

FOI supporters condemn High Court decision

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KERRY O'BRIEN: For decades now, freedom of information laws around Australia are supposed to have operated as an important mechanism in keeping Government honest, opening up both ministers and Australian bureaucrats to scrutiny. But a crucial three-two majority decision in the High Court today to reject a final appeal by a News Limited journalist to access Government documents blocked by the Treasurer, relating to income tax, bracket creep and the first homeowners' scheme, is being interpreted by FOI supporters as a blow to the future effectiveness of the Freedom of Information Act. In fact, some now say the spirit of FOI has been broken completely. Mr Costello, for one, begs to differ. Political editor Michael Brissenden reports.

MICHAEL BRISSENDEN: Michael McKinnon began his seemingly innocuous quest for information on bracket creep and apparent fraud using the first homeowners grants back in 2002. Since then he's challenged the government's rejection of his request for documents under the Freedom of Information Act all the way to the High Court. Today, that court finally made its finding and sided with the Treasurer. In the case known as McKinnon versus the Secretary of the Department of Treasury.

MICHAEL MCKINNON, FOI EDITOR, 'THE AUSTRALIAN': I'm disappointed, I'm disappointed for democracy today. I still believe that citizens in a democracy have a right to know how the government spends their money and whether their politicians are doing their jobs properly.

MICHAEL BRISSENDEN: Colloquially at least this has become known as McKinnon versus Costello and both sides have fought it to the bitter end. McKinnon's employer News Limited has spent an estimated \$1 million in the government's favour from the tribunal through to Federal Court and now to the High Court. The Government has spent even more than that fighting the appeals. This has become a most important make or break case for those who believe the spirit of the FOI Act introduced in 1982 has been breached and its intent abused. Those campaigners, like Michael McKinnon and the legal academic Rick Snell, are somewhat crest-fallen today, to say the least.

RICK SNELL, LAW SCHOOL, UNIVERSITY OF TASMANIA: This was a once in a decade opportunity to reset and retune the operations of freedom of information in this country and the majority of the High Court has failed dismally in taking that opportunity.

MICHAEL BRISSENDEN: Governments of all persuasions have regretted the introduction of the Freedom of Information Act almost since the day it was introduced. In fact, accepting cases of individuals seeking personal information, governments have worked to make FOI almost useless. There are simply too many areas exempt from scrutiny - defence and security, international relations and matters deemed to be commercial in confidence are just some of the no-go areas. Then, there's what is known as the conclusive certificate. This is a broad exemption that can, and as in the McKinnon case often is, administered at a minister's discretion because the release of documents isn't in the public's interests. In a 3-2 ruling today, with Justice Michael Kirby and the chief justice of the court, Murray Gleeson, in the minority the High Court upheld this ministerial right.

RICK SNELL: The majority decision of the High Court effectively opens the gates fairly wide for this government and future governments to use conclusive certificates fairly freely and

without having to meet very high thresholds in making them valid. So you will see the increasing issuing of conclusive certificates and them being unable to be challenged, effectively.

MICHAEL BRISSENDEN: As Peter Costello points out, the use of conclusive certificates has a long bipartisan heritage.

PETER COSTELLO, TREASURER: Can I tell you, every Treasurer - with the exception of John Keirin who wasn't Treasurer for very long - has issued conclusive certificates since the act came into existence. Paul Keating, not only issued conclusive certificates, but when he was found to have not had reasonable grounds, he ignored that. John Sydney Dawkings, Ralph Willis, George Gear, Brian Howe signed them in relation to Treasury matters. I don't quite know why.

MICHAEL BRISSENDEN: These days the Federal Labor Party says they will scrap the use of conclusive certificates. Mark Latham took that policy to the last election and it remains Federal Labor policy. The fact is, though, that State Labor Governments, holding the reins of power don't seem to share the reformist's zeal.

PETER COSTELLO: There's an interesting question. Let's forget the Federal Opposition because Federal Opposition has the great comfort of knowing they're not in government. Let's go to Mr Bracks, Mr Beattie, ask Mr Beattie to announce that policy for his re-election. I don't think so. Can I say to you, all very well for the Labor Party to say that now. Can we please have an explanation of Paul Keating, John Dawkings, Ralph Willis, George Gear, Brian Howe. Come on.

NICOLA ROXON, SHADOW ATTORNEY-GENERAL: We don't control the state Labor governments. We actually think it's really important when the Howard Government is closing down every other avenue of review, whether it's in the Senate or how they deal with the media or the way the gag debate in the house, this is another tool they are using to stop there being public debate and public scrutiny and we don't think they should be allowed to get away with it.

MICHAEL BRISSENDEN: Isn't this an example it is OK if you're in government but not OK if you're in opposition?

NICOLA ROXON: I don't think so. I think the Howard Government is taking this to extraordinary new extremes and the case we were talking about today dealt with tax matters but their views of the Freedom of Information Act to stop releasing information about David Hicks, to stop releasing information about AWB, to stop releasing information about so many other matters that are of public concern that I think they've taken it to a whole new level, which really means that the Commonwealth laws need to be revisited. They're not doing the job they were originally designed to do.

MICHAEL BRISSENDEN: Today the Opposition attempted a suspension of standing and sessional orders to bring on a debate on the matter. The Government used its numbers to gag the motion.

NICOLA ROXON: Mr Deputy Speaker, what is it that the Government is trying to hide by refusing to table these documents?

DEPUTY SPEAKER OF THE HOUSE: ...will resume her seat. I'll call the parliamentary secretary.

LIBERAL MP: Mr Speaker, I vote that the member opposite no longer be heard.

DEPUTY SPEAKER OF THE HOUSE: Those of that opinion say aye. To the contrary no. I think the ayes have it.

MICHAEL BRISSENDEN: Sure, it was a stunt that was never going to succeed but Labor had more success with Question Time today and in particular their persistent questioning of what appears to be some significant abuses of the temporary skilled immigration system known as the 457 Visa Scheme.

TONY BURKE, OPPOSITION IMMIGRATION SPOKESMAN: I refer the Prime Minister to the shocking treatment received by Jack Zhange, a 457 visa holder, the latest in a long line of workers being exploited and abused on these temporary visas.

MICHAEL BRISSENDEN: The case of Jack Zhange hit the news today. Brought to Australia under the 457 Visa Scheme, he was employed at this Melbourne printing factory, earning more than \$300 a week less than the award rates, but he put very little of that in his own pocket as the unions point out - his case is remarkable.

DOUG CAMERON, AUSTRALIAN MANUFACTURING WORKERS UNION: He had to pay \$10,000 to an agent prior to coming here. After he came here, the company then demanded another \$10,000 from him and he paid that back at \$200 a week. The net effect of that is he's living on \$240 a week and the workers are saying they are living on noodles. In fact, their conditions and wages were better in China than they are off here.

MICHAEL BRISSENDEN: The Government today announced that departmental officers were investigating the case. But there may have been a basis for sanctions and that the company would not be permitted to sponsor any further workers until the investigation was completed. All of which led to Kim Beazley to recall some familiar political rhetoric.

KIM BEAZLEY, OPPOSITION LEADER: Prime Minister, who decided that Mr Zhange would come to this country and the conditions and circumstances in which he would work?

MICHAEL BRISSENDEN: There are some serious issues at play here. There is some evidence to suggest cheaper migrant workers are taking unskilled jobs and this comes with the Opposition keen to prove that the broader WorkChoices legislation could push down wages for the rest of us as well. The Prime Minister argues that wages have in fact gone up in the last few months since WorkChoices began. They certainly have for politicians. Late last night they quietly voted themselves a 7 per cent pay rise

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