

Participants:

Mr R K STEWART  
and Mrs C D STEWART  
Applicants

- and -

DEPARTMENT OF TRANSPORT  
Respondent

### DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - application for review of a decision requiring payment of a \$30 application fee for access to documents - whether the requested documents concern the applicants' personal affairs within the meaning of s.29(2) of the *Freedom of Information Act 1992 Qld* and ss.6 and 7 of the *Freedom of Information Regulation 1992 Qld*.

FREEDOM OF INFORMATION - whether the phrase "personal affairs" bears a consistent meaning in the different contexts in which it is used in the *Freedom of Information Act 1992 Qld* - the meaning of the phrase "personal affairs" explained - words and phrases: "personal affairs"; "business affairs".

*Freedom of Information Act 1992 Qld* s.5(1)(c), s.6, s.10, s.21, s.29(2), s.32, s.44(1), s.44(2), s.44(3), s.45(1)(c), s.53

*Freedom of Information Regulation 1992 Qld* s.6, s.7

*Acts Interpretation Act 1954 Qld* s.14B, s.32A, s.36

*Freedom of Information Act 1982 Cth* s.12(2)(a), s.41(1), s.48

*Freedom of Information Act 1982 Vic* s.33(1), s.39

*Freedom of Information Act 1989 NSW* Sch.1 cl.6(1)

*Acts Interpretation Act 1901 Cth* s.22

*Freedom of Information Act 1991 SA*

*Freedom of Information Act 1992 WA*

*Administrative Decisions (Judicial Review) Act 1977 Cth*

*Freedom of Information Amendment Act 1991 Cth*

*Privacy Act 1988 Cth*

*Official Information Act 1982 NZ* s.9(2)(a)

*Re Chandra and Department of Immigration and Ethnic Affairs* (1984) 6 ALD N257

*Re Phillip Page and Metropolitan Transit Authority* (1988) 2 VAR 243

*Colakovski v Australian Telecommunications Corporation* (1991) 100 ALR 111

*DPP v Smith* [1991] 1 VR 63

*Re Eccleston and Department of Family Services and Aboriginal and Islander Affairs*, Information Commissioner Qld, Decision No. 93002, 30 June 1993

*Re News Corporation Limited and Others and National Companies and Securities Commission* (1983) 5 ALD 334

*News Corporation Limited and Others v National Companies and Securities Commission* (1984) 52 ALR 277

*Re Williams and Registrar of the Federal Court of Australia* (1985) 8 ALD 219

  

*Young v Wicks* (1986) 13 FCR 85

*Re Wiseman and Department of Transport* (1986) 12 ALD 707

*Re Corbett and Australian Federal Police (No. 2)* (1986) 11 ALN N249

*Re Griffiths and Victoria Police* (1988) 2 VAR 595

*Department of Social Security v Dyrenfurth* (1988) 80 ALR 533

*Wiseman v the Commonwealth of Australia* (Federal Court of Australia, Sheppard, Beaumont and Pincus JJ, No. G167 of 1989, unreported, Sydney, 24 October 1989)

*Bleicher v Australian Capital Territory Health Authority* (1990) 20 ALD 625

*Re F and Health Department* (1988) 2 VAR 458

*Re Pescott and Victorian Tourism Commission (No. 2)* (1988) 2 VAR 437

*Re Perton and Attorney-General's Department* (1992) 5 VAR 302

*Registrar of Titles (WA) v Franzon* (1976) 60 ALJR 4

*Craig Williamson Pty Ltd v Barrowcliff* [1915] VLR 450

*Re Jones and Attorney-General's Department* (1989) 16 ALD 732

*Re VXH and Public Service Commission* (Commonwealth AAT, No. V89/5, 23 March 1990, unreported)

*Re Forrest and Department of Social Security* (1991) 23 ALD 649

*Re Wiseman and Defence Service Homes Corporation* (1987) 14 ALD 301

*Dr J W C Cumes v Department of Foreign Affairs and Trade* (Commonwealth AAT, A85/85, Hartigan J (President), 8 February 1989, unreported)

*Re Targridge Pty Ltd and Road Traffic Authority* (1988) 2 VAR 604

*Re Anderson and Australian Federal Police* (1986) 4 AAR 414

*Re Boehm and Department of Industry, Technology and Commerce* (1985) 7 ALN N186; [1985] 7 ALD 270

*Re Corkin and Department of Immigration and Ethnic Affairs* (1984) 2 AAR 214

*Re Wong and Department of Immigration and Ethnic Affairs* (1984) 2 AAR 208

*Re Kahn and Australian Federal Police* (1985) 7 ALN N190

*Re Lapidos and Ombudsman (No. 1)* (1987) 2 VAR 82

*Re Lapidos and Office of Corrections (No. 2)* (Victorian AAT, Judge Jones (President), 19 February 1990, unreported)

*Re Ricketson and Royal Women's Hospital* (1989) 4 VAR 10

*Re Lianos and Secretary to Department of Social Security* (1985) 7 ALD 475

*Re Forbes and Department of the Premier and Cabinet* (Victorian AAT, Deputy President Ball, 20 September 1993)

*Re Liddell and Department of Social Security* (1989) 20 ALD 259

*Re Borthwick and Health Commission of Victoria* (1985) 1 VAR 25

*Commissioner of Police v the District Court of New South Wales and Perrin* (NSW Court of Appeal; Kirby P, Mahoney JA, Clarke JA; No. CA 40205/93; 2 September 1993)

*Re Perton and Department of Manufacturing and Industry Development* (1991) 5 VAR 149

*Re Properzi and Department of Immigration & Ethnic Affairs* (1984) ADMN 92-035

*Re Simons and Victorian Egg Marketing Board (No. 1)* (1985) 1 VAR 54

*Argent v South Australian Police Department* (District Court of South Australia, Roder J, 13 November 1992, Judgment No. D2671)

*Re Traynor and Melbourne Metropolitan Board of Works and Minister for Water*

*Resources (No. 2)* (1988) 2 VAR 358  
*Re Perton and Port of Melbourne Authority* (1990) 4 VAR 155  
*Re Hocknell and Australian Telecommunications Corporation* (1991) 23 ALD 446  
*Re Dyki and Federal Commissioner of Taxation* (1990) 22 ALD 124  
*Re Foster and Victorian Police* (1989) 3 VAR 110  
*Re Atkinson and Public Transport Corporation* (1992) 5 VAR 255  
*Re Jacobs and Department of Defence* (1988) 15 ALD 645  
*Re Toomer and Department of Primary Industries and Energy* (1990) 20 ALD 575  
*Re Telfer and Australian Telecommunications Commission* (1986) 11 ALN N122  
*Re Jamieson and Department of Aviation* (1983) 5 ALN N300  
*Re Ritchie and Department of Minerals and Energy* (Information Commissioner Qld,  
5 February 1993)  
*Re Boehm and Department of Prime Minister and Cabinet* (1984) 7 ALN N163

**DECISION**

The decision under review (being the decision of Mr W Rodiger dated 9 February 1993 that a \$30 application fee is payable by Mr & Mrs Stewart in respect of their FOI access request to the Department of Transport dated 12 January 1993) is affirmed.

Date of Decision: 9 December 1993

.....  
**F N ALBIETZ**  
**INFORMATION COMMISSIONER**

## TABLE OF CONTENTS

	Page
Background .....	1
The Applicable Legislative Provisions.....	2
The Issues to be Determined .....	2
The Meaning of "Personal Affairs" .....	3
The different contexts in which the phrase "personal affairs" appears in the FOI Act .....	3
Guidance from other jurisdictions .....	7
Does the phrase "personal affairs" bear the same meaning throughout the Queensland FOI Act? .....	16
The meaning of "personal affairs" - Drawing the threads together .....	19
Matters which clearly fall within the meaning of the phrase "personal affairs of a person" .....	28
Matters which clearly fall outside the meaning of the phrase "personal affairs of a person" .....	29
Recurring issues in the "grey area" .....	31
(i) Names, addresses and telephone numbers .....	31
(ii) Employment related matters .....	34
(iii) "One-off" commercial transactions are capable of concerning a person's personal affairs .....	35
(iv) Whether the characterisation of a document as having a public character necessarily excludes it from containing personal affairs information.....	36
Application of the Relevant Provisions to the Documents in Issue .....	39

Participants:

Mr R K STEWART  
and Mrs C D STEWART  
Applicants

- and -

DEPARTMENT OF TRANSPORT  
Respondent

## REASONS FOR DECISION

### Background

1. By letter dated 12 January 1993, Mr R K & Mrs C D Stewart made application to the Department of Transport (the Department) for access to "*all documents from all parties concerned, with the Department of Transport (Queensland Transport) inquiries from complaints we have made against ... [here a person, who will be referred to as Mrs Z, was identified and that person's part-time occupation was stated] ...*".
2. By letter dated 20 January 1993, Mr B J Butterworth, Manager (Freedom of Information and Administrative Law) of the Department advised Mr & Mrs Stewart as follows:

*The Freedom of Information Act and Regulation require that an applicant applying for access to a document that does not concern the applicant's personal affairs is required to pay an application fee of \$30.00 at the time the application is made.*

*Whilst I can appreciate that the subject of your request may be a matter of concern to you personally, it is nonetheless not regarded as 'personal affairs' in terms of this legislation.*

*Therefore the required fee must be paid before your request can be accepted as an application under the Act.*

3. Mr & Mrs Stewart requested an internal review of this decision. The internal review was undertaken by Mr W J Rodiger, Principal Manager (Legal & Legislative Review), of the Department. By letter dated 9 February 1993, Mr Rodiger advised Mr & Mrs Stewart of his decision as follows:

*I have examined your request and decided that the decision made by the Manager (Freedom of Information) was correct and in accordance with*

*the Freedom of Information Act 1992.*

*By way of explanation I can only reiterate the advice given in the previous letter - 'Whilst I can appreciate that the subject of your request may be a matter of concern to you personally, it is nonetheless not regarded as "personal affairs" in terms of this legislation'.*

4. On 16 March 1993, Mr & Mrs Stewart made application for external review by the Information Commissioner of Mr Rodiger's decision that a \$30 application fee was payable.

### **The Applicable Legislative Provisions**

5. Subsection 29(2) of the *Freedom of Information Act 1992* Qld (hereinafter referred to as the FOI Act or the Queensland FOI Act) provides as follows:

*An applicant applying for access to a document that does not concern the applicant's personal affairs may be required, by regulation, to pay an application fee at the time the application is made.*

6. Section 6 of the *Freedom of Information Regulation 1992* (the FOI Regulation) provides as follows:

*Application fee for access to document*

*6.(1) An applicant who applies for access to a document that does not concern the applicant's personal affairs must pay an application fee of \$30 at the time the application is made.*

*(2) An application fee is not payable for access to a document that concerns the applicant's personal affairs.*

### **The Issues to be Determined**

7. The following issues arise out of Mr & Mrs Stewart's application for external review:
  - (a) the meaning of the term "personal affairs";
  - (b) whether the documents to which access was requested by the Stewarts concern their "personal affairs" for the purposes of s.29(2) of the FOI Act and s.6 of the FOI Regulation; and
  - (c) how the requirement for payment of an application fee is affected in circumstances where some of the documents requested concern the applicant's personal affairs and others do not.

As the term "personal affairs" is a key phrase, occupying an important position in the scheme of the FOI Act, I propose to give detailed consideration to the determination of its proper meaning. Issues (b) and (c) are dealt with together at paragraphs 115 to 121 below.

## **The Meaning of "Personal Affairs"**

### The different contexts in which the phrase "personal affairs" appears in the FOI Act

8. The term "personal affairs" is not defined in s.7 of the FOI Act, nor is a definition provided by s.36 of the *Acts Interpretation Act 1954* Qld. The task then is to ascertain the natural and ordinary meaning of the phrase which is appropriate to the statutory context in which it appears.
9. The use of the term "personal affairs" is not exclusive to the provisions of the FOI Act and the FOI Regulation relating to the payment of an application fee. The term "personal affairs" also appears in s.14(c), s.15(c), s.18(g) and (h), s.27(7)(a)(ii), s.48(2), s.105, s.106 and s.109(2)(a) of the FOI Act. However, the provisions which are of most significance to the task of ascertaining the meaning of the term "personal affairs" are those relating to the payment of an application fee (already set out in paragraphs 5 and 6 above) together with the following provisions:

- (a) subsection 5(1)(c) of the FOI Act:

*Parliament recognises that, in a free and democratic society ...*

*(c) members of the community should have access to information held by government in relation to their personal affairs and should be given the ways to ensure that information of that kind is accurate, complete, up-to-date and not misleading. (my underlining)*

- (b) section 6 of the FOI Act:

*If an application for access to a document is made under this Act, the fact that the document contains matter relating to the personal affairs of the applicant is an element to be taken into account in deciding -*

*(a) whether it is in the public interest to grant access to the applicant; and*

*(b) the effect that the disclosure of the matter might have. (my underlining)*

(Section 6 has no counterpart in the FOI statutes of other Australian jurisdictions, except for Western Australia; see s.21 of the *Freedom of Information Act 1992* WA. Section 6 of the Qld FOI Act was enacted to afford a degree of flexibility not otherwise available in applying the standard exemption provisions. Because s.21 of the Qld FOI Act confers a legally enforceable right of access on any person with no requirement to show a special interest in obtaining particular information, an assessment of the effects of disclosure of a particular document (for the purpose of determining whether an exemption provision applies) generally requires that the interests of a particular applicant be ignored and the question be approached as if disclosure were to anyone who could make an application, or as it is sometimes said "to the world at large". This is appropriate because the FOI Act confers no power to exact any undertaking, or to impose any condition, concerning the use to which a

person granted access to a document under the FOI Act will put the document or information contained in it. What these principles mean, however, is that a person who does have a particular interest in the documents in issue does not have a greater right than anyone else to obtain access to them. Section 6 allows the potential for relaxation of the normal approach to the application of exemption provisions which depend on a test of the kind referred to in s.6(a) or (b), where the document in issue contains matter relating to the personal affairs of the applicant for access. This relaxation in respect of matter concerning the applicant's personal affairs is appropriate because the applicant is the appropriate person to exercise control over any use or wider dissemination of information of that kind which is obtained under the FOI Act. For a more detailed explanation of the rationale for enacting s.6, see Electoral and Administrative Review Commission (EARC), Report on Freedom of Information, Serial No. 90/R6, December 1990, at paragraphs 7.51 to 7.59.)

