

time this bulletin went to press the matter stood adjourned.

THE COURTS

New Avenue of Federal Court Review

Another avenue of judicial review of federal administrative action before the Federal Court has been created. A new sub-section 44(2A) of the Judiciary Act 1903 (inserted by the Statute Law (Miscellaneous Provisions) Act (No. 1) 1984) enables the High Court to remit to the Federal Court matters pending in the High Court in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party. Other ways in which the Federal Court may undertake judicial review are the procedures under the AD(JR) Act and under section 39B of the Judiciary Act.

Scope of Review under AD(JR) Act

The range of government decisions which may be reviewed by the Federal Court under the AD(JR) Act has been considerably widened by the decision of the Federal Court in Chittick v Ackland (27 February 1984).

The Court held that one of the technical (but essential) preconditions for review of a decision, that the decision be made 'under an enactment' was not limited to decisions made directly under instruments of a legislative character such as an Act or regulations. A decision could still be reviewed -

- . where the instrument under which the decision was made (such as a contract of employment) was itself made under an Act or Ordinance; and
- . where the terms of the instrument were unilaterally determined.

The Chittick decision has implications for employees of statutory authorities. See 'Administrative Law Watch', below.

Review of National Crime Authority

The National Crime Authority is to be subject to judicial review and in respect of AD(JR) Act review special rules of court may be made. A person claiming to be entitled to refuse to give certain evidence to the Authority may also make application to the Federal Court under a special procedure established under the National Crime Authority Act 1984.

Procedure - Availability of Judicial Review

The Kavvadias case highlights also the fact that the courts may

still review a decision even though review is available and on foot before another review body such as the AAT. In Kavvadias review of a decision of the Ombudsman not to release a draft report to the complainant was sought by action under the AD(JR) Act as well as by an appeal to the AAT under the FOI Act. Justice Sheppard, who heard the AD(JR) Act application, decided that the matter could be heard, provided the applicant withdrew from the Tribunal.

Statistical Trends

Increasing use is being made of the AD(JR) Act although various areas wax and wane. The table below sets out the areas in which, according to information supplied by the Federal Court, most applications were made during 1983, and compares those figures with the figures for earlier years and for the first quarter of 1984. The decline in applications under the Public Service Act 1922 is significant in terms of the criticism which had earlier been made of the consequences which widespread use of the AD(JR) Act would have on the running of the public service.

<u>Jurisdiction</u>	<u>No. of Applications under the AD(JR) Act</u>			
	Oct 1980 - Dec 1981	1982	1983	Jan - March 1984
Migration Act 1958	14	26	33	5
Income Tax Assessment Act 1936	-	5	25	5
Public Service Act 1922	7	31	15	4
Telecommuni- cations Act 1975	3	2	9	1
Other	45	54	82	9
TOTAL	69	118	164	24

FREEDOM OF INFORMATION

Effect of Secrecy Provision on Right of Access

Key decisions of the Federal Court and the AAT illustrate how limited is the range of documents which are protected from disclosure by section 38 of the FOI Act. That section provides, in effect, that a person has no right of access to a document where a law prohibits persons from disclosing specific information of a kind contained in the document. The landmark case of News Corporation Ltd v National Companies and Securities Commission (1984) 52 ALR 277 has now been applied to a draft report of the Ombudsman (Kavvadias v Commonwealth Ombudsman, Federal Court, 27 March 1984) and to commercial information submitted by television stations to the Australian Broadcasting Tribunal (Re Actors' Equity Association of Australia and Australian Broadcasting Tribunal, AAT, 7 May 1984). In both cases it was held that the secrecy provisions respectively binding the Ombudsman and the ABT did not meet the strict criteria established by the News Ltd case.

Inspection of 'Exempt' Documents

The AAT has ruled that the right of a party to a proceeding to inspect a document relevant to the proceeding (AAT Act, s.39) does not apply in relation to a document claimed to be exempt under the FOI Act. In Re Arnold Bloch, Leibler and Co and Commissioner of Taxation (18 March 1984) the Tribunal relied on section 64 of the FOI Act in holding that counsel for an applicant was not entitled to inspect documents claimed to be 'exempt'.

Use

Use of the FOI Act is undoubtedly increasing but at the same time there is concern that too few people know how to seek access or have even heard of the Act. Measures being undertaken by the Government to boost awareness include informing individuals of their rights to access under the Act in:

- . the 1984 Form S and Form A tax guides;
- . pension and benefit cheques issued by the Departments of Social Security and Veterans' Affairs;
- . pamphlets on student allowances issued by the Department of Education; and
- . telephone directories.