

ORIGINAL DECISIONS REVIEWABLE BY VCAT?

Today the Victorian Civil and Administrative Tribunal handed down a decision which goes against what was believed to be the established correct procedures for seeking review by the VCAT.

In the case before the Tribunal, a Opposition Parliamentarian sought access to various documents from a Government Department. The Department refused access at first instance and notice of that original decision was given to the applicant. The applicant duly sought internal review. A decision was made on internal review that affirmed the original decision. All decisions and requests for review were made within the time limits set out in the FOI Act.

The applicant, being dissatisfied with the decision, applied to the VCAT for review. The application for review identified as the decision to be reviewed the *original decision* and not the decision on internal review. The Department argued that the Tribunal had no jurisdiction to hear the matter on the following grounds:

- ? The only time an applicant may seek review from the Tribunal in circumstances where the applicant had made an application for internal review was where no decision on that internal review had been communicated to the applicant within 14 days.
- ? Where a decision on internal review has been made within time and communicated to the applicant, the fresh decision made on internal review supersedes the original decision for the purposes of review by the VCAT. Accordingly the VCAT can only review the internal review decision, not the original decision.

The Tribunal did not accept that argument and found that the applicant had correctly identified the decision sought to be reviewed, namely, the original decision which was affirmed on internal review. Accordingly, it found that it had jurisdiction to hear the matter.

If you require any further information about the decision and what it will mean for your agency please contact Mick Batskos on 9667 0233 or email: mbatskos@bigpond.com or fax 9667 0237.

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