

1987 ADMINISTRATIVE LAW SEMINAR

Advance Notice

A seminar to examine the administrative law reforms of the last decade, the impact of those reforms and the future of administrative review

Place: The Australian National University, Canberra  
Dates: Friday and Saturday 15 and 16 May 1987

The seminar is being organised jointly by:

- . Administrative Review Council
- . Law Faculty, ANU
- . Commonwealth Attorney-General's Department
- . Royal Australian Institute of Public Administration (ACT)

Director of Studies - Mr Peter Bayne, Law Faculty, ANU  
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Commonwealth Ombudsman

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Section 17 reports

In August 1986 the Senate Standing Committee on Constitutional and Legal Affairs published a report entitled Commonwealth Ombudsman - Annual Report for the period 1984-85. The report discussed the question of a parliamentary response to the Ombudsman's special reports under section 17 of the Ombudsman Act 1976. Two such reports relating to the ABC and the Department of Defence are currently before Parliament - see (1985) Admin Review 70 and (1986) Admin Review 139. In its report the Committee proposed to seek a reference from the Senate to the Constitutional and Legal Affairs Committee in the matter.

On 21 August 1986 the Chairman of the Committee, Senator Michael Tate, gave notice of a motion under which the two existing section 17 reports, and all such reports made in the future, would be referred to the Senate Committee. The Senate subsequently passed Senator Tate's motion on 22 August 1986.

Conference of Ombudsmen

The Ninth Conference of Australasian and Pacific Ombudsmen was held in Hobart during the week commencing 6 October 1986.

### Policies on denial of legal liability

Following various complaints the Ombudsman's office has been examining the Commonwealth's practices in relation to admission or denial of legal liability where claims are made against the Commonwealth, especially in respect of motor vehicle accidents. In one recent case the complainant's car was damaged by a runaway army truck. Liability was denied by the Commonwealth on the ground that the accident occurred on Commonwealth land (where the complainant had formal approval to park) which carried an 'all care no responsibility' disclaimer. When the matter was taken up by the Ombudsman the complainant promptly received an ex gratia payment, but further inquiries are being made by the Ombudsman into whether, despite legal grounds for the denial of liability, the practices of the Commonwealth are appropriate.

### Taxation Relief Boards

Taxation Relief Boards are established under section 265 of the Income Tax Assessment Act 1936 to consider applications from persons seeking release from the liability to pay tax because of 'serious hardship'. The Board is made up of delegates of the Commissioner of Taxation, the Secretary to the Department of Finance and the Comptroller-General of Customs.

For some time the Ombudsman's office has been investigating complaints about the practice of Taxation Relief Boards not to record reasons for their decisions on requests for release from taxation debts. The Taxation Office had resisted the Ombudsman's request for reasons to be recorded and has based its arguments on cost-benefit grounds. Recently, however, the Commissioner of Taxation indicated a preparedness to try and develop criteria and procedures which would enable some kind of 'check list' record of reasons to be maintained without undue diversion of resources. A guidelines circular will also be developed for public release.

At its September meeting the Council decided to place a project on Taxation Relief Boards on its work program. This follows the transfer of certain functions concerning the Boards from the Taxation Boards of Review to the AAT.

### The Canberra Bulletin of Public Administration - proceedings of seminar on the Ombudsman

The Canberra Bulletin of Public Administration is the journal of the A.C.T. Division of the Royal Australian Institute of Public Administration. It is published four times a year and covers government at national and state levels. Articles embrace administrative issues and other matters of interest to government administrators. Each issue also contains reviews of recent books on politics, government, law, economics and industrial relations. A recent issue (Volume XII No. 4 Summer 1985) is entitled The Ombudsman through the Looking Glass, and contains a report of proceedings of a seminar held on 7 September 1985 at the Law School of the Australian National University.

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The Courts

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Standing to challenge film censorship decisions

In Ogle & Anor v Strickland & Ors (4 August 1986) Mr Justice Sheppard held that the applicants, an Anglican minister and a Roman Catholic priest, had no standing to bring proceedings before the Federal Court under the Administrative Decisions (Judicial Review) Act. The applicants were seeking review of decisions relating to the registration of the imported film 'Je vous salue Maria' (Hail Mary). The decisions were made pursuant to the Customs (Cinematograph Films) Regulations. In reaching its decision the Court concluded that, notwithstanding their special position as ministers of religion, the applicants did not stand in any different position from countless other members of the community who, with varying degrees of commitment, profess the Christian faith. The Court considered two recent decisions of the High Court - Australian Conservation Foundation Inc. v Commonwealth of Australia (1980) 146 CLR 493 and Onus v Alcoa of Australia Ltd (1981) 149 CLR 27. There was a question whether the decision in Onus' case, in particular, required a finding that the applicants in Ogle had the requisite standing. In Onus' case the appellants were members of the Gournditch-jmara Aboriginal community and, as such, were custodians, according to the laws and customs of that community, of its ancestral relics. Certain relics were found on the respondent's land and those relics were protected by the Victorian Archaeological and Aboriginal Relics Preservation Act 1972. The appellants were held to have standing to institute proceedings to enforce the Relics Act in respect of relics on the respondent's land.

Mr Justice Sheppard in Ogle considered that perceptions of factual similarities with other cases are rarely of assistance and may lead a court into error.

The decision has been appealed to the Full Court of the Federal Court and is listed for hearing in Sydney on Friday 24 October 1986.

Discounting lump sum compensation payments

In Blackwell v Commonwealth of Australia (18 July 1986) the Full Court of the Federal Court (Northrop, Keely and Wilcox JJ.) set aside a decision of the AAT allowing a discount of 4.5% for the benefit of present receipt of future payments in the calculation of a lump sum payment under the Compensation (Commonwealth Government Employees) Act 1971 in respect of partial incapacity for work. (The AAT's decision was reported at (1985) Admin Review 46.) The Full Court held that the AAT had been incorrect in its conclusion that the High Court had decided in Todorovic v Waller (1981) 150 CLR 402 that, as a matter of law, a discount rate must be adopted. The Full Court also considered that Todorovic's case should be used only for assistance in determining a rate of discount as a