

The Tribunal also found that the Committee was not bound to observe the requirements of procedural fairness, and that although the adverse allegations were not put to the applicant, it could not be found that the Committee had acted improperly.

The Tribunal also found that the report was not misleading. It noted that where an expert committee reports within its terms of reference,

taking into account the material before the committee, it will be an unusual case where the opinion of the committee in the report would be misleading. If it was established that the report did not correctly reflect the opinion of the committee or that the committee failed to take into account a relevant consideration placed before the committee, then its report might be thought to be misleading.

The fact that others may disagree with the report does not make it misleading.

The Tribunal held that there was no basis for amending the document. The applicant was invited by the Tribunal to make a statement to the university under paragraph 51A(c) for an annotation to the document.

[A.M.]

NEWS

'The Age' requests the files on Dugan

Source: *Age*, 16.10.93, p.16

The public was entitled to know why Mr John 'Darcy' Dugan was removed as chairperson of the Victorian Gaming Commission last November and if he was paid compensation, the Administrative Appeals Tribunal was told yesterday.

Mr Mark Dreyfus, for the *Age*, said the Minister for Gaming, Mr Storey, should also reveal whether public funds were used and whether Mr Dugan's removal was proper or warranted.

Mr Dreyfus is representing the *Age* in a freedom of information request by a journalist, Ms Leonie Lamont, to obtain documents relating to Mr Dugan's appointment and dismissal. Ms Lamont appealed to the tribunal after she was denied access to about a dozen documents.

Mr Dreyfus told the tribunal that Mr Storey gave 'the thinnest possible reasons for removing Mr Dugan'. This was despite the fact that, before the state election, the then Opposition criticised Mr Dugan's 'alleged improper conduct'. As coalition leader, Mr Kennett said he would sack Mr Dugan once he became premier.

Mr Dreyfus said Mr Kennett's comments followed allegations that Mr Dugan accepted a free plane flight in the United States with a firm, Video Lottery Consultants, which had sought to supply poker machines to Victoria.

'There are suggestions in this case, not denied by the minister, that a large amount has been paid to Mr Dugan', Mr Dreyfus said. 'But the Government has put up the shutters and further debate is impossible.'

Mr Tim Ginnane, for the Department of Arts, Sport and Tourism said the media had covered the issue extensively and there was nothing more to learn. The documents showed no impropriety and many contained personal information relating to Mr Dugan. All were exempt under the *FoI Act*.

Mr Ginnane said it was vital that correspondence between ministers, senior public servants and heads of statutory authorities remained confidential. He also said the documents revealed no new information about the plane flight.

Mr Ginnane questioned why the *Age* had not written any articles about Mr Dugan's dismissal since last November if it was concerned about the public's right to know. He said journalists were sceptical when a government refused to release information.

An associate editor of the *Age*, Mr Denis Muller, told the tribunal in reference to Mr Dugan that 'the hiring and firing of the most senior public administrators in this field is of major public interest'.

'The person was being paid out of public money, therefore the public is entitled to know whether he was compensated and by how much,' he said. 'This raises a lot of clouds . . . and although there may be no basis, they linger to the present day.'

The member for Glen Waverley, Mr Ross Smith, said he made a *FoI* request in June 1992 for documentation relating to Mr Dugan's US air trip. 'I was sometimes ringing the commission on a daily basis but I kept getting the answer that: you'll get it (the documents) in a few days. This went on for the next few months. It made the newspaper campaign even more relevant.'

A member of the tribunal, Ms Judy Bretherton, reserved her decision.

The right to know

Source: *Age*, Editorial, 26.10.93, p.13

The Department of Health and Community Services did the right thing last week when it released information to the *Age* on public hospital death rates. But that should be just a start. There is a lot more information about our public hospitals gathered by the Department that should now be released. Surely everyone agrees that Victorians have a right to be informed about the quality of patient care in the State's public hospitals. Well, actually, not everyone does.

The response from public hospitals to the report in the *Age* has been outrage that the statistics have been made public. The hospitals have argued that the statistics paint a distorted picture of what is happening and that publication of the death-rate statistics will damage the hospital system. This is an entirely predictable response. It is the response you get from any public institution that is suddenly open to a form of scrutiny that it has managed to avoid over a long period of time. The fact is that the death rate information has been available for some time and despite lobbying by consumer health groups, the information was kept secret because that was the way the hospitals wanted it.

