

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.

Income tax and administrative review jurisdiction planned for the Family Court

A Bill has been introduced in the Parliament which empowers the Federal Court to transfer income tax appeals and proceedings under the AD(JR) Act to the Family Court. Whether a matter is transferred or not will be in the Federal Court's discretion. The Bill providing for the transfers is the Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Bill 1987. In the Senate on 17 December 1987 debate on the Bill was adjourned until the autumn sittings in 1988.

Government response to Senate committee report on income tax rulings

On 18 December 1987, the last day of Senate sittings in 1987, the government announced its response to the report on income tax rulings made by the Senate Standing Committee on Legal and Constitutional Affairs. The committee in its report had recognised the worth of the tax rulings system but had made 3 recommendations for improvement of the system:

- . that each ruling should contain a caveat indicating that it does not have the force of law and that each decision made within the Australian Taxation Office will be considered on its merits as well as pursuant to any relevant ruling;
- . that the Commissioner make a practice of including within rulings appropriate cross-references to related rulings;
- . that the Commissioner make available an improved index to the rulings.

The government response to the report indicated that the Commissioner welcomed the report and proposed to adopt the recommendations fully and promptly.

R E C E N T P U B L I C A T I O N S

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