(c) subsections 44(1) and (2) of the FOI Act:

*44.(1) Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.*

*(2) Matter is not exempt under subsection (1) merely because it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to a document containing the matter has been made. (my underlining)*

(d) section 53 of the FOI Act:

*If a person has had access to a document from an agency or Minister (whether or not under this Act) containing information relating to -*

*(a) the person's personal affairs; or*

*(b) the personal affairs of a deceased person to whom the person is next of kin;*

*the person is entitled to apply to the agency or Minister for correction or amendment of any part of the information if it is inaccurate, incomplete, out-of-date or misleading. (my underlining)*

(e) section 7 of the FOI Regulation:

*.(1) An applicant must pay a charge for access to a document that does not concern the applicant's personal affairs.*

*(2) A charge is not payable for access to a document that concerns the applicant's personal affairs. (my underlining)*

10. Unless the term "personal affairs" is to be interpreted as having a different range of meaning in some of these provisions compared to others (as to which see paragraphs 42 to 50 below) it can be seen that whether the term "personal affairs" is interpreted narrowly or expansively will have a significant impact on the sphere of operation of these respective provisions. If the term is interpreted narrowly, it will -

- (a) narrow the range of documents for which exemption can be claimed under s.44(1) (and hence expand the range of documents available for general access under the FOI Act); but also
- (b) narrow the range of documents to which access can be granted without payment of a \$30 application fee and additional charges for certain forms of access; and
- (c) narrow the range of documents which a person may apply to amend in accordance with s.53 of the FOI Act; and
- (d) narrow the range of documents in respect of which s.6 of the FOI Act may apply.

11. Conversely, if the term "personal affairs" is interpreted expansively, it will -

- (a) expand the range of documents for which exemption can be claimed under s.44(1) (and hence narrow the range of documents available for general access under the FOI Act); but also
- (b) expand the range of documents to which access can be granted without payment of a \$30 application fee and additional charges for certain forms of access; and
- (c) expand the range of documents which a person may apply to amend in accordance with s.53 of the FOI Act; and
- (d) expand the range of documents in respect of which s.6 of the FOI Act may apply.

12. The decisions of courts and tribunals interpreting like legislation in other jurisdictions can provide a useful aid to the interpretation of the term "personal affairs" in the FOI Act. The phrase "personal affairs" (without a statutory definition thereof) is still used in the *Freedom of Information Act 1982 Vic* (the Victorian FOI Act) and the *Freedom of Information Act 1989 NSW* (the New South Wales FOI Act), and was used in the *Freedom of Information Act 1982 Cth* (the Commonwealth FOI Act) from 1982 until 1991, in provisions which correspond to s.44 and s.53 of the Queensland FOI Act, and in provisions which regulate charges for access to documents.

13. The interpretive problem posed in paragraphs 10 and 11 was not posed quite so starkly in the other jurisdictions, where the exemption provisions corresponding to s.44 of the Queensland FOI Act all contained one material difference from s.44 of the Queensland FOI Act. Section 33(1) of the Victorian FOI Act is in the following terms (s.41(1) of the Commonwealth FOI Act was, until its amendment in 1991, identical; and clause 6(1) of Schedule 1 to the New South Wales FOI Act contains only minor and immaterial differences):

*33(1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person.)*

14. The application of this provision calls for a two-step process: first, determine whether a document contains information relating to the personal affairs of any person; and if

so, then determine whether disclosure of that information would be unreasonable. The Commonwealth Administrative Appeals Tribunal (the Commonwealth AAT) has uniformly approved of and followed the range of factors identified in *Re Chandra and Department of Immigration and Ethnic Affairs* (1984) 6 ALD N257 at N259, as being relevant to whether disclosure of personal affairs information would constitute an unreasonable disclosure. A very similar set of factors has been approved of and followed in the Victorian Administrative Appeals Tribunal (the Victorian AAT): see per Jones J (President) in *Re Phillip Page and Metropolitan Transit Authority* (1988) 2 VAR 243 at p.245-6. The most important factor is whether disclosure of the personal affairs information would be in the public interest (see *Colakovski v ATC* (1991) 100 ALR 111 at p.120) but other factors have also been accepted as relevant to the issue of unreasonable disclosure. For example, in *DPP v Smith* [1991] 1 VR 63 at p.69, a Full Court of the Supreme Court of Victoria held that because the persons whose personal affairs information was in issue had themselves chosen to bring the information into the public domain, the granting of public access to the documents under the Victorian FOI Act would not involve unreasonable disclosure.

15. By contrast, under s.44(1) of the Queensland FOI Act information concerning the personal affairs of a person is *prima facie* exempt from disclosure. Only countervailing public interest considerations of sufficient weight to found a judgment that disclosure would on balance be in the public interest, can operate to displace the *prima facie* entitlement to exemption which arises in respect of matter in a document which is properly characterised as information concerning the personal affairs of a person.
16. All of the provisions referred to in paragraph 13 are primarily concerned with the protection of personal privacy. But in respect of the Commonwealth, Victorian and New South Wales provisions the option was available to err on the side of giving an expansive interpretation of the meaning of "personal affairs" (with flow-on effects of the kind referred to in paragraph 11) and let the application of the "unreasonable disclosure" test do the bulk of the work in protecting personal privacy, by setting the appropriate limits of disclosure of personal affairs information under freedom of information legislation.
17. That option is not available under s.44 of the Queensland FOI Act where the test of exemption is whether the information in issue is properly to be characterised as information concerning the personal affairs of a person, and there is an exception only where disclosure of such information would on balance be in the public interest (as to the meaning of "public interest" and the application of a public interest balancing test of this kind, see generally *Re Eccleston and Department of Family Services and Aboriginal and Islander Affairs*, Information Commissioner Qld, Decision No. 93002, 30 June 1993). The appropriate limits of protecting personal privacy under s.44 of the Queensland FOI Act have primarily to be set in the interpretation given to the phrase "personal affairs" in s.44. An artificial or leaning approach to the interpretation of the phrase "personal affairs" is clearly, therefore, not appropriate.
18. The interpretive problems referred to in the preceding paragraphs have been confronted in a great many reported cases, especially in the Commonwealth and Victorian jurisdictions. The results could perhaps best be summarised by saying that the term "personal affairs" has been recognised as having a core meaning (see paragraph 79 below), which is accepted by all external review authorities, but which

is surrounded by a rather large penumbra of uncertainty (the courts and tribunals having consistently abstained from attempting any comprehensive explanation of what is encompassed by the phrase). In the midst of that grey area, conflicting interpretations and applications have been apparent as between the Federal Court of Australia and the Commonwealth AAT on the one hand and the Victorian AAT on the other, as between individual members of the Commonwealth AAT, and even on rare occasions as between individual members of the Victorian AAT. Some of the conflict is explicable by reference to the interpretive problem posed in the preceding paragraphs, i.e. some tribunal members have obviously felt it would yield a more just result in a particular case involving an application to amend "personal affairs" information, if an expansive interpretation were given to the term "personal affairs", and have bridled at the restrictive interpretation given to the term in different contexts (principally in provisions which correspond to s.44(1) of the Queensland FOI Act). Perhaps it was inevitable that certainty could not be achieved in the difficult and marginal cases, where the application of such a broad and open textured phrase as "personal affairs" was the test employed by the legislature. No court or tribunal has yet been able to formulate an entirely convincing touchstone or guiding principle to assist the determination of cases that fall within the area of uncertainty.

#### Guidance from other jurisdictions

19. In one of the earliest decisions of the Commonwealth AAT on the meaning of personal affairs, Davies J (President) took an expansive view of the meaning of "personal affairs" in s.12(2)(a) of the Commonwealth FOI Act, a provision dealing with when access could be obtained to documents that became documents of an agency before the commencement of the Commonwealth FOI Act (the Queensland FOI Act has no counterpart to s.12(2) of the Commonwealth FOI Act; see s.10 of the Queensland FOI Act which provides that a person is entitled to apply for access to a document regardless of when the document came into existence). In *Re News Corporation Limited and Others v National Companies and Securities Commission* (1983) 5 ALD 334, Davies J said (at p.336-7):

*... I am disposed to think that the term 'personal affairs' refers to the 'individual affairs' of a person rather than to the 'private affairs' (as distinct from the 'business affairs') of a person. In my view, the provision looks to information which relates to the affairs of a particular person rather than to public or general affairs. I therefore think that a corporation may have 'personal affairs'.*

20. On appeal, Davies J was overruled by a Full Court of the Federal Court (see *News Corporation Limited and Others v National Companies and Securities Commission* (1984) 52 ALR 277) which held that a corporation cannot have "personal affairs" as contemplated by s.12(2)(a) of the Commonwealth FOI Act, on the basis of reasoning which indicated that a corporation could not have "personal affairs" for the purposes of any other provision of the Commonwealth FOI Act in which the phrase "personal affairs" appeared. After referring to those other provisions of the Commonwealth FOI Act, Bowen CJ and Fisher J said (at p.283):

*These provisions of the Act support the view that it is not intended that the expression 'personal affairs' is applicable to a corporation. There is nowhere to be found an unequivocal indication to the contrary. There are*

*clear indications that the legislation attaches considerable significance to the personal affairs of a natural person. The privacy of such personal affairs is to be protected, information about them must be correct, or at least liable to be corrected on request, access to documents containing information about personal affairs should be more readily and in some circumstances less expensively obtainable. These are all cogent considerations which are of greater significance to a natural person than to a corporation, and justified different treatment of this aspect of the affairs of a natural person.*

21. In coming to this finding, the Full Court of the Federal Court rejected an argument that "person" must be read as including a corporation, based on s.22 of the *Acts Interpretation Act 1901* Cth which provides that the word "person" used in any Act includes a "body corporate" unless a contrary intention appears. The Full Court found in the scheme of the Commonwealth FOI Act a sufficient contrary intention to hold that the phrase "personal affairs of a person" did not extend to corporations. Like s.22 of its Commonwealth counterpart, s.36 (read in conjunction with s.32A) of the *Acts Interpretation Act 1954* Qld also provides that the word "person" includes a corporation unless a contrary intention appears. I consider, however, that for like reasons to those which the Full Court found persuasive in *News Corporation v NCSC*, the scheme of the Queensland FOI Act, and the contexts in which the phrase "personal affairs of a person" (and relevant variations thereof) appear in the Queensland FOI Act, compel the conclusion that where the word "person" appears in conjunction with the words "personal affairs" the word "person" does not include a corporation.
22. If the Full Court had done no more than decide that a corporation could not have "personal affairs" for the purposes of the Commonwealth FOI Act, Davies J's expansive interpretation of the phrase "personal affairs" may have survived in respect of the application of the Commonwealth FOI Act to the affairs of natural persons. However, this possibility was foreclosed by three passages from the judgments of the Full Court which have proved particularly influential on subsequent decisions of the Federal Court of Australia and the Commonwealth AAT. The first passage comprises the last three sentences which appear in the passage quoted at paragraph 20 above. In my opinion, three inferences can legitimately be drawn from this passage about their Honours' view of the meaning of the phrase "personal affairs" in the Commonwealth FOI Act. First, that in s.41(1) of the Commonwealth FOI Act the phrase is concerned with the protection of privacy of natural persons. Second, that the phrase bears a consistent meaning when used in the different contexts referred to in the penultimate sentence of the passage quoted at paragraph 20 above. Third, that the "personal affairs of a person" constitute an aspect of the affairs of a natural person (see the last nine words of the passage quoted at paragraph 20 above). This is in contrast to the view of Davies J that the phrase would encompass all of the "individual affairs" of a person in contradistinction to "public or general affairs".
23. The second passage appears in the joint judgment of Bowen CJ and Fisher J at p.283:

*On the question whether a corporation can have personal affairs as contemplated by s.12(2)(a) of the Act, it is not as easy to reach a firm conclusion. The Act clearly indicates a dichotomy between business and non-business affairs but whether it sees a corporation as having non-business affairs is uncertain. Clearly a natural person is perceived as*

having non-business affairs referred to as 'personal affairs' but with corporations there is no such certainty. (my underlining)

24. The third passage is from the judgment of St John J at p.293:

*It is clear, in my view, that 'personal' and 'business' affairs were different in the mind of the draftsman. A corporation, brought into existence for business, can have business affairs. So too can real persons, but, in addition, affairs relating to family and marital relationships, health or ill-health, relationships with and emotional ties with other real people.*

25. The last quoted sentence has been accepted without reservation in subsequent decisions in both the Commonwealth and Victorian jurisdictions as describing matters which fall within the core meaning of the term "personal affairs". Similarly, the idea of a basic dichotomy between personal affairs and business affairs has coloured subsequent decisions on external review in both the Commonwealth and Victorian jurisdictions. At first blush, this might appear surprising to many members of the community, particularly those who run their own business, and who in conversational language might be inclined to regard matters pertaining to their own business as their personal affairs. Indeed, a Full Court of the Supreme Court of Victoria in *DPP v Smith* [1991] 1 VR 63 at p.69 was prepared to find that documents relating to business transactions of a hotel business owned by natural persons were matters of private concern to them and hence constituted their "personal affairs" within the meaning of that phrase in s.33 of the Victorian FOI Act. This finding (which was not essential to the actual decision in *DPP v Smith*) is difficult to reconcile with the Full Federal Court's reasoning in *News Corporation v NCSC* (a case which is not referred to in the judgments in *DPP v Smith*), and I am not aware of any subsequent cases in which reliance has been placed on this finding in decisions of the Victorian AAT or Supreme Court.
26. In my opinion, a similar dichotomy to that identified by the Full Federal Court in *News Corporation v NCSC* is also clearly evident in the Queensland FOI Act, most notably in the contrast between s.44(1) and s.45(1)(c). Under the former exemption provision, information concerning the personal affairs of a person is *prima facie* exempt unless disclosure would on balance be in the public interest. Under s.45(1)(c), however, information concerning the business or professional affairs of a person is *prima facie* exempt only if its disclosure could reasonably be expected to have an adverse affect on those affairs or to prejudice the future supply of such information to government. Then, like s.44(1), if that *prima facie* test is satisfied disclosure may still be made if on balance disclosure would be in the public interest. Thus, in the absence of any countervailing public interest factors, information concerning the personal affairs of a person is exempt *per se*, whereas information concerning the business or professional affairs of a person must satisfy either of two additional requirements to meet the *prima facie* test for exemption. Even allowing that matter in a document may be exempt under more than one of the exemption provisions in Part 3, Division 2 of the FOI Act, the drafting of these provisions indicates that the kinds of affairs of a person dealt with in s.45(1)(c) were not intended to overlap with the kinds of affairs of a person dealt with in s.44(1).
27. I accept, therefore, that in the Queensland FOI Act the phrase "personal affairs of a person" and its relevant variations, does not include the business or professional

affairs of a person.