But public hospital patients are consumers and they have a right to information that will help them make informed choices about where to go for health services they require. If a hospital has a good record in, say, heart surgery or the treatment of strokes, the public has a right to know about it. If the hospital has a poor record, that fact should be made public as well.

According to hospitals, the Department's figures are skewed, unfair or worthless. But are they? Fifty-four public hospitals figured on the list. In every case, the hospital's inpatient mortality rates were adjusted to eliminate distortions caused by variations in age, case

complexity, the rate of emergency admissions and other factors. Twenty-eight of the hospitals had adjusted death rates higher than expected for hospitals of their kind. As the Department said, the figures need to be treated with caution. A hospital that handles a great many trauma cases will probably have a higher-than-average mortality rate because of the emphasis on emergency care.

Nonetheless, the figures are a broad indication of the quality of the care being offered. That is certainly how consumers will view them. Instead of castigating the Health Department for releasing the figures, the hospitals should use the data to see whether it suggests that there are things they should do differently.

The Department should release figures on infection rates, drug reactions, and a whole range of other matters on which it keeps statistics. With the move to case-mix funding, our public hospitals are being forced to become more consumer oriented. And what consumers of public hospital services need is more, not less, information about the quality of services being offered them.

Senate Select Committee on Public Interest Whistleblowing

On 23 October 1993 an advertisement was placed in major newspapers, excerpts from which follow:

On 2 September 1993, the Senate established a select committee to be known as the Select Committee on Public Interest Whistleblowing. The Committee will inquire into whether whistleblowing should be the subject of Commonwealth legislation to enable the making of such disclosures in the public interest, and, if so, what form the legislation should take. The inquiry will have particular reference to:

- (a) what persons and organisations, as subjects of whistleblowing, should be covered by the legislation;
- (b) the nature of any protection that should be extended to whistleblowers and to the subjects of whistleblowing;
- (c) whether a new agency should be created to receive and investigate any discrimination suffered by whistleblowers as a result of these disclosures, or whether an existing Commonwealth agency should have that role;
- (d) what powers any investigating body should have;
- (e) the nature of any protection that should be extended to any investigating body and its members;
- (f) what remedies and penalties should be provided for whistleblowers and for the subjects of whistleblowing.

The advertisement called for submissions from interested people by 3 December 1993. Further information can be obtained from the Committee Secretary, tel. (06) 277 3572; fax (06) 277 5706.

FOI REVIEW INDEX: NUMBERS 43-48

Anderson and Community Services Victoria	47:66	Olney and Corporate Affairs - Victoria	47:61
Argent and South Australian Police Department	44:20	Perton and Department of Premier and Cabinet	43:10
Arnold Bloch Leibler and Department of Planning and Housing	44:19	Perton and Ministry of Finance	44:18
Australian Doctors Fund and Department of Treasury	46:51	Perton and Department of Manufacturing and Industry Development	45:33
Bennett v University of New England	43:9	Property Owners' Association of Victoria and Ministry of Consumer Affairs	45:35
Boyle and Australian Broadcasting Commission	48:77	Rabel and State Electricity Commission	47:67
Commissioner of Police v District Court of NSW and Perrin	48:76	Rabel and State Electricity Commission	45:33
De Beer and Victoria Police (Nos 1 and 2)	43:12	Reilly and Kilmore and District Hospital	48:76
Dickson and Victoria Police	48:76	RMF and Associates and Accident Compensation Commission	44:15
Everingham v Director General of Education (No. 1)	45:36	S and Commissioner of Taxation	46:47
Everingham v Director General of Education (No. 2)	45:38	Slezankiewicz and Australian and Overseas Telecommunications Corporation	47:67
Galea and Australian and Overseas Telecommunications Corporation	46:49	Smith and County Court of Victoria	45:34
Gower and Department of School Education	47:63	Sobh v Police Force of Victoria	46:46
Jungwirth and Victoria Police	45:35	Southern and Department of Education, Employment and Training	47:68
Maher and Maryborough and District Hospital	44:16	Stockdale and Health Department of Victoria	43:11
McCubbin and Office of Corrections	45:35	Thwaites and Department of Justice	47:66
Nathan and Department of Employment, Education and Training	46:50	Trotman and Occupational Health and Safety Authority	47:64
		Wyman and Monash University	44:19