

# Freedom of Information and the Tasmanian Ombudsman, 1993-1996

HELEN SHERIDAN\* AND RICK SNELL†

The importance of the Tasmanian Ombudsman as external reviewer of agency decisions under the Tasmanian *Freedom of Information Act* 1991<sup>1</sup> cannot be underestimated. Rowat has argued that one of the most controversial questions about Freedom of Information (FOI) schemes has concerned the kind of body which should consider appeals against refusal of requests for government-held information.<sup>2</sup> Australian jurisdictions have chosen a wide range of review options (see Table 1). In Tasmania the Ombudsman forms the only independent and determinative administrative review mechanism for the Act. This model resulted from a mixture of cost considerations and the absence of any State level Administrative Appeals Tribunal (AAT). The dangers of such a model include the greater concentration of power and a greater possibility of bias. In addition, in Tasmania there is the need for clear and comprehensive FOI review precedents, as the number and frequency of FOI determinations by a State Ombudsman as compared to the Federal AAT will inevitably be small.<sup>3</sup> Furthermore, the pivotal role of this office in determining access to government held information is then subject to the constraints of staffing, resources and the mindset of the particular reviewer.

\* BA(Hons)/LLB(Hons)(Tas).

† BA(Hons)/LLB, MA, Lecturer in Administrative Law at the University of Tasmania.

1 Hereafter referred to as the FOI Act.

2 DC Rowat, 'Freedom of Information: The Appeal Bodies Under the Access Laws in Canada, Australia and New Zealand', (1993) 52 *Australian Journal of Public Administration*, 215-221.

3 See E Biganovsky, 'Reinventing Freedom of Information: A State Focus', 1994 National Administrative Law Forum, 'Are the States Overtaking the Commonwealth?' 7-8 July 1994, Brisbane, published in S Argument (ed) *Administrative Law: Are the States Overtaking the Commonwealth?* p 190.

**Table 1: External Review Mechanisms in Australian Jurisdictions<sup>4</sup>**

Jurisdiction	Internal Review	External Review
Commonwealth	s 54	Ombudsman, s 57; AAT, s 55.
Victoria	s 51	Ombudsman ss 27 and 57; AAT, s 50.
Australian Capital Territory	s 59	Ombudsman, s 54; AAT, s 60.
New South Wales	s 34	Ombudsman, s 52; District Court, s 53.
South Australia	s 38	Ombudsman, s 39; District Court, s 40.
Tasmania	s 47	Ombudsman, s 48.
Queensland	s 52	Information Commissioner, s 71.
Western Australia	s 39	Information Commissioner, s 54.

This paper concludes that a deliberate choice of informality linked with the pressures and limitations of reduced resources has damaged the effectiveness of the Ombudsman as the sole external review mechanism for the FOI Act. While this paper is highly critical of the quality of the Ombudsman's performance as the external reviewer of the Tasmanian FOI scheme during the 1993-1996 period, the handling of his case load has been exemplary. A heavy workload and staff cut-backs may have encouraged the Ombudsman to take a low key, informal approach to his review task under FOI. The central concern of this article is that the Ombudsman's discernible predisposition towards non-disclosure and a failure to seriously tackle openly and fully the issue of public interest deliberation has critically weakened any attempt to achieve the objectives of the legislation.

Research undertaken by students at the Law School, University of Tasmania since 1993 suggests that severe reductions in funding and

<sup>4</sup> Based on information in M Campbell, 'Freedom of Information Legislation in Australia: A Comparison', in McMillan J, *Administrative Law: Does the Public Benefit?*, Proceedings of the Australian Institute of Administrative Law Forum (Panther Publishing, 1992).