

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

international instruments to which Australia is a party.

- Many of the rights and freedoms ordinarily contained in a Bill of Rights relate to matters which are exclusively a State responsibility.

The issues paper is not a report. It is intended only to inform readers generally and to identify particular issues on which submissions are being sought. A broad range of rights and freedoms for possible inclusion in any Bill of Rights is canvassed, from civil and political rights such as the right to life and its related issues including euthanasia, abortion and the death penalty, through to economic, social and cultural rights such as a right to work, to share in the resources of the State and marriage rights. The paper asks whether there are other rights than those included in its extensive list, which should be considered for inclusion in a Bill of Rights.

One of the earliest questions posited in the issues paper is whether the existing system in Queensland, based on common law protection of individual rights and freedoms, is in any case or situation inadequate to protect fundamental rights. The question whether any Bill of Rights should be enforceable, or whether it should be an unenforceable declaration of rights, is also posed. There is some discussion as well of possible changes in the role of the judiciary which might ensue if a Bill of Rights were to be introduced.

The paper has a very broad scope, giving in 250-odd pages a philosophical and historical background to human rights issues, concentrating in background matters naturally enough on Queensland, although a brief history of attempts by the Commonwealth and Victoria to give legal recognition to individual rights and freedoms is also included.

Examples of particular questions asked about possible rights are:

- If Queensland were to introduce a right to life, liberty and security of person, should the right to life allow for the possible reintroduction of the death penalty?
- Should any such right to life be worded in absolute terms, with express allowable exceptions for self-defence as in the European Convention, or should it be worded in terms of prohibiting the "arbitrary" deprivation of life?

- Should the prohibition of discrimination, if introduced, be subject to an exception for affirmative action programs designed to remedy social inequalities?
- Should the right to marry be given specific recognition? If so, should such recognition be limited to the right to marry a person of the opposite sex?
- Is the recognition of employment rights appropriate in a possible Bill of Rights, or is implementation and enforcement of such rights best left to the political process?

The review will culminate in the preparation of a report, which is expected to be presented to various officials in the first half of 1993. If you are interested in obtaining a copy of the issues paper, EARC can be contacted at:

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### Paper on parliamentary scrutiny of delegated legislation

In May 1992, the "Papers on Parliament" series published by the Department of the Senate featured a paper entitled *Parliamentary Scrutiny of Quasi-legislation*. The author of the paper was Stephen Argument, the secretary to the Senate Standing Committee for the Scrutiny of Bills. The summary therein of the problems posed by the proliferation of quasi-legislative instruments both for parliamentary scrutiny generally and for role of the Scrutiny of Bills Committee is worth citing in full:

"Parliamentary scrutiny is by no means a cure-all for the problems caused by quasi-legislative instruments. In some respects, increased parliamentary scrutiny is a two-edged sword. While many types of instruments clearly should receive greater scrutiny by the Parliament, the proliferation of such instruments lessens the Parliament's capacity to deal with them properly. In addition, Parliament has, to date, demonstrated an inability to come to grips with such instruments. The Senate Standing Committee for the Scrutiny of Bills continues to draw attention to provisions which, in its view, derogate from the primacy of the Commonwealth