-90 that it is required to produce by its enabling legislation and that had been tabled in Parliament on 13 November 1990. In response to my letters the Tribunal did supply a copy of the 1990-91 annual report but also advised it was 'unsure' if a report had been prepared for 1988-89 but, in any event, did not have a copy.

As for the 1989-90 report, I was told a decision was made not to print it so no copy of it was available either. However, not only did I write seeking the reports to the Tribunal but also to the Speaker of the NSW Parliament. Both letters were sent on 23 June 1992.

I received a reply from the Clerk of the Legislative Assembly, Mr R.D. Grove, within six days of my letter, enclosing a copy of the Tribunal's combined annual reports for 1988-89 and 1989-90.

Mr Grove has my gratitude and his prompt response on behalf of Parliament compares markedly to the response of the VCT: what does this say about accountability?

I have not received a reply from the VCT to my 23 June 1992 letter, nor to my follow-up letters of 27 July and 21 September 1992.

### What do the annual reports reveal?

The 1988-89 and 1989-90 reports I have obtained contain numerous copies and extracts of correspondence between the then Chairman of the Tribunal and the Attorney-General, the NSW Law Society and the Attorney-General's Department.

They represent a 'treasure trove' of information dealing with the way the VCT has operated but more so they reveal material going to the original point of my interest and, in particular, apparently irreconcilable differences

between those who created the VCT and those who were to administer the legislation.

I have yet to assess the contents of the three reports I do have or, in particular, the correspondence reproduced in them, but the material covers such topics as the deficiencies in the *Victims Compensation Act* 1987, and the compensation scheme it created, difficulties encountered with the Attorney-General's Department, responses to criticisms of the VCT, and dealings with the Law Society.

This project is acquiring more tangents than a discussion with Pythagorus but I am finding a range of curious practices both in legislation and reporting processes. Quite simply, the annual reports legislation in NSW requires reporting of 'the good, the bad and the ugly' regarding the operations of departments and statutory bodies.

My next task will be to examine the VCT annual reports I do have and compare the issues raised in them with what is reported in the annual reports of the NSW Attorney-General's Department. If what I have found in the VCT annual reports is not referred to in the other department's reports then it will further demonstrate the inadequacy of the legislation.

I shall pursue this aspect in more detail in my next article.

### My dealings with the VCT

I have sent three letters to the VCT between June and September 1992, all without reply:

- The first sought details of material prepared for the Minister in November 1990.
- The second sought a copy of the 1991-92 annual report mentioned in a press article on 18 July 1992, as well as details of where decisions of the VCT might be published.

The third, in addition to reminding the VCT of my two earlier letters, sought details about the 1700 or so appeals lodged in the NSW District Court against Tribunal decisions.

The focus so far is merely on the availability rather than the content of information about the activities of the VCT.

I did come across a significant amount of information about the operations of the VCT in a publication called *NSW Petty Sessions Review*. This is a small loose-leaf publication aimed at NSW magistrates dealing with civil and criminal law, especially superior court decisions.

I shall deal with some of the contents of the *Petty Sessions Review* below.

### Why is any of this important?

This subject does not just concern the VCT. The Senate has recently examined the subject of reporting on social justice issues by Commonwealth bodies, in particular regarding access to justice. It seems equally desirable for State bodies to similarly account.<sup>1</sup>

There is scope in NSW annual reporting legislation to do this if certain provisions are given a wide and liberal interpretation, but if bodies like the VCT, or the Residential Tenancies Tribunal or the Consumer Claims Tribunals are either not required to produce reports or have no controls over content and availability, then how do citizens assess their activities?

The operation of the VCT has a significant impact on the use of court resources especially in the District Court. In 1991 there were about 1700 appeals lodged against the decisions of the VCT, representing a substantial drain on judicial resources, especially if the District Court is

deciding what the VCT should have decided in the first place.

There is a rumour that appeals from the VCT will go to a panel of three magistrates rather than to the District Court but it seems to me that this will perpetuate the problem. Where will appeals from this panel go?

The broader issues worth pursuing are the assumptions underlying the staffing decisions and recruitment of members to run specialist tribunals, such as the VCT. Why are they so secretive, why are they run by lawyers and court bureaucrats, why are magistrates or ex-magistrates appointed? Why not select after advertising for applicants? These issues, and more, will be worthy of pursuit once I can actually get the raw data about the VCT and other similar tribunals.

Way back on 22 May 1984, in the Parliamentary debate on the *Annual Report (Statutory Bodies) Bill*, the then Opposition spokesperson, one Peter Collins, now a Minister, in a well researched speech on the subject of bureaucratic conduct and secrecy observed:

Most of the annual reports tabled in the NSW Parliament are as useful as a 1960s encyclopaedia. Outdated information is as useless as none at all and sometimes can be worse. Members of Parliament and members of the public have only annual reports to chronicle the progress and problems of our public instrumentalities. In an age of freedom of information, delayed reports mean freedom from information.<sup>2</sup>

## Readers' responses: the VCT strikes again

*Two responses were received to the first article on this subject. One was from an academic at Macquarie University wanting to know more as he was interested in the role of the NSW District Court in dealing with appeals from the tribunal.*

*The second, more interesting response was a letter from a University of NSW law student, Rebecca Peters, who wrote to the author stating among other things:*

**'I wanted to write an essay looking at the type of claims and amounts of the awards made by the tribunal.**

**Of particular interest to me was an examination of the proposition the tribunal was devaluing, in its decisions and orders, those women who were victims of sexual assault compared to victims of things like pub brawls.**

**My idea came from discussions with colleagues who know of specific tribunal cases where the subjective finding at least was that claims by women victims were accorded little value compared to claims by others.**

