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

Courts and tribunals: new administrative arrangements

The Courts and Tribunals Administration Amendment Act 1989 came into operation on 1 January 1990. Its major functions include:

- . separation of day-to-day control of the Federal and Family Courts, and the AAT, from the Attorney-General's Department;
- . making the head of jurisdiction responsible for 'managing the administrative affairs' of the Court or Tribunal;
- . giving a senior officer the staffing responsibilities of a Departmental Secretary. He is to be appointed by the Governor-General and not employed under the Public Service Act;
- . requiring Annual Reports of the management of the administrative affairs of the court or tribunal, and financial statements audited by the Auditor-General, to be tabled in Parliament.

Immigration: unlawful detention

On 21 November 1989, in Park Oh Ho v. Minister for Immigration and Ethnic Affairs, the High Court heard an appeal against an order of the full court of the Federal Court (Admin Review 18:86) upholding a previous decision by Justice Davies (Admin Review 16:37).

The appellants were South Koreans whose entry into Australia allegedly had been part of a migration racket. They were taken into custody in July 1986. On 20 August 1986 an officer of the Department of Immigration and Ethnic Affairs made out deportation orders. The Koreans claimed that the orders were prepared not to enable their early deportation but to facilitate their further detention as potential prosecution witnesses in proceedings against participants in the migration racket. They challenged the legality of their detention from that date. Justice Davies found that the deportation orders were made for an improper purpose, and ordered that they be set aside. He refused, however, to make an order that the detention after 20 August 1986 had been unlawful. The full court of the Federal Court was divided on whether the deportation orders had been made for an improper purpose, and also on whether Justice Davies should have made a declaration that the detention was unlawful. Nonetheless, it upheld the original decisions by a majority.

The only decision reviewed by the High Court was whether a declaration should have been made that the detention of the Koreans from the date of the deportation orders until their release on 2 December 1986 was unlawful. It decided that the Koreans had been legally detained under section 18 of the Migration Act 1958, but this came to an end when the deportation orders were made, so that their continued detention