

said that they would probably be entitled to rely upon the frustration of their professional activities which they alleged the film would occasion, but he preferred not to base his decision upon this additional factor.

The judgments in this case review the authorities dealing with the phrase 'person aggrieved', and discuss standing criteria generally. Justice Wilcox points out that the liberalisation of standing rules evident in Onus is consistent with attitudes expressed in other common law countries, and that there need be no concern that the recognition of non-financial interest will lead to an unmanageable proliferation of cases. He adverts to the concern that a liberalised interpretation of standing criteria will lead to an inadequate presentation of the issues to the court - the courts are entitled to insist upon a plaintiff who will adequately represent the case sought to be made, in the public interest, a plaintiff who has 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court, so largely depends for illumination of difficult ... questions' (per Justice Brennan in Baker v Carr (1962) 369 US 186 at 204). However, his Honour also refers to aboriginal land cases and other recent Australian cases where ideologues have gained access to the courts and voluntary groups have participated in planning appeals, all cases which have been hard fought and professionally conducted. Thus, Justice Wilcox maintains, 'to assume that competitive instincts are aroused only by concern for material wealth would be to ignore history'.

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Commonwealth Ombudsman

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#### Jurisdictional vacuum for employees of statutory authorities

The Ombudsman has drawn to the Council's attention a jurisdictional vacuum in regard to a large area of Commonwealth employment. He recently referred to the Merit Protection and Review Agency a complaint from a former temporary employee in the Public Service about the circumstances in which she was dismissed. This employee's complaint was within the jurisdiction of the MPRA, because she worked for a department. However, the Ombudsman observed that, had she been employed in a statutory authority that employed under its own legislation rather than under the Public Service Act, she may not have had any avenue of review available to her. The Ombudsman said that it was his understanding that many statutory authorities have yet to seek changes to their legislation to confer jurisdiction on the MPRA, while his own jurisdiction only covered limited matters concerning employment by the Commonwealth.

The Council has been advised that the MPRA is undertaking a Management Improvement Study of its operations, the terms of reference for which have been agreed with the Public Service Board and the ACTU. The Council has accepted an invitation to comment on the findings of the proposed study. The jurisdictional vacuum which the Ombudsman has described is likely to be something to which the Council gives attention.

#### Complaints regarding telephone services

In 1985-86, the Ombudsman received over 2000 complaints, both oral and written, concerning Telecom Australia (Commonwealth Ombudsman and Defence Force Ombudsman Annual Reports 1985-86, Table A2). This was the highest number of complaints relating to any single authority except for the Australian Taxation Office. In recent reports to the Council, the Ombudsman has documented some of the issues which have arisen in the course of his investigation of such complaints. In his investigation of one routine metered call complaint, there was a suggestion of Telecom having said to the subscriber that, whilst Telecom may make a business judgment to reduce an account where the Ombudsman was not involved, if a complaint was made to the Ombudsman there would only be a reduction if a clear basis for the reduction emerged. The Ombudsman has sought Telecom's comments on this and reported to the Council his intentions to make some sort of analysis of Telecom's business judgment policies and practices generally.

Other problems have arisen in the course of the Ombudsman's investigation of complaints relating to nuisance telephone calls. When Telecom receives complaints of nuisance calls, it may, through various investigatory techniques, identify a suspect and then proceed to obtain records of calls made from the suspect's telephone service. Several complaints to the Ombudsman have raised issues as to the entitlement of the parties to such matters to obtain information from Telecom concerning its investigations. Thus the Ombudsman received a complaint from an alleged offender that Telecom unreasonably released information about all her telephone calls to an alleged victim, and another from a victim that Telecom unreasonably refused to release the name of the prime suspect. Such complaints raise issues concerning the operations of the Freedom of Information Act. Other complaints raise issues whether, irrespective of the operation of the FOI Act, Telecom should be providing more information, at least to alleged victims.

Also in its investigation of complaints about difficulties with telephone services, Telecom until very recently would, from time to time, undertake aural monitoring of services. This involves relaying calls on the service over speakers in the local exchange. The Ombudsman reported that, following a complaint which arose from such monitoring, he wrote to Telecom expressing his strong concern over the privacy issues raised by the practice and suggesting that aural monitoring should be proscribed forthwith except with the prior express consent of the subscriber. Telecom readily agreed, without the need for any formal recommendation pursuant to section 15 of the Ombudsman Act. Both the investigation and the practice are now at an end.

Other investigations currently underway by the Ombudsman relate to debt recovery procedures. For example, one complaint raised an issue as to the reasonableness of Telecom seeking to recover a statute-barred (and disputed) debt through the threat of cancellation of a current telephone service. Issues had also arisen concerning the ethics and reasonableness of Telecom taking legal action to recover disputed debts when in reality Telecom no longer possessed the documentary evidence supporting the debt.

A remedy in view

In the Ombudsman's 1985-86 Annual Report to the parliament, he discussed (at p.9) the problem of lump sum payments of arrears of income support benefits such as pensions. A typical situation might arise through delays in determining workers' compensation, social welfare or veterans' entitlements, which can cause arrears covering a number of years to be paid in a lump sum. For the purposes of the Income Tax Assessment Act such income is treated as having been derived in the year in which the lump sum is received. The effect of this is that tax payers who, if they had received their payments progressively, would have been due to pay little or no income tax on that income, find themselves facing a large tax bill, not infrequently at the higher marginal rates of tax. The Ombudsman had suggested to the tax office that such late payments should be attributed not to the year in which the lump sum was received, but to the years to which the lump sum related. The Ombudsman reported to the Council that he had recently learned that the Australian Taxation Office has proposed legislation designed to achieve this end.

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A D M I N I S T R A T I V E   L A W   W A T C H  
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AAT filing fees  
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From 1 March 1987 a fee of \$200 is payable on the lodging with the Tribunal of applications for review of decisions other than income maintenance decisions. Income maintenance decisions include, for example, decisions under the Social Security Act 1947, the Student Assistance Act 1973, the Veterans' Entitlements Act 1986, the Compensation (Commonwealth Government Employees) Act 1971, and the First Home Owners Act 1983. The \$200 fee is refunded in whole to the applicant where the proceeding before the Tribunal terminates in a manner favourable to the applicant. The filing fee has been introduced by way of amendment to the AAT Regulations.