28. The next significantly influential (and in some quarters controversial) case was the decision of the Commonwealth AAT in *Re Williams and Registrar of the Federal Court of Australia* (1985) 8 ALD 219. In that case, the applicant applied to the Tribunal for review of a decision refusing him access under the Commonwealth FOI Act to documents that formed part of the selection papers relating to an employment position unsuccessfully sought by the applicant. Beaumont J, sitting as a presidential member of the Commonwealth AAT, held (at p.221):

*In my opinion, no case for exemption under s.41(1) of the Act has been made in respect of any of the material now in contention.*

*Two questions arise in this connection. First, what is meant by the phrase 'personal affairs' where used in s.41(1)? Second, can it be said, in the circumstances, that the disclosure is 'unreasonable'?*

*In my opinion, the reference in the Act to the 'personal affairs' of a person was intended to have its ordinary dictionary meaning, that is to say, to refer to matters of private concern to an individual. It is not necessary to attempt an exhaustive definition of the phrase. It will suffice, for present purposes, to say that, ordinarily, information as to the work capacity and performance of a person is not private in that sense. It is something observed by others and commonly discussed by those involved in that work. Ordinarily, information as to a person's vocational competence is not something which is treated as confidential. Prima facie at least, it is not part of his or her 'personal affairs'.*

29. In a case decided the following year, *Young v Wicks* (1986) 13 FCR 85, Beaumont J, sitting as a Judge of the Federal Court of Australia, had to determine an application under the *Administrative Decisions (Judicial Review) Act 1977* Cth seeking to overturn a decision granting access under the Commonwealth FOI Act to documents that related to the applicant in her capacity as a pilot employed by the Queensland Government. Beaumont J adhered to the position which he adopted in *Re Williams*:

*In my opinion, none of the subject documents contain information relating to the 'personal affairs' of the applicant within the meaning of s.41(1) of the Act. The reference to 'personal affairs' of a person was, I think, intended to have its ordinary dictionary meaning, that is to say, to refer to matters of private concern to an individual: see *Re Williams and Registrar of Federal Court* (1985) 8 ALD 219 at 221.*

30. Beaumont J's interpretation of the term "personal affairs" in *Re Williams* and in *Young v Wicks* initially attracted some dissent in the Commonwealth AAT. In *Re Wiseman and Department of Transport* (1986) 12 ALD 707 the Tribunal (chaired by Senior Member Mrs R Balmford) expressly doubted the correctness of equating the word "personal" with the word "private", and refused to follow that interpretation in the context of an application under s.48 of the Commonwealth FOI Act to amend information relating to the applicant's work performance and capacity for employment. The Tribunal said (at p.714):

*An interpretation which reads 'personal' as essentially meaning 'private' is*

*inconsistent with the very purpose of s.48. That being so, we must look for a meaning of the expression 'information relating to his personal affairs' which comprehends more than 'information the disclosure of which would be an invasion of privacy'.*

The approach of the Tribunal in *Re Wiseman* was followed by Deputy President Nicholson in *Re Corbett and Australian Federal Police No. 2* (1986) 11 ALN N249.

31. Subsequently, in the Victorian case of *Re Griffiths and Victoria Police* (1988) 2 VAR 595 which involved an application (pursuant to s.39 of the Victorian FOI Act) to amend information as to the applicant's work capacity or work performance contained in personnel assessment reports of the Victoria Police, Rowlands J, the President of the Victorian AAT, expressly held that he felt unable to follow the decision of Beaumont J in *Young v Wicks* and preferred the approach of the Commonwealth AAT in *Re Wiseman and Department of Transport*. Rowlands J said:

*In my opinion the documents, concerned as they are with the work capacity or work performance of an individual, the applicant himself, contain 'information relating to the personal affairs of a person'. The Shorter Oxford Dictionary provides as its first definition of 'personal': 'of, pertaining to, concerning or affecting the individual person or self; individual; private; one's own'. It is primarily the 'individuality' which creates the personal nature of personal affairs. ... I think the legislature contemplated that s.39 would be used generally to correct erroneous information concerning an individual retained by an agency for its purposes.*

32. Beaumont J's approach, however, has received more sympathetic treatment in subsequent decisions of the Federal Court of Australia where it has been generally endorsed, albeit with some additional explanation and qualification.
33. *Department of Social Security v Dyrenfurth* (1988) 80 ALR 533 was an appeal to a Full Court of the Federal Court of Australia from a decision of the Commonwealth AAT which followed *Re Williams* and *Young v Wicks* in holding that the Department of Social Security could not rely on s.41(1) of the Commonwealth FOI Act to refuse access to documents connected with the selection process for a Senior Executive Service position, being comparative assessments of those interviewed and not interviewed for the position, and individual assessments of those interviewed for the position. The Full Court of the Federal Court was expressly invited by counsel for the applicant to overrule the decisions in *Re Williams* and *Young v Wicks* and to adopt the reasoning in *Re Wiseman* by construing the words "information relating to ... personal affairs" in s.41(1) of the Commonwealth FOI Act as extending to assessments of the capacity or previous work performance of an applicant for appointment within the Australian Public Service.
34. While the Full Court upheld the appeal and remitted the matter to the Tribunal for reconsideration, it clearly declined the invitation to overrule *Re Williams* and *Young v Wicks* in favour of *Re Wiseman*. The approach of the Full Court was rather to confirm the general statements of principle in *Re Williams* and *Young v Wicks*, with some added explanation and emphasis. It is worth setting out the relevant passage (from p.538 to 540) in full:

*It was argued that, consistently with the approach taken by a Full Court of this court in News Corp Ltd v NCSC (1984) 1 FCR 64; 52 ALR 277, the same width should be accorded to the phrase 'personal affairs' in s.41(1) of the FOI Act as it has received in the application of s.48, and other sections in which it appears in that Act. Accordingly, this court was invited to construe 'information relating to ... personal affairs' in s.41(1) in the same way as it was construed in Wiseman's case, ie as extending to assessments of the capacity or previous work performance of an applicant for appointment within the APS.*

*In our view, it cannot be laid down by way of definition that an assessment of the capacity or previous work performance of an employee or prospective employee necessarily contains 'information relating to the personal affairs' of that person. Equally, however, it is not permissible to construe the phrase, as the tribunal appears to have done, as being incapable of application to information contained in an assessment of capacity or work performance. We do not understand Beaumont J to have adopted, in Young v Wicks or Re Williams, supra, any such rigidly exclusionary interpretation of the phrase. In the former case, his Honour, on an examination of the documents held by the Department of Aviation, found, as a matter of fact, that none of them contained information 'referring to matters of private concern to the applicant as an individual'. That he found it necessary to undertake such an examination at all argues strongly against the view that his Honour considered that the departmental documents in that case were, by definition, incapable of containing 'information relating to the personal affairs of the applicant'.*

*Likewise, in Williams' case, Beaumont J, was at pains to disavow any attempt to define what the phrase necessarily excluded. He observed in the sentence immediately after that quoted by the tribunal in the present case (8 ALD at 221; 3 AAR at 531):*

*'It is not necessary to attempt an exhaustive definition of the phrase. It will suffice, for present purposes, to say that, ordinarily, information as to the work capacity and performance of a person is not private in that sense. It is something observed by others and commonly discussed by those involved in that work. Ordinarily, information as to a person's vocational competence is not something which is treated as confidential. Prima facie at least, it is not part of his or her "personal affairs".'*

*The repetition of the word 'ordinarily' and the qualification 'prima facie at least' to which we have added emphasis, appearing as they do in such close proximity to each other, should be taken as an acknowledgment by Beaumont J that some assessments of work capacity and performance or vocational competence, exceptional though his Honour thought they might be, would contain information relating to the personal affairs of their subjects.*

*Like his Honour, we consider it inappropriate to attempt to describe, even illustratively, what may be 'information relating to the personal affairs of any person'. Some guidance, although by no means exhaustive, is afforded by the observation of St John J in News Corp Ltd v NCSC, supra (FCR at*

79; ALR at 293) that: *'It is clear, in my view, that "personal" and "business" affairs were different in the mind of the draftsman. A corporation, brought into existence for business, can have business affairs; so too can real persons but, in addition, affairs relating to family and marital relationships, health or ill health, relationships with and emotional ties with other real people'.*

*In the same report (FCR at 73; ALR at 286) Bowen CJ and Fisher J said: 'We agree for those reasons with the opinion of St John J that the expression "personal affairs" in s.12(2)(a) refers only to the affairs of a natural person and not to the affairs of a corporation'.*

*It is sufficient for present purposes to indicate our view that information relating to the personal affairs of a person, such as information concerning his or her state of health, the nature or condition of any marital or other relationship, domestic responsibilities or financial obligations, may legitimately be regarded as affecting the work performance, capacity or suitability for appointment or promotion of that person. In those circumstances, it is conceivable that an assessment of work performance, capacity or suitability for appointment or promotion might contain such information. If it did, it would be necessary to consider whether disclosure of that information would be unreasonable so as to render the assessment an exempt document by virtue of s.41(1) of the FOI Act.*

35. Again, in *Wiseman v the Commonwealth of Australia* (No. G167 of 1989, unreported, Sydney, 24 October 1989) a Full Court of the Federal Court of Australia (comprising Sheppard, Beaumont and Pincus JJ) found that no error of law had been demonstrated in the approach of the Commonwealth AAT in applying s.41(1) of the Commonwealth FOI Act. It is noted at page 5 of the judgment that the Commonwealth AAT had taken "personal affairs" to refer to "matters of private concern to an individual", applying *Re Williams* and the decision of the Full Court of the Federal Court in *Department of Social Security v Dyrenfurth*.
36. In *Bleicher v Australian Capital Territory Health Authority* (1990) 20 ALD 625, Wilcox J of the Federal Court of Australia summarised the result in *Department of Social Security v Dyrenfurth*, and made it plain that he considered that the words "personal affairs" were to be interpreted consistently in both s.41(1) and s.48 of the Commonwealth FOI Act (at p.629-630):

*The members of the Full Court, in Dyrenfurth, plainly did not consider that they were overruling the view which Beaumont J had expressed in Re Williams and in Young v Wicks. They accepted that, ordinarily, statements in documents which relate to a person's work performance or capacity do not constitute information regarding that person's 'personal affairs'. But they pointed out, upon some occasions, such documents may contain information of a personal nature, of which they gave examples. It was not possible to say that, because a document related to work performance or capacity, it was necessarily not a document containing information about somebody's 'personal affairs'. If the document did contain such information, the question would arise under s.41 of the Act whether it was unreasonable to disclose that particular information; although, ordinarily, there would be no problem about the disclosure of*

*the remainder of the information in the document: see s.22 of the Act. Also, the document would be one to which s.48 applied, so that the applicant would be entitled to request an amendment of the information relating to his or her personal affairs.*

*Accordingly, it is critical to determine whether a document the subject of a s.48 request contains information relating to the applicant's personal affairs. The document's contents must be considered; it is not enough merely to characterise it as dealing with a person's work performance or capacity.*

37. A further significant qualification to the Federal Court's general endorsement of Beaumont J's approach in *Re Williams* and *Young v Wicks* was added by a Full Court of the Federal Court of Australia in *Colakovski v Australian Telecommunications Corporation* (1991) 100 ALR 111. This case constitutes the last occasion on which a Full Court of the Federal Court of Australia had the opportunity to consider the meaning of the term "personal affairs" in the context of the Commonwealth FOI Act (the term having been removed by amendments to that Act made in 1991). In *Colakovski*, the applicant had sought access to Telecom records relating to alleged nuisance telephone calls made to the applicant. The documents in issue, if disclosed to the applicant, would have revealed the name and telephone number of the subscriber from whose telephone the alleged nuisance calls were made. The applicant was unsuccessful before the Commonwealth AAT, on appeal to a single Judge of the Federal Court and, finally, on appeal to the Full Court. It was held that the documents in issue contained information relating to the personal affairs of a person and that disclosure would be unreasonable within the meaning of s.41(1) of the Commonwealth FOI Act. Lockhart J (with whom both Jenkinson J and Heerey J expressed their agreement, while adding additional comments of their own) reviewed the authorities discussed above and made the following observations (at p.117-119):

*It seems plain to me that the Full Court in Dyrenfurth did not overrule the views expressed by Beaumont J in Re Williams and in Young v Wicks. Their Honours were of the view that, in the ordinary course, statements in documents which relate to a person's work performance or capacity to work do not constitute information regarding his 'personal affairs', though on occasions such documents may contain such information. Their Honours were of the view that, merely because a document relates to work performance or capacity to work, it is not necessarily excluded from being a document containing information about somebody's 'personal affairs'.*

