

The High Court on 19 February refused an application by the hospital for special leave to appeal on the question whether damages are recoverable for denial of natural justice. Although it said that in other circumstances this question might attract a grant of special leave to appeal, in the case in point the question had been left open for subsequent determination in the proceedings, and therefore a grant of special leave was not appropriate.

Commonwealth Ombudsman

Delegates of The National Companies and Securities Commission

The Ombudsman advised the Council about concerns he has over the possible lack of any review mechanism, other than the courts, with respect to State Corporate Affairs Commissions when acting as the delegate of the NCSC. The NCSC falls within the Ombudsman's jurisdiction but the Ombudsman was specifically precluded from investigating the activities of its delegates by regulations made under the National Companies and Securities Commission Act 1976. At the time the regulations were drafted it was generally understood that the State Ombudsmen or their equivalents would have jurisdiction to investigate complaints about the actions of the delegates, but doubts recently were raised whether this is in fact the case.

The NCSC is empowered to appoint special investigators under section 291 of the Companies legislation. These investigators also appear to be outside the jurisdiction of the Commonwealth Ombudsman and there is doubt whether the State Ombudsmen or their equivalents have jurisdiction. NCSC delegates and special investigators thus may not be subject to any form of review by such bodies as the Ombudsman.

Proposed removal of pip tones from community calls

Telecom recently proposed that the pip tones be removed from community calls from areas on the fringe of metropolitan local call zones. Such calls are time charged, although at less than the STD rate, and carry the same initial warning pip tones as STD calls. The removal of the pip tones would mean that subscribers would no longer be alerted to the higher cost of such calls and would be likely to assume, wrongly, that the local call rate applied. The proposal was criticised by the Ombudsman. Subsequently Telecom decided not to proceed with the proposal.

Proposed charge for investigating disputes over metered calls

Telecom also recently proposed to introduce a charge for investigating disputes over metered calls, claiming that the investigations were costly, the disputes often only involved small sums and the process was being used by some people to delay payment of their bills. The Ombudsman pointed out that charges should not be levied for what was effectively an internal review process and that charges would discourage

genuinely aggrieved subscribers from questioning their account. In the Ombudsman's experience the majority of such disputes were from people with a genuine concern about the metering of their calls. Telecom has since decided not to proceed with the proposal.

Transfer of sick leave entitlements to Australian Public Service from certain previous employment

The Ombudsman recently considered several complaints that led him to question whether it is reasonable for the Public Service Act (s.47E) to provide for only a 2 month gap in employment for the carry-over of sick leave from certain recognised prior service, with no flexibility for exceptional circumstances. The immutable 2 month period poses a particular problem for permanent officers of the Australian Defence Force seeking to join the Australian Public Service, because of the requirement for them to give an acceptable period of notice before leaving the defence forces. The Ombudsman has recommended to the Department of Industrial Relations that it consider this issue.

A D M I N I S T R A T I V E L A W W A T C H

Senate rejects Administrative Decisions (Judicial Review) Amendment Bill 1987

On 20 April 1988 the Senate voted to reject the Administrative Decisions (Judicial Review) Amendment Bill. In the second reading debate on the Bill, reference was made to the recommendation in the report of the Senate Standing Committee on Constitutional and Legal Affairs on the Bill, that the 'reverse onus' provisions in proposed sections 10(2)(c) and 10(2)(d) of the Bill not be enacted (see [1988] Admin Review 17). Reference was also made to the Council's Report No. 26, Review of the Administrative Decisions (Judicial Review) Act 1977 - Stage One and the fact that the provisions in the Bill went further than the Council's recommendations in that report. The amendments contained in the Bill would require the Federal Court to refuse to grant an application unless the applicant satisfies it that the interests of justice require that it should not refuse. Recommendation 1(3) in the Council's report, by comparison, followed the existing section 10(2)(b) by giving the court a discretion to refuse relief where an alternative remedy was available. The proposed provision in the Bill would reverse the effect of Kelly v Coats (1981) 35 ALR 93, in which the Federal Court said that the onus under section 10(2)(b) of the Act is on those seeking to persuade the court that it should not exercise the jurisdiction conferred under the Act to hear the application.

It is understood that the government does not presently have plans to bring forward a fresh Bill dealing with the matters addressed by the Council in Report No. 26.