

Change of Ombudsman

Professor Dennis Pearce retired on 31 January 1991 at the end of his three year appointment as Commonwealth Ombudsman and has returned to his position as Professor of Law and Dean of the Faculty of Law at the Australian National University.



Mr Alan Cameron, (pictured above) whose appointment as Commonwealth Ombudsman was announced by the Prime Minister on 20 December 1990, took up his new position on 1 April 1991. Mr Cameron was formerly National Executive Partner of the legal firm, Blake Dawson Waldron. He was a judicial member of the NSW Equal Opportunity Tribunal and a former chairman of the Business Law Section of the Law Council of Australia.

Relationship with the Australian Customs Service

Following criticism of the Australian Customs Service in the Ombudsman's 1989-1990 Annual Report, arrangements have been made between the Ombudsman's office and the Australian Customs Service with a view to establishing a cooperative relationship between the two.

The arrangements include regular, formal meetings; establishment of a joint committee to discuss general issues and specific cases where necessary; and participation by Ombudsman staff in appropriate ACS training courses.

Comcare

As part of an ongoing review of compensation payments, Comcare informed a number of compensation recipients that their payments would cease on 28 February 1991. In some cases recipients had only two days in which to protest against the decision. Several, concerned by the lack of reasonable notice, approached the Ombudsman's Office.

The form letters appeared to contravene an agreement between the Ombudsman's Office and Comcare, whereby individuals whose payments were to be terminated would be told the reasons for the decision and given a reasonable period in which to respond.

Investigation revealed that several of the letters, as the last step in protracted correspondence, were appropriate in the circumstances. Others were found to be inadequate, and Comcare agreed to provide those recipients with more details. The remaining nine were found to be wholly inappropriate, and in these cases Comcare, within 72 hours, reinstated payment and prepared letters of apology.

Evaluation of Defence Force Ombudsman program

During January 1991 the retiring Defence Force Ombudsman completed a limited evaluation of the DFO program in the Ombudsman Corporate Plan. The terms of reference, restricted because of resource constraints, were to:

- assess whether the Office of the Defence Force Ombudsman was efficiently and effectively investigating complaints and reporting the outcomes to affected agencies and complainants;
- assess whether the role of the Defence Force Ombudsman was understood by agencies and persons eligible to lodge complaints.

The main conclusion of the evaluation was that the Defence Force Ombudsman is unable, because of inadequate resources, to meet all the objectives set out in the Corporate Plan. He has

however provided an acceptably effective and efficient independent review function and has made a significant contribution to the improvement of administrative practices in the Australian Defence Force.

Telecommunications Industry Ombudsman

On 17 April 1991 the Minister for Transport and Communications announced that a Telecommunications Industry Ombudsman is planned for 1 January 1992 or earlier. In the meantime, the proposed new Telecom/OTC merged entity will be subject to the Commonwealth Ombudsman's jurisdiction. Both Telecom and OTC are currently within jurisdiction. The new entity will need to be declared to be a prescribed authority for the purposes of the *Ombudsman Act 1976* by regulation.

Department of Social Security ('DSS') - payment of arrears

Several complaints have been received during the last year about the failure of DSS to approve Finance Direction 21/3 payments (which are acknowledgements that the Department would be found liable if the matter were litigated) to claimants where an error was made in the original pension or benefit assessment and arrears were not payable under the *Social Security Act 1947*. Some of the complainants were referred to the Social Security Appeals Tribunal. In most cases it seemed that established assessing procedures had not been followed. After further consideration by DSS, payments were approved to compensate for the loss of arrears.