*It is also plain from the reasons for judgment of the Full Court in Dyrenfurth that their Honours preferred not to substitute for the word 'personal' where appearing in s.41(1) a word such as 'private', though they recognised that according to the ordinary use of the word 'personal' it connotes something private to the person, or, as it was put by Beaumont J in Re Williams at 221, the expression 'personal affairs' refers 'to matters of private concern to an individual'.*

*See also the judgment of Wilcox J in Bleicher v Australian Capital Territory Health Authority (1990) 96 ALR 732, where his Honour carefully reviewed the authorities relating to the meaning of 'personal affairs' in s.41(1) and s.12(2) of the FOI Act and observed (at 738) that: '... matters*

*related to the pursuit of a vocation and "personal affairs" are not necessarily mutually exclusive categories".*

*I respectfully agree with his Honour's observation.*

*... [reference was then made to the decision of the Full Court of the Federal Court in Wiseman v the Commonwealth, and the decision of Rowlands J of the Victorian AAT in Re Griffiths and Victoria Police] ...*

*Although there is no inconsistency between the approach of Beaumont J in Re Williams and affirmed by him in Young v Wicks and the subsequent decisions of Full Courts of this court in Dyrenfurth, there are in my opinion differences of emphasis. Beaumont J treated, as the primary element in a person's 'personal affairs', their private nature in the sense of something confidential to the person: see Re Williams at 221-2. Rowlands J in Re Griffiths appears to have adopted the view that information as to the work capacity or the work performance of a person may fall within the description of the person's personal affairs whether they are confidential to him or not. The Full Court in Dyrenfurth was plainly mindful of these considerations when expressing its views, as demonstrated by the passages from their Honours' reasons for judgment already cited. For myself I prefer the view that the 'personal affairs' of a person within the meaning of ss41(1) and 12(2) of the FOI Act connotes information which concerns or affects the person as an individual whether it is known to other persons or not. For example, a document may contain statements about a person's 'personal affairs'. Such a document would therefore prima facie answer the description of one which relates to the 'personal affairs' of a person within s.41(1). Whether any disclosure of the information would be an 'unreasonable disclosure' within s.41(1) is a different question. If something is notorious about a person and recorded in a document, this may provide in a given case cogent evidence to justify the finding that its disclosure would not represent an 'unreasonable disclosure' of the information; but that is a different question from the first question of what constitutes information relating to the 'personal affairs' of a person. I agree with the Full Court in Dyrenfurth that it would be inappropriate to attempt to define the meaning of 'personal affairs' in some definitive way. It would be unwise to substitute for the word 'personal' some other word such as the word 'private' because one generally accepted meaning of the word 'private' is confidential or not widely known. In my opinion a person's affairs may be personal to him notwithstanding that they are not secret to him. In conclusion on this point I observe that in s.3, which states the object of the FOI Act, reference is made (in s.3(1)(b)) to the 'private' affairs of persons. I do not regard that circumstance as confining the meaning of 'personal affairs' in s.41(1) to affairs that are private in the sense of secret to the person.*

38. If the sentence from this passage which states:

*I prefer the view that the personal affairs of a person within the meaning of s.41(1) and 12(2) of the FOI Act connotes information which concerns or affects the person as an individual, whether it is known to other persons or not*

were taken in isolation, one might think that Lockhart J was embracing the expansive

view of the meaning of personal affairs first suggested by Davies J in *Re News Corporation* (see paragraph 19 above), and as accepted by the Commonwealth AAT in *Re Wiseman* and Rowlands J of the Victorian AAT in *Re Griffiths*. However, His Honour's preceding observations make it clear that His Honour accepted the approach of the Full Court of the Federal Court in *Dyrenfurth*, and indeed His Honour appears to suggest (at p.118) that Rowlands J may have modified his position in *Re Griffiths* if he had had the benefit of the reasons for judgment of the Full Court in *Dyrenfurth*, a decision which was not given until some months after the decision in *Re Griffiths*. I take Lockhart J's emphasis to be that to interpret the phrase "personal affairs" as meaning "matters of private concern to an individual", while properly drawing attention to privacy considerations, carries the danger of incorrectly limiting the scope of the term "personal affairs" to matters that are confidential to the person or at least not widely known.

39. Before leaving *Colakovski's* case, the remarks of Heerey J at p.123 are also worth noting:

*The fact that the call was made in itself is a personal affair of the caller. The personal affairs of a person are made up of a myriad of acts, facts, matters and circumstances. A single act, such as the making of a telephone call, can be a personal affair. Evidence of the subject matter of the call, for example, that it was connected with the caller's duties as a public employee, might compel the conclusion that no question of personal affairs was involved.*

40. Beaumont J's approach to the meaning of "personal affairs" in *Re Williams and Young v Wicks* has also been accepted in Victoria, having rebounded from its outright rejection by the President of the Victorian AAT in *Re Griffiths* (see paragraph 31 above) to win endorsement by a Full Court of the Supreme Court of Victoria in *DPP v Smith* [1991] 1 VR 63 at 69 (though as remarked at paragraph 25 above, the application in that case of Beaumont's J preferred meaning so as to extend to the "private business affairs" of individuals is difficult to reconcile with *News Corporation Ltd v NCSC*). It was also endorsed by Jones J during his tenure as President of the Victorian AAT in cases such as *Re F and Health Department* (1988) 2 VAR 458 and *Re Pescott and Victorian Tourism Commission (No. 2)* (1988) 2 VAR 437. Jones J's statement in the latter case of the basic interpretative approach, however, exemplifies the more robust and expansive approach of the Victorian AAT to the meaning of the phrase "personal affairs" (at p. 453):

*The expression 'personal affairs' has been broadly construed to encompass any matters of private concern to an individual. Information relating to a person's work performance or employment can relate to his personal affairs. (my underlining)*

41. The same remarks were made by Smith J during his tenure as President of the Victorian AAT in *Re Perton and Attorney-General's Department* (1992) 5 VAR 302 at 319. I think it is fair to say that the Victorian AAT has shown itself more likely to take the opportunity referred to in paragraph 16 above (an opportunity which the Federal Court of Australia has declined), that is, to adopt an expansive interpretation of the meaning of "personal affairs" and leave the major part of the work of setting appropriate limits for the protection of personal privacy to the application of the

"unreasonable disclosure" test in s.33(1) of the Victorian FOI Act. As explained at paragraph 17 above, that opportunity is not available in the interpretation of the phrase "personal affairs" in s.44(1) of the Queensland FOI Act, which does not contain an "unreasonable disclosure" test.

Does the phrase "personal affairs" bear the same meaning throughout the Queensland FOI Act?

42. It is a basic principle of statutory construction that a particular word or phrase is to be interpreted consistently throughout a statute in which it appears except so far as the context and subject matter of particular provisions otherwise indicate or require: see generally D C Pearce and R S Geddes, *Statutory Interpretation in Australia*, 3rd Ed., 1988 at pages 65-66; *Registrar of Titles (WA) v Franzon* (1976) 60 ALJR 4 at p.6, per Mason J. Paragraphs 8 and 9 above detail the different contexts in which the phrase "personal affairs of a person", or relevant variations thereof, appear in the Queensland FOI Act. The phrase is not defined and it is possible to argue that the phrase was intended to bear different shades of meaning in the different contexts in which it appears, for example the provisions of Part 4 dealing with amendment of records, and the provisions dealing with fees and charges for access to documents. I am sure many members of the community would regard it as only fair that the right to seek amendment of incorrect information about themselves, or to seek documents about themselves free of charge, should apply to any documents containing information about themselves as individuals (this is comparable to the meaning of the phrase "personal affairs" which was preferred by Davies J in *Re News Corporation and NCSC*, see paragraph 19 above, by the Commonwealth AAT in *Re Wiseman*, see paragraph 30 above, and by Rowlands J in *Re Griffiths*, see paragraph 31 above). It could also be argued that if one of the objects of Part 4 of the FOI Act is to ensure that information held by government agencies about individuals, and which might be used to make decisions affecting their interests, is accurate, complete, up-to-date and not misleading, then fine distinctions about whether any inaccurate, incomplete, out-of-date or misleading information relates to a person's personal affairs or some other kind of affairs, are hardly appropriate.
43. While these arguments are attractive, I do not think they can be sustained in the face of the words which Parliament has chosen to use. If Parliament had intended the entitlement to seek amendment of incorrect information to extend to information relating to any affairs of an individual, the appropriate words it would have chosen to use in s.53(a) would have been "the person's affairs", rather than the words which were actually employed, i.e. "the person's personal affairs". The words which Parliament has chosen to use are in themselves indicative of an intention to draw some line of demarcation between a person's personal affairs and other kinds of affairs which a person has or engages in.
44. I think the Full Court of the Federal Court in *News Corporation v NCSC* correctly observed this intention to draw a line of demarcation (see paragraph 22 above). The Full Court expressed the view that one of the basic distinctions apparent on the face of the Commonwealth FOI Act was between personal affairs and business affairs, and I have already expressed the view (at paragraphs 26 and 27 above) that a similar basic distinction is apparent on the face of the Queensland FOI Act. There may be a number of unstated policy reasons for Parliament wishing to restrict the scope of the entitlement to obtain access to documents free of charge or to seek amendment of

allegedly incorrect information in documents held by government agencies. General concerns about the cost and resource implications of the FOI Act may have been thought to justify limitation of the entitlements to have access to documents free of charge, and to seek amendment of incorrect information, so that they applied only to documents containing certain kinds of information about individuals, rather than any information about individuals.

45. On careful examination, I can find no sufficiently strong indication in the different provisions in which the phrase "personal affairs" appears (and in the apparent objects of those provisions) to displace the normal rule of construction that Parliament intended the same words to have the same meaning in different parts of the same statute. In the text of the FOI Act itself, the most decisive indication that a consistent meaning for the phrase "personal affairs" was intended, appears in s.5(1)(c), which relevantly provides:

*5. (1) Parliament recognises that, in a free and democratic society -*

...

*(c) members of the community should have access to information held by government in relation to their personal affairs and should be given the ways to ensure that information of that kind is accurate, complete, up-to-date and not misleading. (my underlining)*

46. It is generally regarded as an important aspect of privacy protection that an individual be allowed ready access to personal information about himself or herself held by government, and be permitted to ensure its accuracy (see paragraph 71 below).
47. Section 5(1)(c) highlights the linkages, in the scheme of the FOI Act, of those provisions aimed at furthering the protection of individual information privacy. Information concerning X's personal affairs (in the absence of countervailing public interest considerations) is exempt from general access under s.44(1), but not from X's access (s.44(2)); to facilitate X's access to that information s.6 permits some other exemptions which may be applicable to be applied more leniently, and no fees and charges are applicable; and s.53 enables X to apply for amendment if any part of the information relating to X's personal affairs is considered to be inaccurate, incomplete, out-of-date or misleading. The linkages were also referred to in paragraph 18.35 of EARC's Report on Freedom of Information:

*18.35 Throughout this Report, the Commission has sought to promote the protection of individual information privacy, and has recognised that individuals have a strong and continuing interest in information held by government agencies which concerns their personal affairs. For this reason, it is considered that FOI legislation should not impose a charge of any kind in respect of documents containing information which relates to the personal affairs of the applicant.*

48. There can be little doubt that the phrase "personal affairs" bears the same meaning in s.44(2) as in s.44(1). The fundamental rule of construction referred to in paragraph 42 above applies with special force to words that appear more than once in the same section of an Act - see *Craig Williamson Pty Ltd v Barrowcliff* [1915] VLR 450 at

p.452. Thus it is the same personal affairs information of an applicant to which s.44(2) facilitates access, which is referred to in s.5(1)(c) as being the personal affairs information to which members of the community should have access, and have ways of ensuring its accuracy, completeness and etc. (that is, under s.53 of the FOI Act). It is information of that same kind to which access is facilitated by the provision that no fees or charges should be payable. Thus s.5(1)(c) supports a construction that gives the same meaning to the words "personal affairs" wherever they appear in the FOI Act. (An individual can still seek access to information about himself or herself, but which does not concern his or her personal affairs, pursuant to the general right of access conferred by s.21 of the FOI Act; but an application fee would be payable.)

49. There are other factors which tend to confirm that this is the correct approach. The different contexts in which the phrase "personal affairs" appears in the Queensland FOI Act are comparable to the different contexts in which the same phrase appeared in the Commonwealth FOI Act, prior to the passage of the *Freedom of Information Amendment Act 1991* Cth. It is implicit in the decision of the Full Court of the Federal Court of Australia in *News Corporation Limited v NCSC* that the phrase "personal affairs" was intended to bear a consistent meaning in the different contexts in which it appeared (see paragraph 22 above). It is also implicit in the reasoning of the Full Court of the Federal Court in *Department of Social Security v Dyrenfurth* that the phrase "personal affairs" was to be interpreted consistently as between s.41 and s.48 of the Commonwealth FOI Act; and it is quite explicit in the decision of the Federal Court in *Bleicher's* case (see paragraph 36 above) that the phrase "personal affairs" is to be interpreted consistently as between s.41 and s.48 of the Commonwealth FOI Act. Whilst some members of the Commonwealth AAT in cases decided in the mid-1980s were not prepared to accept that the phrase "personal affairs" must be interpreted consistently as between s.41 and s.48 (see paragraph 30 above), following the Full Court's decision in *Dyrenfurth's* case it came to be accepted in the Commonwealth AAT that the phrase "personal affairs" ought to be interpreted consistently in the different contexts in which it appears in the Commonwealth FOI Act: see, for example, *Re Jones and Attorney-General's Department* (1989) 16 ALD 732; *Re VXH and Public Service Commission* (No. V89/5, Deputy President Thompson, 23 March 1990, unreported); *Re Forrest and Department of Social Security* (1991) 23 ALD 649. (Possibly because the Victorian AAT has generally adopted a more expansive approach to the interpretation of the term "personal affairs", it does not seem to have arisen as a significant issue in that jurisdiction that the phrase might bear a different meaning in different contexts.)
50. The legislative history of the enactment of FOI legislation in Queensland supports the use (as an aid to statutory interpretation of those provisions in the Queensland FOI Act which are closely modelled on provisions in other jurisdictions) of the approach discussed generally in Pearce and Geddes, Statutory Interpretation in Australia, at page 61-62, to the effect that where an Act is passed by one Parliament in like form to that previously passed by a Parliament in another jurisdiction, and there are prior decisions of courts in the other jurisdiction on the meaning of the prior Act, it is appropriate to infer legislative approval by the first-mentioned Parliament of the interpretation given to the prior Act by courts in the other jurisdiction. In this instance, the Queensland Parliament has chosen to use the phrase "personal affairs" in provisions of the FOI Act which are closely modelled on like provisions in the Commonwealth FOI Act. Those provisions of the Commonwealth FOI Act had been interpreted by the Federal Court of Australia, a superior court of record, so as to

accord the phrase "personal affairs" the same meaning in the different contexts in which it appeared in the Commonwealth FOI Act. This provides further support for the view that the Queensland Parliament intended the phrase "personal affairs" to have the same meaning wherever it appears in the Queensland FOI Act.

