

The Ombudsman

Public awareness survey

The Council earlier in the year contributed a small amount of funding towards a survey of public awareness of administrative review bodies conducted on behalf of the Ombudsman in June 1992. The survey showed that the following percentages of people aged 16 and over were able to recognise the names of the respective institutions:

- Commonwealth Ombudsman – 54%
- State and Territory ombudsmen (average) – 60%
- Administrative Appeals Tribunal – 39%
- Social Security Appeals Tribunal – 57%
- Immigration Review Tribunal – 48%
- Veterans' Review Board – 45%
- Federal Court – 70%

The survey's chief interest lies in the detailed results showing correlations of knowledge with other characteristics. For example, although only 45% of people had heard of the Veterans' Review Board, 87% of recipients of service pensions recognised its name. Significantly more men than women appear to be aware of the Ombudsman. Lack of knowledge of the Ombudsman is directly correlated to indicators of disadvantage such as: recent arrival in Australia; English not the person's first language; receipt of income support from the government; limited education; youth; and low income level generally. The Ombudsman intends to use the information from the survey to target specific groups for promotional activities during the coming years and to measure the effectiveness of those activities. The planning of such activities on a significant scale will await the Government's response to the Council's Report No 34 on access to administrative review.

Regional information register

The Ombudsman's Office is in the process of establishing a register of Ombudsman-related information to be made available to Ombudsmen in the Australasian and Pacific region, and possibly for purchase by other bodies interested in the subject. The information will be available as hard copy

and on computer disc.

Consultants have begun developing the data base and indexing the information. Once the project is established, funds from subscriptions and sale of the register will enable it to be maintained and updated. The establishment of the project is being funded by the Australian International Development Assistance Bureau and by the New Zealand Government in recognition of the assistance it will provide to Pacific Ombudsmen.

Detainees and duty of care

The Ombudsman considered the question of duty of care in the context of a complaint against Australian Federal Police (AFP) watch-house officers that a lack of immediate medical attention had caused additional and unnecessary scarring to the complainant.

In their community policing role, AFP officers often detain people affected by alcohol for their own protection. Many have sustained injuries either from fighting or from falling over while intoxicated. Often they refuse medical attention when it is offered. Watch-house sergeants do not generally call the medical officer on duty if the detainee has refused medical attention.

In the present case, medical evidence showed that there would not have been a difference in the amount of scarring because of the delay. However, the case highlighted the problems that can arise when watch-house officers are not trained to recognise serious injuries, particularly when they are not obvious. It also showed an anomaly between the AFP's standing orders and the local guidelines, which give greater discretion to watch-house officers on when to call the duty medical officer.

Members of the Ombudsman's Office and the AFP had discussions on how best to protect both detainees and officers. The Ombudsman has been informed that the AFP is updating its procedures and standing orders, which will include a detailed medical sheet on pre-existing medical conditions to be filled out by watch-house officers.

Recovery of overpayments

The Ombudsman's Office receives a steady flow of complaints relating to recovery of past overpayments of benefits.

The Office is currently considering the administrative practice required by the Department of Finance that imposes an administrative charge (an effective interest rate) where the money is to be repaid by instalment, regardless of whether administrative error caused the overpayment or hardship is likely to be caused by repayment. The practice contrasts with the Commonwealth's reluctance to pay interest where it has not promptly paid benefits to people entitled to them.

An area in which the collection of overpayments has caused concern is in relation to child support payments. Under the child support scheme, the Child Support Agency (CSA), collects maintenance for children from non-custodial parents (payers) and that maintenance is paid by the Department of Social Security (DSS) to custodial parents (payees). The scheme allows payers to have their child support liability for a current year reduced on the ground that their income for that year is more than 15% less than the year on which the original liability was based. Payers whose child maintenance liability has been determined by a court can also have their liability reduced retrospectively. These reassessments create situations where payees are overpaid, by force of

circumstance, sometimes substantial amounts.

Until recently, the CSA's practice in these cases was to suspend immediately all payments of ongoing maintenance entitlements to the payee until the overpayment had been recovered. This action was taken as a matter of course, without reference to the payee's circumstances. Under the relevant legislation, the Secretary of the DSS has both the power to recover overpayments of the type in issue and a discretion to collect overpayments from payees by determining appropriate amounts to be deducted from ongoing child support payments. This discretion was apparently not being exercised. The CSA recovery processes are dependent on its computer systems which could not be changed in the short term to allow for collection of the overpayments by way of regular deductions from ongoing payments.

Following the Ombudsman's intervention, the CSA advised that recovery action would be suspended until there is clear authority for both the Registrar of the CSA and the Secretary of the DSS to undertake recovery action and an option is made available to payees to repay overpayments by instalments in cases of hardship.

ADMINISTRATIVE LAW WATCH

Issues Paper: Bill of Rights for Queensland?

In mid-June 1992, the Electoral and Administrative Review Commission (EARC) of Queensland released an issues paper entitled *Review of the Preservation and Enhancement of Individuals' Rights and Freedoms*. Following some expressions of dissatisfaction in the Fitzgerald Report with the state of civil liberties in Queensland, and having already completed more urgent reviews into specific areas of suggested reform, EARC resolved to inquire whether to recommend a draft Bill of Rights for Queensland. This issues paper, then, is intended to deal with more general issues concerning the preservation and enhancement of individuals' rights and freedoms.

Among the reasons cited in support of

the carrying out of a State inquiry into a possible Bill of Rights are the following:

- In other countries with federal systems of government that have introduced a national Bill of Rights, notably Canada and the United States, most if not all States or provinces have their own Bill of Rights to complement the federal one.
- The Commonwealth Minister for Justice, Senator Tate, indicated recently that the Federal Government was unlikely to make any fresh initiative to introduce a Commonwealth Bill of Rights in the near future.
- Whereas the States have general law-making power in this field, the Commonwealth is confined under the Constitution to giving consideration to the recognition of the rights contained in