

FOI APPLICATIONS: 1 January 1983 - 30 September 1985

The following table shows a steady increase in the number of FOI applications to the AAT between January 1983 and September 1985.

YEAR	Jan = March	April = June	July = Sept	Oct = Dec	TOTAL
1983	26	32	59	63	180
1984	43	46	85	87	261
1985	50	99	100	=	249

Commonwealth Ombudsman

Section 17 Report to Parliament

Section 17 of the Ombudsman Act 1976 provides that where the Ombudsman has furnished information to the Prime Minister on a report concerning an investigation which he has conducted, he may also forward copies of the report to the President of the Senate and the Speaker of the House of Representatives, for presentation to both Houses of Parliament.

On 10 September 1985 a report under section 17 of the Ombudsman Act was tabled in the Senate and the House of Representatives. This was the first such report in the eight years of the Ombudsman's operations and relates to the investigation of a complaint about the ABC. At this stage the report has not been debated by the Parliament.

FOI Requests

In recent months several requests under the Freedom of Information Act 1982 have been made either to the Ombudsman's office or another agency, for access to documents relating primarily to the personal

affairs of the applicants, but where material relating to the investigation by the Ombudsman of other complaints is encompassed by the requests.

In Boehm v Commonwealth Ombudsman (30 July 1985) Mr Justice Jenkinson held that certain references to other complaints were exempt from disclosure under section 41 of the FOI Act on the basis that such complainants and their affairs were unrelated to the applicant.

In Smith v Commonwealth Ombudsman, although the applicant withdrew during the course of the proceedings, Sir William Prentice recorded a decision affirming that details relating to other complainants were exempt from disclosure to the applicant under section 40(1)(d) of the FOI Act. No detailed reasons for decision were given.

COMPLAINTS TO OMBUDSMAN: 1984/85

Figures provided by the Ombudsman's office show that there were over 23,000 approaches from members of the community to his office in 1984/85, and almost 20,000 of them were classified as complaints. 3,339 of them were written complaints (600 more than for 1983/84) and 16,084 oral complaints (3,600 more than for 1983/84).

ADMINISTRATIVE LAW SEMINAR

A seminar is to be held at the Conference Centre, University of Auckland, N.Z. on 20-21 February 1986 on the topic: Judicial Review of Administrative Action in the 1980's - Prospects and Problems. Speakers will include The Hon Sir Gerard Brennan, Judge of the High Court of Australia, The Hon Michael Kirby, President, New South Wales Court of Appeal, and Professor David Williams, Professor of Law at Cambridge University. Details are available from the Secretary, Legal Research Foundation Inc., University of Auckland, Private Bag, Auckland, N.Z.

The Courts

Scope of AD(JR) Act

In Mercantile Credits Ltd v Commissioner of Taxation (29 August 1985) the applicant sought an order of review in respect of decisions by the Commissioner refusing to issue certificates that certain loans complied with section 128H(2) of the Income Tax Assessment Act 1936. The decisions were said to be excluded from the scope of the AD(JR) Act under paragraph (e) of Schedule 1 to that Act. The Court held that the refusal to issue a certificate under section 128H was a decision affecting liability to payment of withholding tax, not a decision forming part of the process of making or leading to the making of the calculation of the tax and, therefore, was not within paragraph (e) of Schedule 1 to the Act. The fact that the applicant had exercised the right given under the Income Tax Assessment Act 1936 to have his objection referred to the State Supreme Court was not, in the circumstances, sufficient to warrant the Court declining to exercise jurisdiction in the matter, mainly because the question was one of law as to the application of the statutory provisions, and such a question could be dealt with by the Court expeditiously.

Review of Magistrate's Order

In Woss v Jacobsen and Zempilas (5 June 1985) seven warrants were issued by a Queensland Magistrate on seven charges of conspiracy to defraud the Commonwealth. The warrants were endorsed under the Service and Execution of Process Act 1901 for execution in Woss' home State, Western Australia. Woss was brought before a WA Magistrate, Zempilas, who ordered Woss' return to Queensland in respect of two of the warrants. Woss applied for review of the order on the grounds that Zempilas had no jurisdiction under the Service and Execution of Process Act 1901 and that he improperly exercised the power under the Act because it was unreasonable for him to order Woss' return. The primary judge rejected the first argument and decided that it was inappropriate for the Federal Court to deal further with the matter, even though it had jurisdiction, because adequate provision was made in the Act for review of the decision in the State Supreme Court. Woss appealed to the Full Court of the Federal Court. The Full Court held that section 9 of the AD(JR) Act precluded State Courts from only