Improvements in official procedures

A number of improvements in procedures have been made recently, including:

- Telecom Adelaide has taken further action to prevent recurrence of threats to disconnect telephones for the non-payment of unrelated accounts. Despite Telecom's undertaking in 1988 to advise all its State administrations that telephone disconnection action did not apply in cases of damage to property, the Ombudsman received a complaint recently in which this threat had been made

- The Attorney-General's Department advised that, an instruction had been issued by the Inspector-General to the Official Receivers that, where an agent is engaged to sell property of the bankrupt estate, officers should not enter into negotiations for the sale of property independent of the agent. Offers received direct from interested purchasers are to be referred to the agent and not dealt with by staff members
- The ACT Housing Trust and the Building Control authorities accepted the Ombudsman's recommendation that they establish guidelines and procedures for dealing with applications for building by Housing Trust tenants
- Following the intervention of the Ombudsman's Office, the Australian Customs Service recently concluded negotiations with the Australian Tax Office to adopt a scheme to allow Customs to charge penalty sales tax on certain types of goods, such as video cameras. An anomaly had arisen between the Sales Tax Assessment Act and the Customs Act in cases where people imported goods on which no duty was payable, but sales tax was payable, and failed to declare the goods
- Because of the considerable backlog in processing applications for continuation of studies, many overseas students' temporary entry permits expired, making them illegal entrants. Following the intervention of the Ombudsman's office, new legislation was passed and details disseminated to the Department of Immigration, Local Government and Ethnic Affairs' regional offices to enable students to return home in time for last Christmas.

Act of grace payments

The Department of Finance has begun its review of the trial arrangements for the devolution of act of grace powers to permanent heads in cases where the Ombudsman has made recommendations for such payments to be made. The two-year trial period expired in December 1990, but the power to approve payments has not been revoked and the arrangements will continue until the Minister has considered the outcome of the review.

Review of the Ombudsman's Office

The Senate Standing Committee on Finance and Public Administration is conducting a review of the Ombudsman's Office, with particular reference to:

- the scope of the Ombudsman's jurisdiction;

- the performance of the Office in the exercise of its powers and functions;
- the adequacy of the Office's resources to perform its various functions;
- whether any consequential amendments of the *Ombudsman Act 1976* are desirable.

ADMINISTRATIVE LAW WATCH

ARC Report - Statements of Reasons for Decisions

Council Report number 33 'Review of the Administrative Decisions (Judicial Review) Act: Statements of Reasons for Decisions' now published, completed the Council's current review of the AD(JR) Act.

Previous Reports in this review were

- Number 26, Review of the Administrative Decisions (Judicial Review) Act 1977: Stage 1 - in 1986, and
- Number 32, Review of the Administrative Decisions (Judicial Review) Act: The Ambit of the Act - in 1989.

The Report notes that, following ten years of operation, requests for statements of reasons for decisions under the AD(JR) Act fell to 284 in 1989 from a peak of over 2000 in the mid-1980s. That reduction is significant evidence that the requirement to give reasons for decisions upon request has improved the standard of Commonwealth decision making. It is also evidence that the requirement cannot be said to impose a great burden upon administrators.

The Report recommends that Schedule 2 of the AD(JR) Act be repealed so that the right to seek judicial review under the Act will be co-extensive with the right to request reasons. At the same time the Council recommends that some decisions should be removed from the scope of the Act altogether and that section 13A of the AD(JR) Act be bolstered so that decisions based on information which ought not be disclosed in a statement of reasons in the public interest, need not be disclosed.

Report number 33 is now available from the Australian Government Publishing Service.

ARC Discussion Paper - ABT inquiries procedures

The Council has recently released a discussion paper on the Australian Broadcasting Tribunal's inquiries procedures. The paper was prepared in consultation with a Council committee by the Communication Law Centre of the University of New South Wales, as consultants. The Council's broadcasting project has previously produced

- Report number 12, 'Australian Broadcasting Tribunal Procedures' - in 1981, and
- Report number 16, 'Review of Decisions under the Broadcasting and Television Act 1942' - in 1982.

The paper is concerned with the appropriateness of the procedures contained in the ABT inquires regulations and discusses whether

- changes should be made in ABT procedure to ensure that its powers are exercised in a just, equitable, effective and efficient manner, and
- provision should be made in the regulation for the review on the merits of ABT procedural decisions.

The paper considered the following issues:

- uniformity of procedures
- a right to initiate an ABT inquiry
- the ABT's powers to reject applications and dispose of minor matters
- the public inquiry file and giving public notice of an inquiry
- the status of parties
- optional hearings
- the Tribunal's role in inquiries
- whether ABT procedural decisions should be subject to review on the merits.

The Council is aware that recent develop-