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

Courts and tribunals: new administrative arrangements

The Courts and Tribunals Administration Amendment Act 1989 came into operation on 1 January 1990. Its major functions include:

- . separation of day-to-day control of the Federal and Family Courts, and the AAT, from the Attorney-General's Department;
- . making the head of jurisdiction responsible for 'managing the administrative affairs' of the Court or Tribunal;
- . giving a senior officer the staffing responsibilities of a Departmental Secretary. He is to be appointed by the Governor-General and not employed under the Public Service Act;
- . requiring Annual Reports of the management of the administrative affairs of the court or tribunal, and financial statements audited by the Auditor-General, to be tabled in Parliament.

Immigration: unlawful detention

On 21 November 1989, in Park Oh Ho v. Minister for Immigration and Ethnic Affairs, the High Court heard an appeal against an order of the full court of the Federal Court (Admin Review 18:86) upholding a previous decision by Justice Davies (Admin Review 16:37).

The appellants were South Koreans whose entry into Australia allegedly had been part of a migration racket. They were taken into custody in July 1986. On 20 August 1986 an officer of the Department of Immigration and Ethnic Affairs made out deportation orders. The Koreans claimed that the orders were prepared not to enable their early deportation but to facilitate their further detention as potential prosecution witnesses in proceedings against participants in the migration racket. They challenged the legality of their detention from that date. Justice Davies found that the deportation orders were made for an improper purpose, and ordered that they be set aside. He refused, however, to make an order that the detention after 20 August 1986 had been unlawful. The full court of the Federal Court was divided on whether the deportation orders had been made for an improper purpose, and also on whether Justice Davies should have made a declaration that the detention was unlawful. Nonetheless, it upheld the original decisions by a majority.

The only decision reviewed by the High Court was whether a declaration should have been made that the detention of the Koreans from the date of the deportation orders until their release on 2 December 1986 was unlawful. It decided that the Koreans had been legally detained under section 18 of the Migration Act 1958, but this came to an end when the deportation orders were made, so that their continued detention

was unlawful. In addition, the Court expressed the view that 'pending deportation' means during such time as is required for the implementation of the deportation order, and 'does not authorise the indefinite detention in custody of a person for some ulterior purpose, such as...being kept available as a witness in a pending criminal prosecution'. It concluded that the Koreans were entitled to a declaratory order that the detention was unlawful, in addition to an order formally quashing the deportation orders on which that detention was based.

Grouped proceedings in the Federal Court

On 11 December 1989 the Leader of the Australian Democrats introduced the Federal Court (Grouped Proceedings) Bill in the Senate. The Bill is based on a 1988 report (No. 46) by the Law Reform Commission of Australia on grouped proceedings in the Federal Court, which arose from a reference from the Attorney-General in 1977 concerning access to the courts.

The reference required the Commission to report on two separate questions: the standing of persons to sue in Federal and other courts whilst exercising federal jurisdiction or in territory courts; and class actions in such courts. Report No. 46 dealt with the second question.

The Commission examined the barriers to access and found a number of examples where a grouping procedure would be desirable. It proposes a scheme for the grouping of claims in the Federal Court, and includes in the report a draft Bill giving the suggested legal basis for the scheme. The suggested procedure would operate mainly in the areas of:

- . proceedings against the Commonwealth;
- . claims under federal laws such as the Trade Practices Act 1974;
- . federal administrative law;
- . federal tax law; and
- . federal industrial and intellectual property law.

In the Second Reading Speech on the Bill, Senator Haines said that the Bill 'will enhance enormously Australian consumers' rights to redress'. She agreed with the report that, in an age of mass production and distribution of goods and services, the potential for loss or damage to be caused on a mass scale is high, though the damage incurred by an individual may be relatively small in proportion to the cost of legal proceedings. The Bill provides for a scheme which aims to achieve the goals of access and court efficiency by allowing the grouping of claims in the Federal Court.

Tenure of appointees to Commonwealth tribunals

In November 1989 the Joint Select Committee on Tenure of Appointees to Commonwealth Tribunals released its report. Included in the Committee's terms of reference was one to inquire into the principles that should govern the tenure of office of quasi-judicial and other appointees to Commonwealth tribunals.

The Committee concluded that, in order to perform their functions, quasi-judicial tribunals require people of superior