

Different departments, different approaches

Re Dillon and Department of Treasury and Re Dillon and Department of Trade (7 February 1986) concerned identical requests for documents relating to the Argyle diamond mines but reflect a divergence of approach to such matters by the respondent departments. The Treasury issued a conclusive certificate (section 36(3), FOI Act), made various claims of exemption and did not volunteer the documents in issue to the Tribunal, while the Department of Trade did not issue a certificate and volunteered the documents. In the Trade matter, the exemptions were largely upheld because the information which would have been disclosed had been provided in confidence by companies and state and foreign governments. In reaching this decision, the Tribunal placed considerable evidential weight on the documents themselves. In the Treasury matter, the Tribunal was generally unable to reach a state of satisfaction that disclosure would be contrary to the public interest on the evidence adduced and required production of the documents.

Considerable attention was paid to the effect of a certificate upon the order of proceedings and it was decided that the non-certificated claims of exemption need not be considered before requiring production.

In Re Lordsvale Finance Limited (No. 2) and Department of Treasury (7 February 1986), where access to documents relating to a foreign takeover proposal was refused by the Foreign Investment Review Board, the Treasury had also issued a certificate. However, the Tribunal required production of the documents, not being satisfied that there existed reasonable grounds for the claim that disclosure would be contrary to the public interest. It also considered various facets of the public interest.

Commonwealth Ombudsman

Reports to Parliament

The Acting Ombudsman has expressed his concern that reporting to Parliament pursuant to section 17 of the Ombudsman Act may not be sufficient sanction or end result of an Ombudsman investigation where the Ombudsman is critical of an agency that fails to implement the Ombudsman's recommendations. Having ascertained from other Ombudsmen that they too consider that reports to Parliament, in the absence of any guarantee that Parliament would actively consider them, do not

necessarily constitute an adequate resolution to an investigation, the Ombudsman has approached the Prime Minister for his views on whether he believes it desirable for such reports to receive a guaranteed minimum of attention, with a view to taking some practical steps to improve the position.

Act of grace payments

Where the Ombudsman is of the opinion that payment of money is necessary to rectify or mitigate a decision or action, he is able to recommend that payment be made to persons affected by a particular decision or action under investigation. For example, a recent case in which such a recommendation was made concerned a block of land bought at auction in the ACT. Substantial hidden defects were later discovered and, being unable to afford the cost of the site preparation works necessary to enable a house to be built on the block, the parties approached the Department of Territories which took back the block and sold them a replacement at reserve price. They complained, however, that they were not reimbursed the cost of discovering the hidden defects and the Ombudsman subsequently recommended payment of these costs. This recommendation has not been implemented, and as the issue of financial recompense is a significant one for the future effectiveness of the Ombudsman's office the Ombudsman hopes to be able to discuss this matter, initially with the Department of the Prime Minister and Cabinet, in the near future.

The Courts

No reasons required

The NSW Public Service Board was not obliged to give reasons for dismissing an appeal under section 116 of the NSW Public Service Act, the High Court has unanimously ruled, in Public Service Board of New South Wales v Osmond (21 February 1986). In that case, the respondent, an officer of the NSW Public Service, unsuccessfully applied for promotion to the position of Chairman, Local Lands Boards. His appeal was dismissed by the Public Service Board and reasons were refused. By majority, the Court of Appeal declared that the Board was obliged to give its reasons and ordered it to do so - the Board then appealed by special leave to the High Court.