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Commonwealth Ombudsman

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Visit of the United Kingdom Select Committee

The Select Committee of the House of Commons on the Parliamentary Commissioner for Administration will be visiting Australia in February 1985 and will meet at some stage with the Commonwealth Ombudsman, officers from the Attorney-General's Department, and the Chairman and Director of Research of the Administrative Review Council. The Committee is particularly interested in the operation of Australian Ombudsmen and how they handle complaints, including investigations in the following areas:

- . complaints against police;
- . public service grievances; and
- . freedom of information disputes.

Investigation Documents Held to be Exempt Under Victorian FOI Act

See report on the Victorian County Court decision in Deasey-v-Geschke (1 November 1984) at page 14 below.

Statistical Trends

The table below shows the increasing trend towards the making of oral, as opposed to written, complaints. The month of October saw the peak number of new complaints and also the largest percentage of oral, rather than written, complaints in the last six months of 1984.

<u>No. of Complaints Received/On Hand</u>						
	Jul	Aug	Sept	Oct	Nov	Dec
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Complaints received:						
Oral	1196 (80.76%)	1503 (81.07%)	1530 (84.76%)	1836 (85.51%)	1633 (82.73%)	1385 (85.28%)
Written	285 (19.24%)	351 (18.93%)	275 (15.24%)	311 (14.49%)	341 (17.27%)	239 (14.72%)
TOTAL Complaints on hand	<u>1481</u>	<u>1854</u>	<u>1805</u>	<u>2147</u>	<u>1974</u>	<u>1624</u>
	1967	1996	1959	2011	2002	1960
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The Courts

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Common Law Obligation to Give Reasons

The N.S.W. Public Service Board is obliged to provide reasons for certain decisions in a promotion appeal, despite the absence of an express statutory requirement (such as section 13 of the Commonwealth AD(JR) Act) to do so, according to a majority of the New South Wales Court of Appeal in Osmond-v-Public Service Board of N.S.W. (21 December 1984). The President of the Court, Justice Kirby, emphasised in his judgment that the requirement to give reasoned decisions was not a novel principle - it was an aspect of the established doctrine that powers which affected individual rights and interests must be exercised fairly.

In a dissenting judgment, Justice Glass suggested that the presence of Commonwealth and Victorian legislative initiatives in the area of administrative law, which include statutory requirements that reasons be given upon request, merely underlined the deliberate nature of the failure of the New South Wales Government to adopt similar proposals for reform (NSW Law Reform Commission Report No. 16, Appeals in Administration and P. Wilenski, Review of New South Wales Government Administration, Interim Report 1977 and Unfinished Agenda 1982). In these circumstances, his Honour concluded that the Court should not fill a gap created by legislative inaction.

Statement of Reasons Under the AD(JR)Act

A request for a statement of reasons before a decision is given is not a request within the meaning of sub-section 13(1) of the AD(JR)Act according to the Federal Court in Lally-v-West (5 November 1984).

Discretion to Refuse Relief and Jurisdiction of State Courts

The Federal Court's discretion to refuse relief for the reason that adequate provision is made elsewhere for review was invoked in Woss-v-Jacobsen and Anor. (30 October 1984). The Court held that a full appeal was available to the Supreme Court of Western Australia under section 19 of the Service and Execution of Process