the Board and notwithstanding the practical difficulties for the Board's operations and the potential increased costs of conducting hearings.

Macrae v Attorney-General for New South Wales (24 June 1987) concerned a decision of the New South Wales Government not to reappoint 6 magistrates following a restructuring of the magistracy in that state. The Court of Appeal held the decision void. The central issue was whether the prerogative of the Crown to appoint judicial officers to a new court was non-justiciable or whether the appellants had such a legitimate expectation to procedural fairness as to require the Attorney-General to afford them the opportunity to be heard in response to material adverse to them. The court answered the latter question in the affirmative. As to the former question, the court affirmed the view taken in such cases as R v Toohey; ex parte Northern Land Council (1981) 151 CLR 170 and FAI Insurances v Winneke (1982) 152 CLR 342 that the courts may review decisions, even if made in exercise of prerogative powers, where it is demonstrated that a denial of natural justice has occurred.

There is an interesting discussion in the judgment of the President, Justice Kirby, of the 'convention' in common law jurisdictions of preserving and respecting the continuance in office of judicial office holders and others who hold quasi-judicial offices following the abolition of one court or tribunal and the creation of another.

Commonwealth Ombudsman

Section 16 report - A.C.T. teachers' leave entitlements

The recommendations in a report that had been made to the Prime Minister under section 16 of the Ombudsman Act in 1986 have been accepted by the Prime Minister. The report concerned several A.C.T. teachers who had been recruited from Victoria on the promise that they would be entitled to carry over sick and long service leave entitlements from their previous employment. When it became known that this was not the case, complaints were made to the Ombudsman who found that the teachers' decision to move to the A.C.T. had been influenced by this wrong advice. The Ombudsman recommended that, although there was no legal obligation to recognise the leave entitlements, the A.C.T. Schools Authority should do so as a matter of equity. The Authority initially agreed to implement this recommendation but later reneged on this agreement which led to the section 16 report being made to the Prime Minister. The Prime Minister decided that the promise originally given to the teachers should be met.

Withdrawal of income tax ruling

In his 1984/85 Annual Report, the Ombudsman referred to difficulties he had with the Commissioner of Taxation's exercise of his discretion under section 221D of the Income Tax

Assessment Act. That section enables the Commissioner to vary the amounts to be deducted from salary or wages for the purpose of meeting the special circumstances of any case. The Commissioner's income tax ruling IT2010 (an income tax ruling sets out the Commissioner's interpretation of the law and is intended to be a non-binding guide for taxpayers) made it clear that he considered that circumstances that were not employment related were not relevant to his consideration of requests for variation pursuant to section 221D.

The Ombudsman received approximately 50 complaints from taxpayers whose requests for variation pursuant to section 221D had been refused. The majority of complainants had invested in negatively geared rent producing properties and were eligible for substantial allowable deductions. The Ombudsman considered that IT2010 was based on a mistake of law and took into account irrelevant considerations in the exercise of the discretion. The Commissioner has now informed the Ombudsman that he has reviewed his approach and considers that the special circumstances envisaged by section 221D are not limited solely to employment related factors or hardship but would also include those situations where a significant over-deduction of instalments would occur. The Commissioner has issued a new income tax ruling to give effect to this new approach.

Allotment for special duty of certain units during the Vietnam war

Both the 1984-85 and 1985-86 Reports of the Defence Force Ombudsman referred to a problem concerning the eligibility for repatriation and like benefits of members of the Defence Force engaged in the Vietnam war. Eligibility depended on their being allotted for special duty in the special area of that conflict in terms of sections 3 and 6 of the Repatriation (Special Overseas Service) Act 1962. A number of complaints were received from personnel of units, such as HMAS Sydney and the RAAF Hercules squadrons which operated between Australia and Vietnam in support of the in-country forces, that they had been denied eligibility because they had not been allotted as required by the Act. These units were judged as not having been allotted because they had not been subject to continuing danger. The Ombudsman formed the view that allotment for special service in a special area was a question of fact and that the personnel were allotted when they were ordered to take their voyages/flights in support of the war.

As a result of considerable pressure exerted by veterans, and organisations representing them, the government decided that, as an act of grace, all the personnel in question would be deemed to have been allotted. This action conferred eligibility for repatriation benefits, including defence service homes benefits, but without retrospective effect. It did not entitle the members to campaign medals, and they have been pursuing that question with the Minister and the Department. As this basic issue remained unresolved, the allotment question was reopened. Advice was received from the Attorney-General's Department to the effect that, since the Act

contains no definition of 'allotted', it should be given its ordinary meaning, that is 'assigned' or 'directed', and that it seemed clear that the veterans concerned were so assigned or directed to service in a special area in terms of the Act. The Department added that it thought that the veterans were also on special duty in terms of the Act because they were directly supporting the warlike operations in Vietnam and the connection was close and immediate.

This advice clarifies the allotment issue and raised some very complicated questions concerning how the entitlements thereby accruing to the people in question should be administered. For example what should be the remedy for those who applied for and were denied defence service home loans; and those who enquired but did not apply; and those who may have qualified for a service pension? The Ombudsman has proposed to the departments concerned that they confer on what action should be taken, and has suggested that it is for the Department of Defence to take the lead. The Department of Veterans' Affairs has since provided further information to the Attorney-General's Department and has asked for the advice given by that Department to be reconsidered.

Telephone intercepts - Ombudsman's new role

The Telecommunications (Interception) Amendment Act 1987 (still to be proclaimed) confers a new and rather different function on the Ombudsmans office - that of compliance auditing in respect of the keeping of certain records by the Australian Federal Police and the National Crime Authority (NCA).

Under sections 80 and 81 of the Act the AFP and the NCA are required to maintain various records connected with telephone intercepts and these records are subject to regular inspection by the Qmbudsman. The purpose of the inspections is to ascertain the extent to which these agencies have met the relevant statutory requirements pertaining to both the keeping and destruction of records (section 79 of the Act requires that certain records be destroyed when they are no longer required). Provision is made in the Act for the Ombudsman or a delegated officer to enter premises, obtain access to information, require the production of material, and question officers for the purpose of carrying out the inspection function. Inspections are to be conducted at least twice each financial year and reports are to be submitted to the Attorney-General with copies being supplied to the Commissioner of the AFP and the Chairman of the NCA as the case may be.

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Task Force Review

The Task Force on Review of Administrative Appeals Tribunal Procedure which was set up by the Attorney-General in late December 1986 to conduct a review of the operations of the AAT