**It would be an interesting hypothesis to test.**

**I telephoned the VCT in April 1992, and spoke to one of the staff. I shall summarise the call, but to give the real flavour of the encounter, I have included some of the 'She said' 'I said' bits where suitable.**

**The information I was after included such things as: how many applications the tribunal receives, how many appeals there had been, what was the breakdown of claims by types of violence, what the average award was either overall or for particular types of violence, etc.**

**The answer for each of my questions was 'well, that**

**information isn't available', and as any keen observer of the bureaucratic tongue would know this could mean either 'we do not have it' or 'we are not going to give it to you'.**

**I also wanted to know of any guidelines issued about how tribunal members should go about making decisions. She said: 'We couldn't possibly give you that'.**

**I asked if any decisions of the tribunal were published anywhere and she said 'No'.**

**The only thing the officer did volunteer was that the average award by the tribunal was about \$8300, so I should be grateful for that.**

**I asked why the information I sought was not available and was told it was too time consuming to prepare. She knew this because similar material had been put together in response to requests from the Minister and MPs.**

**I asked if I could get a copy of that material on the basis that it was already compiled but I got a flat 'No' on that score.**

**My final question should appeal to you. I said: 'Can I at least get a copy of your annual report?' She said: 'There is none but you might look at the annual report for the Attorney-General's Department, it has some figures in it.'**

**By this point I started to think of another essay topic.**

**I don't know how your project is going, Bruce, but I hope you have better luck than me.'**

As the accompanying article demonstrates there is a great need for specific disclosure provisions for the VCT but also for an even broader overhaul of the annual reporting legislation applying in NSW.

In looking at the VCT we not only have delayed information but information unavailable in annual reports that curiously is available elsewhere.

No details of actual VCT decisions or appeals appear in any of the annual reports I have obtained. However, details of both appear in the journal *Petty Sessions Review* mentioned above.

In the 1990-91 annual report there is a brief paragraph dealing with the policy applying to hearings of claims. The Chairman reported he was curtailing hearings but would review this policy once arrears were reduced.

In an issue of *Petty Sessions Review* the following paragraph appears:

The backlog of applications lodged with the VCT is expected to be cleared in early 1992. Thereafter, it is likely that the tribunal will more frequently accede to a victim's preference for a determination at a hearing rather than without a hearing.<sup>3</sup>

While neither entry is very informative, I am told getting a hearing is an important issue for claimants, so surely such a policy issue should be fully discussed in an annual report rather than being commented on in a more meaningful way in a private publication.

The *Petty Sessions Review* also gives details of 86 claims and District Court appeals, setting out the name of the member or judge involved, the details of the incident, the injuries received by the victim, the award made and its variation on appeal.

My question is simple: why are these details not included in the VCT's annual report?

Returning to the hopes and dreams of politicians regarding the NSW annual reporting legislation, consider again the views of Peter Collins:

The end result of these bills will be that success or failure can be discovered more quickly and responded to by appropriate executive action. It will see the end of whitewashing government reports. It will promote the development of a managerial environment within a defined framework of objectives in which initiative, ability and competence are the recognised values.<sup>4</sup>

Is someone in the VCT reading this and making notes?

### What can I do next?

If the VCT does not reply to my letters or does so and declines to provide the information requested my options are limited.

One is to apply under the *Freedom of Information Act* 1989 (NSW) but by virtue of Schedule 1, Clause 11 (Judicial Functions) the material I seek, other than the annual report, might well be exempt.

Another approach would be to go to the NSW Ombudsman, at least to get an answer to my letters from the VCT. Under the *Ombudsman Act* 1974 (NSW), Schedule 1, Clause 2, the activities of a court are outside the Ombudsman's jurisdiction so that avenue is closed. (In any event I have been writing recently to the Ombudsman about another matter and despite two letters to his office I cannot get a reply from him either.)

While neither of the NSW Acts dealing with annual reports applies to the VCT both of these statutes contain provisions requiring copies of annual reports to be available to the public.

A first step would be to amend the *Victims Compensation Act* 1987 to ensure that there was a similar requirement for public availability going beyond the mere duty to submit an annual report to the Minister.

Should there be an actionable right to take proceedings against the relevant statutory officers (chairperson and/or registrar of the VCT) wherever they do not produce a report or make it available to the public? I think there should be.

### Is there a message in all this?

If I did not have other things to do I would like to make my life's work the location of and then the scrutiny of the contents of the annual and other reports of all NSW public bodies.

I seem to have some vague recollection of the provisions of *Magna Carta*: I admit I am probably giving it a wide interpretation but it seems in relation to bureaucrats at least, two bits of it might be relevant:

40. To no one will we sell, to no one will we deny or delay right or justice. [i.e. I have a right to an annual report, among other information.]

45. We will not make justices, constables, sheriffs or bailiffs who do not know the law of the land and mean to observe it well. [i.e. all bureaucrats should know what the law requires them to do and do it.]

As for this scribbler, I shall keep writing letters. I hope I do not have to trouble Parliament again. In a later issue you will hear more. Does any reader want to open a book on the results?

**Bruce Smith**

*Bruce Smith is a Sydney lawyer.*

### References

- 1 Senate Standing Committee on Legal and Constitutional Affairs, 'Scrutiny of Annual Reports', June 1992, especially Chapter 5.
- 2 NSW Hansard, 22 May 1984, p.1269.
- 3 NSW *Petty Sessions Review* Vol. 9, p.4318.
- 4 NSW Hansard, 22 May 1984, p.1271.

**Postscript:** At the time of going to print I was advised that the Chairman of the Tribunal had issued a Discussion Paper on amendments to the *Victims Compensation Act*. I have written to the Tribunal seeking a copy. **[B.S.]**