

whether or not the respondent agency is an employer of the applicant. In addition, it ruled that it includes not only factually erroneous assertions but also information conveyed by innuendo. Interpreting the relevant section (section 48) in accordance with the objects and intent of the FOI Act tended towards a broad interpretation, the AAT said, and it emphasised that the question was not whether the document being examined related to the applicant's personal affairs but whether the actual information, the record of which was sought to be amended, so related.

With reference to the extensive "process of continuous alteration" of records carried out by George Orwell's Winston Smith in the Records Department of the Ministry of Truth in Nineteen Eighty-Four, the AAT warned against the danger of the artificiality that could arise as a consequence of wholesale amendment and updating of information relating to personal affairs, as well as the enormous administrative burden that it could impose, and said that the addition of a notation to a record might often be the appropriate way of giving effect to the interest of the individual in the accuracy of records.

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Commonwealth Ombudsman

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Annual reports

The annual reports of the Commonwealth Ombudsman and Defence Force Ombudsman were tabled in the Parliament on 5 December 1985. In his report, the Ombudsman points out the increase in the number of approaches to his office each year. This should not be regarded as evidence of unimproved public administration, he remarks, but rather as the result of increasing awareness of the existence of his office and the positive results achieved. Experience of several Ombudsman offices in Australia and overseas is that after a decade or so, the number of complaints received each year levels off, although this has not yet occurred with the Commonwealth Ombudsman. The Ombudsman highlights a concern that his increasing work has not been matched by increases in staff, and adds that he regards it to be wrong in principle for levelling of his operations to be achieved by the executive policy process of providing insufficient staff to meet the public demand for his services.

The report also discusses the Ombudsman's freedom of information role which continued to be severely restricted in the past year by staff shortages. His office is involved in

four ways in administration of the FOI Act - it is an agency to which the Act applies, it is an avenue of review alternative to the AAT for FOI applicants who have not succeeded in obtaining the release of information, it is supposed to have a representational advocacy role before the AAT, and it is to monitor the application of the Act. With no additional staff, it has not only as a subject agency been unable to meet the time framework of the Act but also is unable either to perform the monitoring function or the advocacy role before the AAT. (In consequence, that role has not been publicised.)

The extent of the community's interest in freedom of information is demonstrated by the range of FOI complaints received by the Ombudsman's office. In 1984 - 85 there were 142 complaints, a rise of 103% over the previous year. The usual practice is to take up an FOI complaint only after the applicant has sought "internal" review, although this practice may be departed from where waiting for internal review seems likely to disadvantage the applicant. For example, in one instance the applicant was involved in litigation against an agency and required the documents for the hearing, but normal internal review would probably not have been completed until well after the hearing. In other cases, it was almost certain that the grounds of first refusal would be affirmed unless additional material was put before the decision maker. Thus the development of a role for the Ombudsman's office in FOI cases as a source of independent advice and assessment for both agency and applicant is reflected. This role necessitates determining whether the administrative processing of the FOI request has been efficient and comprehensive, and evaluating the arguments advanced for non-release.

In discussing the operation of the FOI Act, the Ombudsman outlines three areas which he feels need attention:

- . exempting the Ombudsman's office from the FOI Act;
- . providing individuals with the same "third party" rights and protections as are now given to commercial interests; and
- . catching up with the computer revolution and the use and abuse of data manipulation.

The report of the Defence Force Ombudsman records a satisfactory experience in the first full year of operation of that jurisdiction and highlights the office's experience in the application of natural justice in the Defence Force. The Defence Force Ombudsman also records a continuing concern that resolution of complaints often takes too long.

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The Courts

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Natural justice and deportation orders

Contrary to the view which has prevailed, the principles of natural justice do apply to the making of a deportation order under section 18 of the Migration Act, the High Court has ruled. The Court relied on statutory amendments, in the context of the AD(JR) Act, made since the earlier cases on this point. In Kioa v West (18 December 1985) it was held that the appellants, prohibited immigrants, had been denied an opportunity to answer some prejudicial material which had been before the delegate, and an order was made to set aside the deportation order and refer the matter back to the Minister.

The significance of this decision may extend beyond deportation orders under section 18 of the Migration Act. Mr Justice Brennan expressed the view that "the exercise of powers conferred by ss. 6, 6A, 7 and 18 are conditioned on the observance of the principles of natural justice".

Refugee status decision made under an enactment

In Minister for Immigration and Ethnic Affairs v Mayer (5 November 1985) the High Court held by a 3-2 majority that a decision by the Minister that a person was not eligible for refugee status had been made under an enactment. Hence the person was eligible under the AD(JR) Act to seek reasons for the decision. The Minister had claimed he was not required to give reasons for the decision and this had been overturned by Mr Justice Davies in the Federal Court. His Honour's decision was subsequently upheld on appeal to both the Full Federal Court and the High Court.

A decision, but not of an administrative character

In Letts v The Commonwealth & Ors (30 October 1985) the applicant sought review of a decision of the Registrar of the High Court that the commencement of certain proceedings in the High Court be referred to a Justice of the Court to consider whether it was an abuse of the process of the Court. It was argued, however, that there was no "decision" susceptible of review or, if there was a decision to which the AD(JR) Act applied, then the Court in its discretion should refuse to grant the application.

It was held that there had been a decision made by the Registrar - he had not purported to determine the matter but