

many times over as against the party who was unsuccessful' in the Federal Court proceedings.

Payment of family allowance in respect of children in Vietnam

The somewhat surprising decision of the AAT in Ho and Secretary to the Department of Social Security, which was commented on at [1987] Admin Review 6-7, was the subject of an appeal to the Federal Court in Secretary to the Department of Social Security v Ho (27 October 1987). Justice Davies allowed the appeal and remitted the matter to the AAT for rehearing according to law. Similar facts concerning whether a father in Australia had the custody, care and control of children in Vietnam so as to qualify for the family allowance arose in Huynh v Secretary, Department of Social Security. In a judgment delivered on the same day as the judgment in Ho, Justice Davies dismissed the appeal from a decision of the AAT which had affirmed the decision of the department cancelling Mr Huynh's entitlement to family allowance.

Commonwealth Ombudsman

Rural telephone services

For some time the Ombudsman has been investigating Telecom's pricing policy for installation of rural telephone services. In particular, he was concerned at what appeared to be discriminatory pricing for installation of services on properties which differed from the traditional family farm (eg cluster development or 'communes'). Telecom has now revised its pricing policy and the first reduction of around \$1,000 has been achieved for a subscriber who complained to the Ombudsman. The Ombudsman is still concerned, however, that the operation of waiting lists in rural areas may be having similar discriminatory effects against non-farm properties. He is continuing to investigate the operation of these waiting lists.

Compensation for Telecom errors

Section 111 of the Telecommunications Act 1975 provides immunity from suit for errors by Telecom in many situations. The Ombudsman has taken the view, however, that immunity from legal suit should not preclude Telecom from paying compensation to subscribers in particular cases where there is an obvious error by Telecom and the consequences are quantifiable. Telecom has recently agreed to pay \$2,400 in compensation to a business proprietor whose home telephone number was incorrectly listed as his business number in the yellow pages directory. The \$2,400 covered his cost of installing a call-diversion machine on his telephone. There are other outstanding cases of a similar type which the Ombudsman is pursuing. The Ombudsman is yet to take up with Telecom the validity of a by-law which purports to deny liability specifically in the case of directory error.

Wrongful reduction in rank

As Defence Force Ombudsman, the Ombudsman has been investigating the case of an Army sapper who was purportedly reduced from the rank of corporal to sapper. The corporal was never given the opportunity to show cause why he should not be reduced.

The Ombudsman concluded that he was thus denied administrative fairness and that the lack of opportunity to show cause was contrary to the provisions of Australian Military Regulation 161(3), which explicitly provides for just that.

Despite the Ombudsman's argument that the purported reduction was therefore invalid, the Chief of the Defence Force maintained that because the soldier was a bad corporal, who should have known his shortcomings, no remedial action was necessary. The Ombudsman recently conveyed his formal conclusions to the Chief of the Defence Force making recommendations intended to remedy the soldier's position in terms of rank, seniority, and pay. (In view of the Ombudsman's conclusions about the validity of the reduction, the Ombudsman took the view that the question whether the soldier was a good corporal was irrelevant, just as the question of guilt is irrelevant to a defective prosecution.)

A D M I N I S T R A T I V E L A W W A T C H

Senate committee report on Administrative Decisions (Judicial Review) Amendment Bill 1987

The Senate Standing Committee on Legal and Constitutional Affairs tabled its report on the Administrative Decisions (Judicial Review) Amendment Bill 1987 in October. The report recommends that the 'reverse onus' provisions in proposed sections 10(2)(c) and 10(2)(d) set out in the Bill not be enacted. In circumstances where another review avenue is open or where the application under the AD(JR) Act relates to an interlocutory decision in the course of proceedings before another tribunal, those proposed sections require the Federal Court to refuse to grant the application unless the applicant satisfies it that the interests of justice require that it should not refuse to grant the application.

The government's position on the Senate Standing Committee's report is not yet known. Debate on the Bill has been postponed to the autumn 1988 sittings.

National identification system

The Senate Standing Committee on Legal and Constitutional Affairs has been given a reference on the feasibility of and need for a national identification system. The committee is required to report on or before 1 May 1988.