The meaning of "personal affairs" - drawing the threads together

51. Having determined that the phrase "personal affairs" ought to be given a consistent meaning in the different contexts in which it appears in the Queensland FOI Act, it must be determined what meaning Parliament intended the phrase to have.

52. The following dictionary definitions of "personal" are of assistance:

- The Oxford English Dictionary

*"Of, pertaining to, concerning, or affecting the individual person or self (as opposed, variously, to other persons, the general community, etc., or to one's office, rank or other attributes); individual; private; one's own".*

- The Collins English Dictionary (Aust. Ed.)

*"... Of or relating to the private aspects of a person's life: personal letters; a personal question ... referring to, concerning, or involving a person's individual personality, intimate affairs etc. ...".*

53. The following definitions of "affair" and "affairs" are relevant:

- The Oxford English Dictionary

*"affair ... A thing that concerns any one; a concern, a matter ... ordinary business or pursuits of life, transactions between man and man ..."*

- The Collins English Dictionary (Aust. Ed.)

*"affairs 1. Personal or business interest: his affairs were in disorder".*

54. In *Re Williams*, Beaumont J held that the reference in s.41(1) of the Commonwealth FOI Act to the personal affairs of a person was intended to have its ordinary dictionary meaning, which, in his opinion, was to refer to *"matters of private concern to the individual"*. As disclosed at paragraphs 32 to 40 above, Beaumont J's statement has been widely approved, albeit with some qualifications and clarifications as to appropriate emphasis.

55. I consider that the adjective "personal" in "personal affairs" is really meant to capture the ordinary meaning which is conveyed when an individual responds to an intrusive question by a stranger or a government official with a retort such as: "I am not prepared to give you that information; it's personal". It is the first meaning from the Collins English Dictionary (Aust. Ed.) quoted above (i.e., "of or relating to the private aspects of a person's life") which in my opinion is most apposite to convey the ordinary meaning of the word "personal" in the phrase "personal affairs" in the

different contexts in which it is used in the Queensland FOI Act. My preference for that particular dictionary meaning should not be taken as indicating any departure from the meaning referred to in the preceding paragraph as having been widely approved. I think there is some scope for misinterpretation of the words "matters of private concern to the individual" which could be misread to extend to matters that were affecting an individual so as to cause personal concern or even anxiety, but were not matters relating to the private aspects of that person's life (cf. paragraphs 112 to 114 below). I think the particular dictionary meaning which I prefer merely captures a little more elegantly and precisely the sense of the words "personal affairs" which Beaumont J had in mind, and which has subsequently been approved on several occasions by the Federal Court of Australia in the cases reviewed above.

56. I think that the phrase "personal affairs" in the Queensland FOI Act should be interpreted consistently with those Federal Court cases. If the aid to statutory interpretation referred to in paragraph 50 were applied here, it would tend to support the conclusion that the Queensland Parliament intended that the phrase "personal affairs" be interpreted consistently with the meaning given to the same phrase (as it appeared in comparable contexts in the Commonwealth FOI Act) by the decisions of the Federal Court of Australia referred to in paragraphs 32 to 39 above. In addition, it would, in my opinion, be implicit in the application of that aid to statutory interpretation that one infers the legislature's approval of a prior interpretation of like words given in decisions of a superior court of record, in preference to any inconsistent decisions of an inferior tribunal.
57. That conclusion would be reinforced by the fact that the Queensland Parliament did not see fit to adopt the amendments made to the Commonwealth FOI Act in 1991 to remove the term "personal affairs" which was described in the explanatory memorandum to the *Freedom of Information Amendment Act 1991* Cth as a "more limited and uncertain phrase" than the term "personal information" which replaced it. The term "personal information" was given a definition which corresponded to the meaning of the same term as used in the *Privacy Act 1988* Cth. An FOI memorandum issued by the Commonwealth Attorney-General's Department at the time of the amendments stated that:

*The main purpose of the change is to ensure that the privacy exemption is capable of applying to information regarding work performance, capacity or suitability of a person for appointment or promotion.*

58. The 1991 amendments to the Commonwealth FOI Act were introduced after EARC had delivered its Report on Freedom of Information in December 1990 (and were not taken into account in that Report), but well before the passage of the Queensland FOI Act, and it was open to the Queensland Parliament to embrace the 1991 Commonwealth amendments if they were considered to be appropriate. (The *Freedom of Information Act 1992* WA, in its personal information exemption, followed the 1991 Commonwealth amendments, while adding some variations of its own.) Alternatively, it was open to the Queensland Parliament to follow the approach adopted in the *Freedom of Information Act 1991* SA, which was to employ the term "personal affairs" but give it a non-exhaustive statutory definition, clearly extending its meaning into at least two areas where doubt existed as to the application of the undefined words "personal affairs" on the Commonwealth authorities.

59. Since the Queensland FOI Act employs the undefined phrase "personal affairs", I consider that it was Parliament's intention that the phrase should be interpreted consistently with the decisions of the Federal Court of Australia in *News Corporation v NCSC*, *Department of Social Security v Dyrenfurth*, *Wiseman v Commonwealth of Australia*, *Bleicher v ACT Health Authority* and *Colakovski v ATC*. This would tend to be confirmed by paragraphs 7.168-7.174 of the EARC Report on Freedom of Information. That report is a document to which consideration may be given for the purposes of s.14B of the *Acts Interpretation Act 1954* Qld (see s.14B(3)(b)). Section 44 of the FOI Act has been enacted by the Queensland Parliament in an almost unchanged form from clause 36 of the draft FOI Bill recommended by EARC. EARC's commentary on clause 36 indicates that it clearly intended that its recommended clause 36 should be interpreted in accordance with the decisions of the Federal Court of Australia in *Young v Wicks*, *Department of Social Security v Dyrenfurth*, *News Corporation v NCSC*, and of the Commonwealth AAT in *Re Williams and Registrar of the Federal Court of Australia*.
60. The decision of the Full Court of the Federal Court in *Colakovski v ATC* had not been given at the time the EARC Report on Freedom of Information was delivered, but it was given well before the passage of the Queensland FOI Act. In it, Lockhart J expressed a qualification (or perhaps rather a clarification as to appropriate emphasis) to Beaumont J's approach to the meaning of the phrase "personal affairs", as referred to in paragraph 38 above. I think that in general terms it is a sensible qualification that information does not have to be secret, or not widely known, in order to answer the description of information concerning the personal affairs of a person. However, since s.44(1) of the Queensland FOI Act does not contain an "unreasonable disclosure" test, a legitimate question may arise as to the utility or merit of exempting under s.44(1) information concerning the personal affairs of a person which has become widely known in the community or even become a matter of public record. There may be a legitimate question of fact and degree involved in that a person's personal affairs may become so widely known that they ought logically to cease to be eligible for protection under a provision whose basic concern is the protection of personal privacy. This is an issue on which I would not wish to express any concluded view until an appropriate case to test the proposition arises.
61. I note in this regard, however, that the Commonwealth AAT in *Re Wiseman and Defence Service Homes Corporation* (1987) 14 ALD 301 said that documents containing matters easily verifiable from public records cannot be said to be "personal" (and that was specifically in addition to holding that disclosure of such matters could not be "unreasonable"). The particular documents which prompted these remarks were rate notices and accounts in respect of a residential property, of which the Tribunal said:
- They would be in no different position in our view from, for example, a title search, being merely a record of publicly available information. This is not one of those cases where the existence of a document such as a title search in a file, for example, of the Australian Federal Police, would, in itself, be of significance.*
62. This aspect of the Commonwealth AAT decision was not specifically dealt with on appeal to the Full Court of the Federal Court in *Wiseman v the Commonwealth of Australia* (cited in paragraph 35 above), although the Full Court expressly found that

no error was demonstrated in the AAT's approach to s.41(1) of the Commonwealth FOI Act. In *Dr J W C Cumes v Department of Foreign Affairs and Trade* (Commonwealth AAT, A85/85, Hartigan J (President), 8 February 1989, unreported) Hartigan J said (at p.20):

*I also note that documents containing matters easily verifiable from public records cannot be said to be 'personal', nor can disclosure of such matters be unreasonable; cf. Flick, Federal Administrative Law, at 2062/3 and the cases there cited.*

The schedule to Hartigan J's reasons for decision in *Cumes'* case discloses that the basis for his decision that two of the documents in issue were not exempt under s.41(1) of the Commonwealth FOI Act was that they contained publicly available information, and that this was regarded as a separate basis to the additional finding that it would not be unreasonable to disclose the two documents. (There are several reported cases where information has been held not to be exempt under s.41(1) of the Commonwealth FOI Act or s.33(1) of the Victorian FOI Act on the basis that it was a matter of public record, but this was generally regarded as a relevant factor in the application of the "unreasonable disclosure" test.)

63. While the word "personal" in this context is not to be equated completely with "private", nor certainly with that sense of the word "private" that means secret or confidential, there is no doubt in my mind that the word "personal" was intended to convey a dimension having to do with privacy. The dictionary meaning for which I have expressed a preference above also conveys a privacy dimension, and when one looks to the legislative history of the Commonwealth FOI Act and the Queensland FOI Act there can be no doubting that the protection of the privacy of natural persons was a major concern in the enactment of s.41 of the Commonwealth FOI Act (see for example Chapter 24 of the 1979 Report of the Senate Committee on Constitutional and Legal Affairs on the Draft Commonwealth FOI Bill) and s.44(1) of the Queensland FOI Act. In Queensland, the EARC Report on Freedom of Information, in its commentary on clause 36 of its recommended draft bill (which with only some minor and immaterial changes was enacted by the Queensland Parliament as s.44 of the FOI Act) noted that the "personal affairs" exemption was designed to protect the personal privacy of individuals and said (at p.75, paragraph 7.164):

*The Commission has attempted throughout this Report to promote and protect personal privacy. The Commission considers that the exemption which it proposes will adequately protect personal privacy. As already noted, the Commission considers that it is essential that a comprehensive review of privacy laws be conducted. Inevitably, an element of such a review would involve FOI legislation and the personal affairs exemption in particular.*

64. In Freedom of Information (Law Book Company, 1984) Peter Bayne records (at p.179) how the phrase "personal affairs" rather than "privacy" came to be employed in the Commonwealth FOI Act:

*Although the heading to s.41 indicates that the section deals with documents 'affecting personal privacy' the section itself refers to 'personal affairs'. The choice of the latter was deliberate, and was made at the*

*behest of the Australian Law Reform Commission, which was concerned that the use of the concept of privacy might 'give rise to interpretation in the Administrative Appeals Tribunal of concepts of privacy before the Law Reform Commission had an opportunity to define what ought to be included within the concept'. (Citing the evidence to the Senate Committee on Legal and Constitutional Affairs given by Mr Lindsay Curtis; the Australian Law Reform Commission (ALRC) was at the time working on a major reference on privacy, with a view to recommending the enactment of comprehensive privacy legislation.)*

65. The United States FOI Act has an exemption provision (Exemption 6) that is phrased in terms of exempting from disclosure certain kinds of documents "which would constitute a clearly unwarranted invasion of personal privacy". However, in my opinion, the use of the term "privacy" in FOI legislation would probably not have furnished any greater certainty. Privacy has been described as "a concept which enjoys universal approbation but which eludes definition" (see Eagles, Taggart and Liddell, Freedom of Information in New Zealand, Auckland, 1992, OUP at page 250, discussing s.9(2)(a) of the *Official Information Act 1982 NZ* which allows information to be withheld from access where this is necessary to "protect the privacy of natural persons, including that of deceased natural persons"). Privacy is a commonly used, ordinary language concept, but not one capable of precise definition because of the range of interests involved and the wide variety of attitudes held by different individuals and different groups within a single community as to what constitutes their sense of privacy and their sense of an invasion of privacy.
66. The major studies of privacy by the Australian Law Reform Commission (the ALRC) are particularly instructive. In its report, Unfair Publication: Defamation and Privacy (ALRC Report No. 11, Canberra, 1979), the ALRC said (at page 109):

*Privacy includes a number of interests; essentially however all involve the right of an individual to personal autonomy. This includes the right to control the transmission of certain personal information. In many cases truth is irrelevant. The truth of the statement may even increase the injury. The critical matter is the nature of the information and the use made of it; whether it is material which so closely pertains to a person in his innermost thoughts, actions and relationships that he may legitimately claim the prerogative of deciding whether, with whom and under what circumstances he will share it. The privacy claim is a claim for individual personality.*

...

