

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.