

CLA - There's no 'freedom' in education debate

5 Sep 07 Update: CLA has been an observer of Freedom of Information (FOI) requests in 2006 and 2007 for the release of information relating to school closures within the ACT, as part of a high-profile community debate running for 20 months. While an appeal against the non-release of documents is being heard before a Full Bench of the Administrative Appeals Tribunal (ACT), it is clear that the ACT Government is pursuing a path of freedom **from** information and not freedom **of** information.

CLA was even denied, under FOI, access to the ACT Government's own Statement of Facts and Contentions that provides the reasoning of why the community should be denied the information on school closures. That [document](#) has now been made available, even though the department considered it was still exempt from disclosure!

The ACT Government's approach to this significant test of its openness in government does not bode well for informed debate in other areas of community concern. It sets a tone and pattern of behaviour that denies the people's right to know.

It is ironic that the ACT Government was the first in Australia to introduce a Human Rights Act, in July 2004, which claims, in s 16 and s 17, that:

- *citizens have the freedom to seek, receive and impart information of all kinds; and*
- *every citizen has the right to take part in the conduct of public affairs, directly or through freely chosen representatives.*

It is even more ironic that, in late 2006, it was ACT Chief Minister Jon Stanhope who publicly disclosed to the nation – by posting the document on his website – the draft of Prime Minister John Howard's anti-terrorism legislation.

Background:

With announcement of the ACT Government's proposal to close a significant number of schools, the Opposition Liberal Party and others sought, under FOI provisions, information on the government's rationale and decision-making process: how they came to choose which schools to close. While some documents were provided, government decision-makers claimed exemptions for a significant number of other documents.

Having exhausted the review process, the Liberal Party Shadow Minister for Education, Vicki Dunne, appealed to the Administrative Appeals Tribunal (ACT) for a review of the FOI decisions made by various government officials. The [Statement of Facts and Contentions](#) lodged by Ms Dunne outlines a determined effort by the ACT Government to block the release of information under FOI.

The decision-makers have:

- Issued, on a purported power of the Minister, conclusive certificates that, without any further justification, deny the release of a swathe of documents. The use of such certificates to hide such a broad sweep of basic information is unprecedented since self government in the ACT;
- Determined it is not in the public interest to release documents on school closures, which are clearly 'in the public interest'.
- Tried to redefine the scope of the FOI request to exclude, under their interpretation, the documents subject to the information request;
- Claimed that releasing the information would subvert the cabinet process, when the withholding of information appears more designed to protect the Cabinet from public interest scrutiny; and
- Argued that arrangements entered into by the ACT Department of Education prevent it from disclosing information. This stance calls into question how a government department has a right to enter into an agreement that subverts an Act (the FOI Act) under which the department is meant to operate?

In seeking to obtain the Government's reasoning for its position, CLA sought a copy of the two-page [Government's Statement of Facts and Contentions](#). CLA request was denied based on an exemption purported to be granted if the document was *privileged from producing in legal proceedings*. The document has been produced in proceedings and been given to third parties, so how the Department can even contend privilege remains a mystery.

The document has now been released to CLA and the sensitive of its content is not apparent, nor why it could not have been made available when originally requested?

CLA believes that the FOI Act is based on the concept of wide public disclosure of information, and not on the Executive Government construct of hindering the release of information;

This case is (at Sep 07) subject to ongoing proceedings in the Administrative Appeals Tribunal (ACT) and, as an indication of its significance, is being heard before a Full Bench of the Tribunal. A Tribunal decision is expected shortly.