*The privacy claim is not an absolute one. We are individuals, with individual personalities and needs but we live in a community. Individuals interact; inevitably the interaction leads to the transmission of personal information. Both individuals and institutions, public and private, have a legitimate claim to receive, at least on a restricted basis, a considerable amount of very personal information ... Some matters, although highly personal, raise issues of public concern. All members of the community have an interest to receive information on topics of public significance. The claim to privacy tends to conflict with the claim to public information.*

*The dilemma has always been to strike a proper balance between these two interests ...*

67. In its major report, Privacy (ALRC Report No. 22, Canberra, 1983), the ALRC attempted to define "privacy", or at least to describe the nature of privacy (at Volume 2, paragraphs 1032-3):

*... Earlier attempts to 'define' privacy, and to justify the need to protect privacy, were carefully reviewed in Chapter 1. None is completely satisfactory. In part, this is because privacy is a collection of related interests and expectations, rather than a single coherent concept. As was shown in Chapter 1, claims to privacy must be seen in the appropriate context, as an expression of the claim that all human rights be appropriately respected. ...*

*1033. An understanding of what is encompassed in the concept of privacy can therefore be gained by seeing privacy in the context of human rights. Basic to all the human rights identified in the ICCPR [the International Covenant on Civil and Political Rights] and other international human rights instruments is respect for individual autonomy. Claims to privacy are part of the claim that the autonomy of each individual should be protected and his integrity respected. Privacy claims involve a number of aspects:*

- *that the person of the individual should be respected, i.e. it should not be interfered with without consent;*
- *that the individual should be able to exercise a measure of control over relationships with others; this means that:*
  - *a person should be able to exert an appropriate measure of control on the extent to which his correspondence, communications and activities are available to others in the community; and*
  - *he should be able to control the extent to which information about him is available to others in the community.*

68. In the same report, the ALRC said (Summary, p.1):

*Privacy protection should be approached through definition of interests commonly grouped under the heading 'privacy interests' ... Privacy interests include:*

- *the interest in controlling entry to the 'personal place', or 'territorial privacy';*
- *the interest in freedom from interference with one's person and 'personal space', or 'privacy of the person'; and*
- *the interest of the person in controlling the information held by others about him, or 'information privacy'.*

*Related to these are the concepts of:*

- *freedom from surveillance, and from interception of one's communications, or 'communications and surveillance privacy'; and*
- *'privacies of attention', i.e, the ability to exclude intrusions that force one to direct attention to them rather than to matters of one's own choosing.*

69. It is the third of these categories, "information privacy", to which s.44(1) of the FOI Act is primarily directed; however, it could also incidentally affect "territorial privacy", and "privacies of attention" in the sense of being free from unwanted solicitations (see for example, *Re Targridge Pty Ltd and Road Traffic Authority* (1988) 2 VAR 604 where access was refused to lists of names and addresses which the applicant had sought in order to use as a "target" list for sales and finance offers through direct mailing).
70. The ALRC Report No. 22 referred with approval to the following comments on information privacy made by the Canadian Task Force on Privacy and Computers (at p.22):

*Privacy in the Information Context. The third category of claims to privacy ... is based essentially on a notion of the dignity and integrity of the individual, and on their relationship to information about him. This notion of privacy derives from the assumption that all information about a person is in a fundamental way his own, for him to communicate or retain for himself as he sees fit. And this is so whether or not the information is subsequently communicated accurately, and whether or not it is potentially damaging to his reputation, his pocket-book, or his prospects; the context is of course the controlling factor in determining whether or not particular information will be damaging. Competing social values may require that an individual disclose certain information to particular authorities under certain circumstances (e.g., census information). He may decide to make it available in order to obtain certain benefits (e.g., credit information or information imparted to his lawyer to win a lawsuit or to his confessor to win salvation). He may also share it quite willingly with his intimates. Nevertheless, he has a basic and continuing interest in what happens to this information, and in controlling access to it.*

71. The ALRC also made it clear that it regarded rights of access to, and correction of personal information as fundamental principles of privacy protection (see paragraph 1003, p.463; paragraph 1235, Volume 2, p.100). It referred to the fact that an access and correction scheme had been provided for in the Commonwealth FOI Act, the correction scheme having been "included as an amendment in the Senate ... largely as a stop-gap measure until the [ALRC's] recommendations are implemented". (See also the 1979 Report of the Senate Committee on Constitutional and Legal Affairs on the Draft Commonwealth FOI Bill, at paragraphs 24.14 to 24.18.)
72. The FOI Act is concerned with access to documents in the possession or control of government agencies and Ministers. Government agencies must gather a good deal of

personal information about individuals in the discharge of their public functions, such as the provision of health services, administration of schemes for the provision of welfare benefits, and so forth. Frequently, personal information is volunteered by persons seeking a service or benefit, though usually on the express or implied understanding that the information will be used only for the purpose for which it is provided. In some circumstances, government agencies have coercive powers to compel persons to disclose personal information. In other instances, personal information may be collected without the knowledge of the person concerned. Clearly, in enacting s.44 of the FOI Act, Parliament intended that much of the personal information that government agencies collect, store and use, should not be able to be accessed as of right by third persons pursuant to the general right of access conferred by s.21 of the FOI Act. The problem in determining the appropriate line of demarcation is that in employing an inherently imprecise concept like "personal affairs" (using personal in the sense which I have explained at paragraph 55 above), which imports similarly imprecise concepts of privacy interests, uncertainty is bound to occur when one tries to denote the boundaries of what is encompassed within the concept.

73. In one of the more informative early analyses of the term "personal affairs" given by the Commonwealth AAT, Deputy President Hall said in *Re Anderson and Australian Federal Police* (1986) 4 AAR 414 at p.430:

*... The expression 'personal affairs' is undefined. Accordingly, it must be construed according to its ordinary English meaning ... The tribunal in Re Williams construed the expression as referring to 'matters of private concern to an individual'. It is, however, an expression that is inherently incapable of precise or exhaustive definition. Its meaning and application are, I think, best left to be worked out as fact situations arise, bearing in mind the dichotomy which the Act establishes between 'business and professional affairs' on the one hand, and 'personal affairs' on the other.*

74. While this may be a prudent approach on the part of an external review authority, I think it is incumbent on an external review authority occupying a position comparable to the Information Commissioner's position in the scheme of the Queensland FOI Act, to attempt to offer as much clarification as is possible (without overreaching) in order to assist FOI administrators to achieve a proper appreciation and application of the phrase "personal affairs" in the more difficult and marginal cases which will be encountered among the 98% of FOI access applications which do not flow through to external review. I propose therefore to summarise what I consider to be clearly encompassed within the phrase "personal affairs" as it is used in the Queensland FOI Act, and what I consider clearly falls outside the ambit of the phrase "personal affairs", together with my preliminary assessment (in paragraph 76 below) of the approach which should guide the application of the phrase "personal affairs" to matters falling within the substantial grey area in between.
75. The views expressed in relation to matters falling within what I have referred to as the grey area are based on a review of all decided cases in other Australian jurisdictions and on my experience to date in discharging the role of external review authority under the Queensland FOI Act, and to that extent the views expressed may evolve as greater experience is acquired, and more and varied situations are encountered, in the discharge of the external review function.

76. When dealing with matters that fall into the grey area, I think it is legitimate to draw on the privacy material discussed earlier, for assistance. I think it is legitimate to resort for a guiding principle to a variant, appropriate to the context, of the fallback test to which the law frequently resorts in areas which substantially call for the making of value judgments reflecting current community standards, i.e. the reasonable person test. In my opinion, an appropriate guiding principle when difficult and marginal cases are encountered in the grey area should be that the phrase "personal affairs of a person" extends to the kinds of information concerning the affairs of a person which a notional reasonable bystander, applying the current community standards of persons of ordinary sensibilities, would regard as information the dissemination of which the person (whose affairs the information concerns) ought to be entitled to control, and hence, which should be capable of being claimed to be exempt from mandatory disclosure under the FOI Act.
77. Of course whether information is exempt under s.44(1) in any particular case will also depend on whether there are public interest considerations favouring disclosure which are strong enough to outweigh the inherent privacy interest, so as to warrant a decision that disclosure of the "personal affairs" information would on balance be in the public interest. Whether an agency or Minister chooses to exercise the discretion to claim an exemption under s.44(1) may also be influenced by factors such as whether the person whose affairs the information concerns, raises no objection to release of the information, either generally or to a particular applicant for access.

Matters which clearly fall within the meaning of the phrase "personal affairs of a person"

78. Section 44(3) of the FOI Act gives a clear enough indication that the legislature contemplated that information of a medical or psychiatric nature concerning a person is information concerning the personal affairs of that person.
79. What I described in paragraph 18 above as the core meaning of the term "personal affairs", which is agreed upon by all external review authorities, would comprise the elements referred to with approval by Full Courts of the Federal Court in *News Corporation Ltd v NCSC* and in *Department of Society Security v Dyrenfurth*, namely -

- affairs relating to family and marital relationships;
- health or ill-health;
- relationships with and emotional ties with other real people;
- domestic responsibilities or financial obligations.

(It would be prudent to assume that the Full Court in *Dyrenfurth's* case intended the adjective "domestic" to attach also to the words "financial obligations", given that financial obligations of a business more properly fall within the concept of business affairs. In so saying I do not doubt that many individuals who operate small business undertakings may have difficulty in drawing a strict line between domestic financial obligations and the financial obligations of their business. This is exemplified in *Re Boehm and Department of Industry, Technology and Commerce* (1985) 7 ALN N186; [1985] 7 ALD 270 where it was held that information relating to the likelihood of a person being ejected from his home as a result of his being unable to meet payments on a mortgage taken out to finance a

business, was information relating to the mortgagor's personal affairs, so that documents which contained such information, although otherwise relating to his business, were available to him as personal affairs documents under s.12(2)(a) of the Commonwealth FOI Act. In my opinion, however, s.45(1)(c)(i) of the Queensland FOI Act contemplates that the financial affairs of a business are covered by that exemption provision rather than by s.44 of the FOI Act.)

80. Some further examples of matters which have been held in decided cases to fall within the meaning of the phrase "personal affairs of a person", and which I consider to have been correctly decided for the reasons given by the relevant tribunal in each case are as follows (the list is meant to be illustrative, rather than exhaustive, of matters which I consider clearly fall within the meaning of the phrase "personal affairs" in the Queensland FOI Act):

- a person's signature (as distinct from a person's name, as to which see paragraphs 86 to 90 below) for the reasons given by the Commonwealth AAT in *Re Corkin and Department of Immigration and Ethnic Affairs* (1984) 2 AAR 214.
- the mention of a person's name in police records (or in agency records of a comparable nature) in association with some possible wrongdoing: *Re Wong and Department of Immigration and Ethnic Affairs* (1984) 2 AAR 208; *Re Kahn and Australian Federal Police* (1985) 7 ALN N190.
- complaints made by a prisoner as to his conditions in prison (*Re Lapidos and Ombudsman (No. 1)* (1987) 2 VAR 82 at p.88) and information concerning what happens to a prisoner whilst he is in prison (*Re Lapidos and Office of Corrections (No. 2)* Judge Jones (President), 19 February 1990, unreported).
- a person's income (*Re Ricketson and Royal Women's Hospital* (1989) 4 VAR 10) and personal financial position (*Re Lianos and Secretary to Department of Social Security* (1985) 7 ALD 475; *Re Wiseman and Defence Service Homes Corporation* (1987) 14 ALD 301). (It has been held, however, that there is a general public interest in seeing how the taxpayers' money is spent which is sufficient to justify the disclosure of the gross income payable from the public purse to the holder of a public office. This would not necessarily extend to income received by that person from other sources, nor to the net income received by that person, which is normally dependent on certain domestic relationships and/or income from other sources, nor even to the form in which the person elects to take non-salary components of a total income package - see *Re Ricketson* and *Re Forbes and Department of the Premier and Cabinet*, Victorian AAT, Deputy President Ball, 20 September 1993.)
- information supplied by a prospective tenant for the purpose of obtaining a residential lease of premises (*Re Liddell and Department of Social Security* (1989) 20 ALD 259).

Matters which clearly fall outside the meaning of the phrase "personal affairs of a person"

81. For information to be exempt under s.44(1) of the FOI Act, it must be information which identifies an individual or is such that it can readily be associated with a particular individual. Thus deletion of names and other identifying particulars or references can frequently render a document no longer invasive of personal privacy,

and remove the basis for claiming exemption under s.44(1). This is an expedient (permitted by s.32 of the Queensland FOI Act) which has often been endorsed or applied in reported cases: see, for example, *Re Borthwick and Health Commission of Victoria* (1985) 1 VAR 25 where the applicant sought disclosure of the names and medical history (clearly "personal affairs" information) of intellectually handicapped children who had been the subject of a Health Commission inquiry. Rowlands J (President) held that the applicant's interest in the documents, and the privacy of the children, could both be accommodated by substituting letters of the alphabet for the children's names.

