

jeopardy'. It considered that the married quarter in question was only deficient in 'minor respects' and that the standards had been taken too literally by the Attorney-General's Department. The latter Department, however, re-affirmed its original opinion, albeit on slightly different grounds. On that basis, a decision was made to pay the member the full \$16 000; but he did not receive the money until more than two years after his application for redress of grievance had been upheld.

The Ombudsman found several administrative aspects of the case unsatisfactory, including the decision to seek a second legal opinion and the unnecessary delay in effecting payment.

Lack of review rights

The Ombudsman received a complaint about the suspension of compensation payments to a Telecom employee because he did not participate in a rehabilitation program as required under the Commonwealth Employees Rehabilitation and Compensation Act 1988. The man's medical practitioner provided a certificate testifying that it was physically impossible for him to attend the program, but Telecom's Comcare delegate refused to accept it.

Since the action related to the man's continuing employment, however, it was excluded from the Ombudsman's jurisdiction by virtue of the Ombudsman Act. Persons in this situation originally were assumed to be covered by public service review mechanisms, but Telecom is one of a number of authorities that have not yet agreed to come within the jurisdiction of the Merit Protection and Review Agency. In cases of this nature the person concerned therefore has no right of review by either agency.

Admissibility of statements of reasons

In the course of proceedings in Taveli v Minister for Immigration, Local Government and Ethnic Affairs (28 April 1989, unreported) the Department sought to tender its section 13 statement as prima facie evidence of the reasons for the decision. Mr Taveli objected, and Justice Wilcox rejected the tender on the basis that a section 13 statement is not admissible in the decision maker's favour as a self-serving document. The matter is under appeal.

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

Higher Education Funding Act 1988: guidelines for remissions

Under section 63 of the Higher Education Funding Act 1988 the Secretary of the Department of Employment, Education and Training (DEET) is empowered to remit a student's semester debt in special circumstances. A semester debt is a student's

liability in relation to his or her course of study. In the normal course of events it is discharged by the Commonwealth and is repayable by the student.

DEET has recently finalised guidelines to assist delegates in making decisions under section 63 of the Act. The guidelines elaborate on the term 'special circumstances' and set out various course-related, medical and family reasons which might be accepted as 'special circumstances' for the purpose of section 63. The guidelines will become a section 9 document for the purposes of the Freedom of Information Act.

Conference on rule-making

On 31 August 1989 the Administrative Review Council held a Conference on Rule-making at Parliament House Canberra. Representatives of the Parliament, government departments and agencies, the Office of Parliamentary Counsel, legal publishers, lawyers, legal academics and user groups attended. Mr Jeffrey Lubbers, the Director of Research of the Administrative Conference of the United States, addressed the conference on the operation of the Administrative Procedure Act in the United States. Professor Saunders, the President of the Administrative Review Council, provided an overview of rule-making in Australia.

The Council's interest in the subject stemmed initially from two particular types of rule-making: the use of manuals to structure the exercise of discretions and the use of statutory guidelines to influence or direct tribunal decisions. These led to a range of related issues which required the subject to be addressed more broadly, including:

- . the circumstances in which it is appropriate to use subordinate rather than primary legislation;
- . the distinction between different forms of subordinate legislation;
- . the problems of multiple forms of subordinate legislation, including complexity of the regulatory structure and accessibility of the law;
- . the character of a host of instruments not presently treated as legislation; and
- . the nature and effectiveness of mechanisms for scrutinising rules and enforcing accountability for rule-making, whether through Parliament or otherwise (see also Focus, p.2).

Australian Institute of Administrative Law

In May 1989 a group of interested people met to discuss the possible formation of an organisation to promote knowledge of administrative law and to exchange information about administrative law and administrative practices. The group made it clear that it would seek its membership from a wide range of