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ARTICLES

Someone to watch over me: Use of FOI requests by the tobacco industry – *Andrew D Mitchell* and *Tania Voon*

Australia's freedom of information (FOI) regime was amended in 2010 to embody a pro-disclosure culture within government, attempting to balance improved accessibility to government information with protecting agencies from abusive and unreasonable FOI requests. Through a case study of the tobacco industry's use of FOI requests, this article examines whether that balance has been properly struck. The article examines the operation of Australia's FOI regime, its use by tobacco companies, the adequacy of current FOI protections to allow agencies to deal with unreasonable requests, and potential amendments to remedy deficiencies in Australia's FOI regime, including pursuant to the recent Hawke Review. The article suggests that further reform is needed to discourage unnecessary and vexatious FOI requests and prevent wasteful use of agency time and resources. In particular, the article recommends the institution of a tiered charging regime, whereby small to moderate requests would be free or at low cost, and larger requests would be subject to more onerous charges that better reflect the requests' cost to government. 18

Executive detention and the Australian Constitution – *Anthony Gray*

This article explores the constitutionality of laws providing that a member of the Executive can order the incarceration of an individual thought to pose a risk to public society. Remarkably, this was legislated in Queensland in 2013 as a response to a Queensland court ordering the release of a repeat sex offender. The Queensland Court of Appeal invalidated the legislation on constitutional grounds in Attorney-General (Qld) v Lawrence (2013) 284 FLR 21; [2013] QCA 364, and the Queensland government abandoned thoughts of an appeal to the High Court. This article explores Ch III constitutional arguments against the validity of such a scheme. 43

What is "fair" and "reasonable" depends a lot on your perspective – *Chris Wheeler*

The way administrative actions (including inaction) of public sector agencies and officials is perceived by affected members of the public has a direct impact on whether those actions are seen as acceptable and those agencies and officials as trustworthy. Key criteria on which assessments are made by members of the public, the courts and administrative review bodies like ombudsman about the standard, quality and acceptability of administrative action are the perceived fairness and/or reasonability of related outcomes, procedures and/or behaviour. However, when used in the context of the review of administrative action, the terms "fair" and "reasonable" are imprecise and their application in practice varies considerably depending on the particular interests, role or perspective of the person making the assessment. In practice, members of the public, the courts and ombudsman generally focus on different aspects of the administrative action in question, and interpret and apply those criteria quite differently. As perceptions of fairness and/or reasonability can strongly influence the how people respond to administrative action, as well as the likelihood that they will comply with the law, it is important that the courts and ombudsman are aware of the factors that influence such judgments. 63

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