82. I have already indicated my view (at paragraphs 21 and 27 above) that corporations do not have personal affairs for the purposes of the FOI Act, and that information concerning a person's business or professional affairs is not information concerning the personal affairs of that person.
83. With respect to persons who are employees of other persons, corporations or governments, I endorse what was said by Deputy President Hall of the Commonwealth AAT in *Re Anderson and Australian Federal Police* (1986) 4 AAR 414 at p.433-4:

*In my view, the fact that a document may refer to a person by name does not necessarily mean that the document relates to that person's 'personal affairs': cf Re Witherford and Department of Foreign Affairs (1983) 5 ALD 534 at 539. There are many circumstances in which a person may be referred to in correspondence or other documents without the documents containing information with respect to that person's personal (or 'non-business') affairs. Correspondence signed in the course of one's business, profession or employment is an obvious example. Documents signed as the secretary of a social club or sporting body would normally be of a similar nature. In my view, acts, matters or things done by a person in a representative capacity on behalf of another person, body or organisation, would not normally be said to relate to that person's 'personal affairs'. In such cases, the document does not relate to the person's personal affairs because there is no relevance between the information contained in the document and any matter personal to the applicant: cf Department of Airforce v Rose (1976) 425 US 352 at 371.*

84. This principle is consistent with principles stated in (and the general approach of) the judgments of the New South Wales Court of Appeal in *Commissioner of Police v the District Court of New South Wales and Perrin* (Perrin's case) (Kirby P, Mahoney JA, Clarke JA; 2 September 1993), a case which involved the application of the personal affairs exemption in clause 6(1) of Schedule 1 to the New South Wales FOI Act; see for example per Kirby P at p.29-30:

*... It cannot properly be said that the disclosure of the names of police officers and employees involved in the preparation of reports within the New South Wales Police can be classified as disclosing information concerning their personal affairs. The preparation of the reports apparently occurred in the course of the performance of their police duties. What would then be disclosed is no more than the identity of officers and employees of an agency performing such duties. As such, there would appear to be nothing personal to the officers concerned. Nor should there be. It is quite different if*

*personnel records, private relationships, health reports, or (perhaps) private addresses would be disclosed. Such information would attract the exemption. But the name of an officer or employee doing no more than the apparent duties of that person could not properly be classified as information concerning the personal affairs of that person. The affairs disclosed are not that person's affairs, but the affairs of the agency.*

85. In the particular context of government employees it would be inimical to the attainment of one of the major objects of FOI legislation (i.e. enhancing government's accountability and keeping the community informed of government's operations) if disclosure of records relating merely to the performance by a public servant of his or her duties could be resisted on the basis that they related to the public servant's personal affairs. In my opinion, *Perrin's* case was clearly correctly decided and ought to be followed in Queensland (in preference to earlier decisions which are necessarily inconsistent with it, such as *Re Perton and Department of Manufacturing and Industry Development* (1991) 5 VAR 149).

#### Recurring issues in the "grey area"

##### (i) Names, addresses and telephone numbers

86. Despite statements in many earlier tribunal decisions in both the Commonwealth and Victoria (see, for example, *Re Properzi and Department of Immigration & Ethnic Affairs* (1984) ADMN 92-035; *Re Simons and Victorian Egg Marketing Board (No. 1)* (1985) 1 VAR 54; *Re F and Health Department* (1988) 2 VAR 458) that a person's name, address and telephone number constitute part of that person's personal affairs, more recent decisions of senior judges call for a more considered approach to that question of characterisation according to the particular context in which that information appears. I have already referred to *Perrin's* case where the names alone of police officers performing their police duties were in issue. In *Colakovski* (at p.119) Lockhart J said:

*There is a real question as to whether the name and telephone number can answer the description of 'information relating to the personal affairs' of that person under s.41(1). Viewed as an abstract conception I would be inclined to the view that it could not, but such questions are not considered by courts in the abstract.*

His Honour had no difficulty in holding that the information in issue, viewed in its full context, answered the statutory description of information which relates to the "personal affairs" of a person.

87. In *Argent v South Australian Police Department* (District Court of South Australia, Roder J, 13 November 1992, Judgment No. D2671), the Court was dealing with an FOI access application for records held by the respondent in relation to a traffic accident in which the appellant sustained personal injury. The names and addresses of persons said to be witnesses to the accident in question were claimed by the respondent to be exempt material on the basis that disclosure would be an unreasonable disclosure of information concerning the personal affairs of a person. Having quoted the passage from Lockhart J's judgment in *Colakovski* that is set out above, the Court said:

*... I have no doubt that in the circumstances of this case, the information which has been withheld from the appellant is information ... which does not relate to the personal affairs within the meaning of the Act, of the bus operator. Each case must be looked at in its own circumstances to determine what might be involved in relation to what are personal affairs. The name and telephone number of the person in Colakovski's case, if alone disclosed, would not have resulted in the disclosure of information relating to personal affairs per se. But, because giving that information and the manner in which it had been obtained would effectively reveal other matters about a person's personal affairs it would in its own context involve the release of information about personal affairs. In the present case, on its own facts and its own circumstances, if the name and home address of the bus operator were to be released all that would be revealed is that the bus operator, a person living at a certain address, was a witness to an accident which had happened on a public thoroughfare, and as a result of which information was provided by him to the police in his capacity as a member of the public. In those circumstances, I cannot see how the release of the information relating to name and home address would result in the release of information relating to the bus operator's personal affairs as that term is used in the legislation. Whilst it may be true that in some circumstances the release of an address might lead inevitably to the release of information relating to a person's personal affairs, there is nothing before me to lead me to the conclusion that that would occur in the present case.*

88. While I consider that the result in *Argent's* case was justified, I have reservations about the analysis which suggests that a person's home address does not fall within the ordinary meaning of information relating to that person's personal affairs. I agree with the New South Wales Court of Appeal in *Perrin's* case that a name alone does not ordinarily fall within the meaning of the phrase "personal affairs"; see per Mahoney AJ at p.22, who said:

*A person's name would not, I think, ordinarily be, as such, part of his personal affairs. It is that by which, not merely privately but generally, he is known.*

I also note that in the passage quoted at paragraph 84 above, Kirby P expressed in passing (and without deciding) a note of reservation about whether private addresses of police officers constitute their personal affairs. However, the appearance of a name in conjunction with a home address would seem to me to fall, in the normal case, on the other side of the line. The address at which a person chooses to reside and make their home seems to me to fall within that zone of domestic affairs which is clearly central to the concept of "personal affairs". A business address would be materially different.

89. The disclosure of the name and address of a witness to a motor vehicle accident might well be justified on public interest grounds, i.e. in assisting the parties to civil litigation to have access to all relevant sources of evidence so as to ensure that litigants have at least the opportunity to seek to put all relevant evidence before the court, or to determine their approaches to pre-trial settlement of their dispute in the light of all relevant available evidence. (In substantially similar circumstances Jones J of the Victorian AAT held in *Re Phillip Page and Metropolitan Transit Authority*

(1988) 2 VAR 243 that the names and addresses of witnesses to a road accident constituted the witnesses' personal affairs, but that disclosure to the applicant who was injured in the accident would not be unreasonable.)

90. Many of the earlier tribunal decisions which automatically applied the principle that a person's name, address or telephone number are part of that person's personal affairs might well have been correctly decided if the context in which they appeared was properly evaluated. However, I think that the more recent cases properly call for a more careful evaluation and characterisation of the context in which a person's name, address or telephone number (or any combination thereof) appear, before it is decided that their disclosure would disclose information concerning the personal affairs of a person.

(ii) Employment Related Matters

91. As is illustrated by the cases surveyed in these reasons for decision, a high proportion of cases on the meaning of "personal affairs" have involved matters related to the employment of public servants. This is probably because public servants as a group have a higher awareness of the existence of, and use that can be made of, freedom of information legislation than the public at large.

92. Many of the reported cases relate to assessments of a person's work capacity and performance, or vocational competence. There are also a number of cases, however, which deal with matters incidental to the relationship of employee and employer and which could properly be said to concern the employee's "personal affairs". Without resiling from the principles I have endorsed at paragraphs 83 to 85 above, I consider that there is a relevant distinction to be drawn in respect of matters that relate to an employee as an individual, rather than an employee as agent or representative of the employer, and some matters in the former category may fall within the meaning of the phrase "personal affairs", as it has been explained above.

93. The passage quoted from *Perrin's* case at paragraph 84 above suggests that an employee's personnel records would attract the "personal affairs" exemption. I consider that personnel records, relating to such matters as an individual employee's sick leave, annual leave, reasons for requesting a transfer of position, and like material may be capable of falling within the ambit of the phrase "personal affairs", always depending on the proper characterisation of the actual material in issue (cf. *Re Traynor and Melbourne Metropolitan Board of Works and Minister for Water Resources* (No. 2) (1988) 2 VAR 358 at 365). I also agree with the decision of the Victorian AAT in *Re Perton and Port of Melbourne Authority* (1990) 4 VAR 155 to the effect that information concerning the personal superannuation contributions made by an individual employee would constitute information concerning that employee's personal affairs. (It would be a more difficult question whether, by parity of reasoning with *Re Ricketson* and *Re Forbes*, referred to in paragraph 80 above, the extent of the tax-payer funded government contribution to an individual's superannuation entitlements is a matter in respect of which the public interest favours disclosure.)

94. I also endorse the principle stated by Smith J (President) of the Victorian AAT in *Re Perton and Attorney-General's Department* (1992) 5 VAR 302 at p.319:

*In our view, material which discloses a complaint or allegations made to the Commissioner for Equal Opportunity pursuant to the Racial Discrimination*

*Act, and the Sex Discrimination Act, as is the case here, will in many circumstances be regarded as 'personal affairs'. This is notwithstanding that the complaint and allegations concern incidents that arose in the work place in the context of a person's employment. Whether or not such material relates to a person's personal affairs is ultimately a question of fact depending on the documents in issue and the context in which they were created."*

95. *Re Hocknell and Australian Telecommunications Corporation* (1991) 23 ALD 446, provides a further example of an employment related matter that was held to constitute a person's personal affairs. The material in issue was part of a letter forwarded by a Telecom employee requesting a transfer from one personnel unit to another personnel unit. The author of the letter wished to obtain a transfer because he was unhappy about his working relationship with the applicant and the material in issue made criticisms of the applicant's conduct and attitude towards him. The tribunal held that the material in issue was exempt under s.41(1) of the Commonwealth FOI Act (at p.448):

*... I am satisfied that the letter refers to matters of private concern to [the author]. The fact that those matters also relate to the pursuit of his vocation as an assistant personnel officer of the respondent does not derogate from that description. The letter on its face is not an attempt to denigrate the applicant, but explains the writer's discomfort in working with her. Whether that be the fault of the applicant, or that of [the author of the letter], or because of incompatibility of approach, the letter is simply an explanation of reasons of private concern to [the author], for seeking a transfer.*

96. Somewhat similar circumstances arose in *Re VXH and Public Service Commission* (Commonwealth AAT, No. V89/5, Deputy President Thompson, 23 March 1990, unreported) where the applicant applied under s.48 of the Commonwealth FOI Act for amendment of information contained in a supervisor's assessment of his work performance. The Tribunal, after referring to the Full Federal Court's decision in *Dyrenfurth's* case, held that adverse assessments of the applicant relating substantially to the applicant's behaviour towards other members of staff constituted information relating to the applicant's personal relationships with others and hence related to his personal affairs. This case treads a very fine line since the import of the supervisor's remarks was that the applicant's poor relationships with other staff reduced the effectiveness of the applicant's work performance.
97. The fact that an employee has unsuccessfully applied for another position (especially if it be with another employer, but even in respect of an application for a different position with the same employer) was held to be a matter relating to that employee's personal affairs within s.41(1) of the Commonwealth FOI Act in *Re Dyki and FCT* (1990) 22 ALD 124, endorsing the reasons given by Senior Member McMahon in *Re Williams* (who delivered a separate set of reasons for decision, concurring with Beaumont J).
98. As the cases already surveyed in these reasons for decision demonstrate, the area of assessments of the work capacity and performance, or vocational competence, of an employee has been the area most productive of inconsistent approaches to the

application of the term "personal affairs". The approach of the Victorian AAT has, in my opinion, clearly diverged from that of the Federal Court of Australia.

99. The Victorian approach, for example, hardly even acknowledges Beaumont J's emphasis in *Re Williams* (and subsequently endorsed on four separate occasions in the Federal Court of Australia) that ordinarily information as to the work capacity and performance of a person is not private in the requisite sense (see, for example *Re Foster and Victorian Police* (1989) 3 VAR 110 where an adverse assessment of the work capacity and performance of the applicant police officer was accepted without argument by both parties and the Tribunal as relating to the applicant's personal affairs for the purposes of an amendment application under s.39 of the Victorian FOI Act; and note the attempt by Mrs K Dimtscheff, Deputy President of the Victorian AAT in *Re Atkinson and Public Transport Corporation* (1992) 5 VAR 255 at p.279 to reconcile the decision of the Full Court of the Federal Court in *Dyrenfurth* with the Victorian approach exemplified in *Re Pescott and Victorian Tourism Commission* (No. 2)). For the reasons given at paragraphs 56 to 59 above, I consider that the decisions of the Federal Court of Australia there referred to should be followed in Queensland, in preference to any decisions of the Victorian AAT, or indeed of the Commonwealth AAT, which necessarily conflict with the principles stated by the Federal Court of Australia.
100. The area of assessments of work capacity and performance remained the main area of difference in approach between Victoria and the Commonwealth to the matters encompassed in the phrase "personal affairs" until the *Freedom of Information Amendment Act* 1991 Cth removed the term "personal affairs" from the Commonwealth FOI Act and substituted the term "personal information", defined in such a way as to cover assessments of the work capacity and performance of an individual. Until the 1991 amendments, the Commonwealth AAT generally accepted the constraints imposed by the Full Federal Court's endorsement in *Department of Social Security v Dyrenfurth* of *Re Williams*. Yet differences in approach were still evident. A fairly strict approach is evident in the application of s.41(1) of the Commonwealth FOI Act to assessments of public servants for promotion (applying *Re Williams* and *Dyrenfurth*) in *Re Dyki and FCT* (1990) 22 ALD 124, and in the application of s.48 of the Commonwealth FOI Act to information expressing serious doubt as to the applicant's professional competence, in *Re Jones and Attorney-General's Department* (1989) 16 ALD 732. On the other hand, a readiness to exploit the concession made by the Full Court in *Dyrenfurth's* case (i.e. that it is not permissible to construe the phrase "information relating to the personal affairs of any person" as being incapable of application to information contained in an assessment of capacity or work performance) is evident in the Tribunal decisions in *Re Jacobs and Department of Defence* (1988) 15 ALD 645, *Re VXH and Public Service Commission* referred to in paragraph 96 above and *Re Toomer and Department of Primary Industries and Energy* (1990) 20 ALD 575, all of which were cases dealing with amendment under s.48 of the Commonwealth FOI Act of information contained in assessments of vocational competence.
101. I think the Tribunal's approach in *Re Jacobs* is unexceptionable. The issue in that case (i.e. whether there may be a medical explanation for an unfavourable work assessment given in respect of the applicant) was one of the exceptions to the usual principle (i.e. that ordinarily information as to the work capacity and performance of a person is not "personal affairs" information) that was squarely contemplated by the Full Federal Court in *Department of Social Security v Dyrenfurth*.

