

federal law or depends upon the federal law for its enforcement (whether or not the controversy involves the interpretation of the law) then a matter will have arisen under that law. This head of jurisdiction will be enlivened when it is necessary to determine whether the Commonwealth law in question confers a right or affords a defence which is an issue in the litigation or when a claim is made by one of the parties which is based upon that law ie the statute is relied upon as giving a right claimed or as the direct source of a defence asserted.

Other propositions to be derived from the cases are:

- (a) it does not matter that the questions to be determined arise from a controversy involving a person to whom the Act or other statutory provision is not directed;
- (b) if the question involves the interpretation of a statute to ground a declaration of the extent or limitation of the rights provided thereunder a matter will have arisen under the Act;
- (c) the fact that the relief sought is declaratory will not prevent the jurisdiction being federal in character ie where declaratory powers are to be exercised with regard to a matter arising under a Commonwealth Act;
- (d) a matter may arise under a law of the Parliament either in whole or in part;
- (e) a matter may arise under a law of the Parliament by reason of matters raised in a statement of claim or in a defence or in a reply;
- (f) a matter may arise under a law of the Parliament where the suit could be disposed of by deciding the matter so arising whether or not the suit is so disposed of;
- (g) a claim for damages for breach of a contract or a claim for relief for breach of trust is a claim arising under federal

law if the contract or trust is in respect of a right or property which is the creation of federal law ie the subject matter of a contract or trust exists as a result of federal law;

- (h) the entitlements in question may arise under an Act or under regulations made under such an Act;
- (i) a matter arising under a law of the Parliament may also be a matter arising under the Constitution or involving its interpretation.

The important cases include -

*R v Commonwealth Court of Conciliation Arbitration Ex parte Barrett* (1945) 70 CLR 141, 154; *Felton v Mulligan* (1971) 124 CLR 367; *Moorgate Tobacco Co Limited v Philip Morris Limited* (1980) 145 CLR 457; *LNC Industries Limited v BMW (Australia) Limited* (1983) 151 CLR 575, 581-2; *O'Toole v Charles David Pty Limited* (1991) 171 CLR 232, 307 and *Re Tooth (No 2)* (1978) 34 FLR 112, 139-140.

In terms of administrative law, the impact of the new provision will be primarily in relation to actions for declarations, particularly against the Commissioner of Taxation, which were often commenced in the High Court. The impact will also be in judicial review action strictly speaking where a Commonwealth body corporate is involved (and thus no officer of the Commonwealth within section 39B) and where the decision in question was not within the AD(JR) Act because it is legislative rather than administrative or because it is within Schedule 1 to that Act and thus excluded from it.

## The Ombudsman

### 20th Anniversary Publication

To commemorate the Ombudsman's 20 year anniversary, the Ombudsman's Office has published "twenty years of the Commonwealth Ombudsman 1977 - 1997". This document is a record of the office and poses some ques-