102. *Re Toomer* enters more difficult territory, and is difficult to reconcile with *Re Jones*. In essence, it was there held that an assessment of work capacity or performance containing criticism of a person's personality or an attack on professional or technical reputation is personal, and falls within the meaning of "personal affairs" in s.48 of the Commonwealth FOI Act. I have difficulty in seeing how it is possible, ordinarily, to undertake an assessment of an employee's work performance and capacity, or vocational competence, without dealing in that person's reputation for the performance of employment duties. There may be a line to be drawn between assessments which reflect on reputation for the conduct of employment duties, and assessments which reflect on a person's general reputation or personality, though I expect that in many instances it could prove a difficult line to draw. Whether the Tribunal's approach in *Re Toomer* is correct and ought to be followed in Queensland is a matter on which I prefer to reserve my opinion until an appropriate occasion arises to give the matter detailed consideration.

(iii) "One-off" commercial transactions are capable of concerning a person's personal affairs

103. I have earlier referred to the basic distinction between personal affairs and business affairs in the scheme of the Queensland FOI Act. For a matter to relate to "business affairs" in the requisite sense, it should ordinarily, in my opinion, relate to the affairs of a business undertaking which is carried on in an organised way (whether it be full time or only intermittent) with the purpose of obtaining profits or gains (whether or not they actually be obtained). Thus, one-off commercial transactions entered into by individuals in relation to their domestic circumstances are ordinarily more likely to fall within an individual's "personal affairs".

104. In this regard, I respectfully disagree with a categorisation made by the Commonwealth AAT in *Re Telfer and Australian Telecommunications Commission* (1986) 11 ALN N122. In that case, an application was made under s.48 of the Commonwealth FOI Act for amendment of certain Telecom files which related to complaints made by the applicant Mr Telfer in relation to the malfunctioning of his telephone service and consequent overcharging by Telecom. The Tribunal said:

*Undoubtedly, the inefficient operation of his telephone, the investigation of fault, the initial overcharging and the lengthy correspondence which ensued, were of great concern to the applicant. But overall the Tribunal is of the view that the subject matter of dispute arose out of and related to the details of a business transaction - albeit one with a public utility. We are of the opinion that very few of the pieces of information of which amendment is sought relate to Mr Telfer's 'personal affairs' in the sense that the phrase is used in s.48 of the FOI Act. (my underlining)*

105. It is reasonably clear from the Tribunal's reasons that the supply of telephone services was to the applicant's residence, and there is no suggestion that supply of telephone services to the applicant was otherwise than on a domestic basis. To the extent that the passage quoted suggests that matters relating to a business transaction of this kind cannot fall within the ambit of the "personal affairs" of an individual in a position comparable to the applicant Mr Telfer, it is in my opinion mistaken. (I do not suggest that Telfer's case was wrongly decided since much of the information in issue did not concern the applicant's personal affairs, rather it related to matters such as equipment examinations, reports thereon, the accuracy of Telecom's metering systems, the

allocation of metering systems, and etc.)

106. The entry by an individual into a mortgage agreement to obtain finance to purchase a family home can undoubtedly be characterised as a commercial or business transaction. But that does not mean that it cannot be characterised as a matter concerning that person's personal affairs. Similarly, where a person enters a contract for the construction of a swimming pool fence around the swimming pool in the grounds of that person's family home, and subsequently pays a fee to the local authority to inspect and certify the pool fence's compliance with relevant legislative requirements, these are matters that can be described as commercial or business transactions, but they would not in my opinion be categorised as the homeowner's business affairs for the purposes of the FOI Act, and would ordinarily fall within the homeowner's "personal affairs".
107. Likewise, matters relating to an agreement for the lease of residential premises concern a business transaction, but are nevertheless capable of falling within the "personal affairs" of the tenant. If on the other hand, the landlord is engaged in a business undertaking involving the lease of that property (and perhaps others), the matter would ordinarily relate to the business affairs of the landlord.

(iv) Whether the characterisation of a document as having a public character necessarily excludes it from containing personal affairs information

108. Potential for confusion is inherent in the last two sentences of the following passage from Beaumont J's judgment in *Young v Wicks* (1986) 13 FCR 85:

*In my opinion, none of the subject documents contain information relating to the 'personal affairs' of the applicant within the meaning of s.41(1) of the Act. The reference to 'personal affairs' of a person was, I think, intended to have its ordinary dictionary meaning, that is to say, to refer to matters of private concern to an individual: see Re Williams and Registrar of Federal Court (1985) 8 ALD 219 at 221. Applying that test to the present material, it is not possible to identify any document as one which contains information referring to matters of private concern to the applicant as an individual: each of the documents relate to the administration by the Department of the Air Navigation Act 1920 and the Air Navigation Regulations thereunder. The applicant, it is true, is the subject of the documentation but the documents are concerned exclusively with the public regulation of air navigation. The result is that the documents have a public, rather than a private, character.*

109. Elsewhere in the judgment, His Honour expressly ruled that the documents did not relate to the applicant's business or professional affairs as that term was used in s.43(1)(c)(i) of the Commonwealth FOI Act. The documents related to the applicant in her capacity as a pilot employed by the Queensland government, and their characterisation as documents relating to the applicant as an employee, may have been sufficient in itself to prevent them from satisfying His Honour's preferred test, i.e. "matters of private concern to the individual" (see in this regard the passage from *Re Anderson* set out at paragraph 83 above). I think that all his Honour meant to convey was that the documents in issue contained no information referring to matters of private concern to the applicant, even though the applicant was the subject of the

documents. However, the last two sentences of the quoted passage could be interpreted as raising an additional relevant factor, i.e. that documents will not have the requisite private character if they relate to a public matter such as the public regulation of air navigation.

110. This has echoes of remarks made by Davies J in *Re Jamieson and Department of Aviation* (1983) 5 ALN N300, in which he expressed his doubt that the report on the investigation into an aircraft accident, undertaken in the interests of public safety, constituted information relating to the personal affairs of the pilot of the aircraft concerned. Davies J was there acting on the same view of the meaning of "personal affairs" as he had expressed in *Re News Corporation* (see paragraph 19 above), i.e. that it meant "individual affairs" as distinct from "public or general affairs", but at a time before the Full Federal Court in *News Corporation v NCSC* had decided that the basic distinction was between personal affairs and business affairs.
111. I doubt whether the characterisation of a document as relating to public affairs or public regulation of some area of activity, is relevant to the characterisation of particular information as information concerning the personal affairs of a person; for example, the regulation of the *Commonwealth Social Security Act* would undoubtedly require the Department of Social Security to collect information on the domestic affairs of applicants for social security benefits, being information that would generally fall within the accepted core meaning of the term "personal affairs". Indeed, the question of exemption or amendment of information can only arise under the FOI Act in respect of information contained in documents which are in the possession or under the control of a government agency or Minister, and would normally be in that possession or control for some purpose relating to public administration. I think the better view is that "personal affairs" information, properly so characterised, may still attract the application of s.44(1) even though contained in a document that may properly be characterised as relating to the public regulation of some area of activity.
112. On the other hand, there is in my opinion a relevant distinction to be made between information which relates exclusively to a matter of public policy, public administration or public regulation, which matter is of personal concern (or even anxiety) to an individual, and information which relates to "matters of private concern to an individual", to use Beaumont J's phrase.
113. In this regard, I refer to my decision in *Re Ritchie and the Department of Minerals and Energy* (5 February 1993) where I stated:

*Governments make many decisions of a general policy nature or decisions of general application to the community or a certain sector of the community, which may adversely affect individuals, and indeed cause them considerable personal concern or hardship; but they cannot for that reason alone be said to relate to the personal affairs of an individual affected. To take a simple example, a government decision to build a new railway line along a route currently occupied by suburban housing may be of personal concern (indeed cause misery) to a homeowner on the proposed rail corridor, but documents relating to such a decision could not be said to relate to the personal affairs of the homeowner. By contrast, an FOI request for all documents relating to a government decision to compulsorily acquire the land of a particular homeowner could*

*be said to relate to the personal affairs of that homeowner.*

114. To like effect is the decision of the Commonwealth AAT in *Re Boehm and Department of Prime Minister and Cabinet* (1984) 7 ALN N163 where it was held that Cabinet documents relating to a policy which had a severe financial impact upon the applicant, were not documents relating to the applicant's personal affairs:

*... Mr Boehm lodged another request seeking access to documents described as:*

*'Cabinet Decision 2221 23 Apr '74 press release no. 235 Structural Adjustment Assistance Program S.A.A.P. also No. 2255 where Ministerial responsibility was given to administer the Program to Minister for Ind & Com''*

*Mr Boehm was supplied with a copy of the Press Release but was refused access to Cabinet Decisions 2221 and 2255 and the associated Cabinet documents. ...*

*The letter of 21 March 1984 of Mr S Hamilton, First Assistant Secretary, Parliamentary and Government Division, establishes that the Cabinet documents contain no reference to Mr Boehm. The Press Release of 23 April 1974 of the Prime Minister indicates that the Government was dealing with major policy matters of wide-ranging import, namely, the granting of assistance to individuals and firms where structural change had adversely affected the firm, for example, a change in the levels of tariff protection allowing cheaper goods into Australia from overseas thereby putting the local factory out of business.*

*While the Government's policy had a severe impact on Mr Boehm and his factory and put him out of business, the Cabinet documents are not documents relating to his personal affairs as such. Mr Boehm was one of a number of people affected by the policy changes of the Government and who had a claim for compensation.*

*The later Cabinet decision and documents apparently deal with the establishment of a Structural Adjustment Board. This would be in implementation of the Structural Adjustment Assistance Programme. This does not relate to the personal affairs of Mr Boehm.*

*Accordingly, I am of the opinion that the Cabinet documents are not documents to which section 12(1)(a) applies - they do not contain information relating to the applicant's personal affairs.*

#### Application of the Relevant Provisions to the Documents in Issue

115. The Department has identified a number of documents which fall within the terms of Mr & Mrs Stewart's FOI access request dated 12 January 1993, and they have been produced to me for inspection. These documents relate to a dispute that has arisen between several parties (including Mr & Mrs Stewart) which relates to the operation of a school crossing at the Harristown State Primary School. The documents include

correspondence between the Department and Mr & Mrs Stewart, documents relating to Mr & Mrs Stewart's son, documents relating to the Department's investigation of the Stewarts' complaints and other matters relevant to the dispute, documents relating to the employment of Mrs Stewart and Mrs Z as crossing supervisors, correspondence between the Department and third parties relevant to the school crossing dispute, and documents relating to an inquiry undertaken by the Parliamentary Commissioner for Administrative Investigations (Ombudsman) into that dispute.

116. Some of the documents to which the Stewarts have requested access under the FOI Act relate to matters which concern them as individuals. However, many of the documents clearly concern matters other than the Stewarts' "personal affairs", such as the employment affairs of Mrs Z and the personal affairs of other persons involved in the school crossing dispute. Indeed, there are some documents which clearly fall within the terms of the Stewarts' FOI access request, but which contain no reference to the Stewarts or any member of their family.
117. By letter dated 4 June 1993, I wrote to Mr & Mrs Stewart drawing their attention to relevant case law (including my decision in *Re Ritchie and Department of Minerals and Energy*, 5 February 1993) on the meaning of "personal affairs" and indicating my preliminary view that, while some of the documents which fall within the terms of their FOI access request relate to their personal affairs, many do not, and hence a \$30 application fee was required according to the terms of s.29(2) of the FOI Act and s.6 of the FOI Regulation.
118. In the light of the views I had expressed, I invited Mr & Mrs Stewart to take the opportunity to make a written submission in support of their contention that a \$30 application fee was not payable. Mr & Mrs Stewart wrote to me indicating that they did not accept my preliminary view and referring to several matters about their complaints and the ongoing dispute which, with respect, did not really focus at all on addressing the issue for my determination in this application for review. It is not surprising that Mr & Mrs Stewart were unable to address a meaningful submission without access to the documents in issue. (Citing financial hardship Mr & Mrs Stewart have declined my suggestions to pay the \$30 application fee demanded by the Department in order to obtain access to the documents in issue, or at least those not claimed by the Department to be exempt from disclosure. That suggestion was put on the basis that an application for review of the Department's decision to require a \$30 application fee could still be pursued, and a refund obtained if the Department's decision was ultimately set aside.) I am satisfied, however, that this is a case where the relevant documents, on their face, speak for themselves on the issue of whether or not they concern the applicants' personal affairs.
119. I accept that the fact that the applicants have lodged complaints with the Department, and with the Office of the Parliamentary Commissioner for Administrative Investigations, is a matter concerning the applicants' personal affairs. (*cf. Re Lapidus and Ombudsman (No. 1)* (1987) 2 VAR 82 at p.88). However, it does not follow that every document generated in the course of pursuing inquiries into those complaints concerns the applicant's personal affairs. This is especially true of documents which on their face contain no matter which relates to personal aspects of the applicants' lives, but which do contain matter relating to personal aspects of the lives of other persons.

120. I have concluded that some of the documents to which access is sought by the Stewarts concern their "personal affairs", but I am satisfied that many of the documents requested do not concern the applicants' "personal affairs" as that term has been explained in these reasons for decision.
121. Given the terms in which s.29(2) of the FOI Act, and s.6 of the FOI Regulation are framed, an application for access to documents need seek only one document which does not concern the personal affairs of the applicant to attract the imposition of the \$30 application fee.
122. Accordingly, I find that the Department was correct in requiring the payment of an application fee of \$30 by Mr & Mrs Stewart, pursuant to the provisions of s.29(2) of the FOI Act and s.6 of the FOI Regulation, in respect of their FOI access application dated 12 January 1993, and I affirm the decision under review.

.....  
F N ALBIETZ  
**INFORMATION COMMISSIONER**