relevant interest entitling him to challenge in this Court the subsequent decision of the Australian Broadcasting Tribunal.'

Bona fides of ASC investigation

Little River Goldfields N L v Moulds (22 November 1991) concerned applications for judicial review in respect of notices issued under the *Australian Securities Commission Act 1989* (Cth). The notices were issued in relation to an investigation being conducted by the Australian Securities Commission and they required the provision of evidence on oath and the production of documents. The notices referred to an investigation of suspected offences which may have been committed in respect of dealings in securities of Little River Goldfields.

Little River Goldfields' appeal was based on a number of grounds, the first one being that there was no valid investigation being undertaken by the ASC in the absence of any written decision to undertake the investigation. The Court, constituted by Mr Justice Davies, rejected this argument, noting that the only requirements under the ASC Act are a reason to suspect that a contravention has been committed and a belief that it is expedient and appropriate to undertake the investigation. The ASC Act does not require any matters to be put in writing and it is not to be implied that strict limited terms should be imposed.

Little River Goldfields also argued that no officer of the ASC could have had reason to suspect that there had been a relevant contravention. It further submitted that the ASC was not entitled to investigate whether a contravention had occurred unless it had cogent information that such was the case.

The Court rejected these arguments on the basis that no attempt had been made to prove what was the material before the investigating officer at the time the investigation had been recommended or before the ASC at any time in the course of the investigation, therefore it could not be held that the actions taken in the course of the investigation were entirely without foundation or were unreasonable or not bona fide or that material factors were ignored. It was at this point that Mr Justice Davies stated that he would not regard the original report, the approval to investigate or the subsequent carrying on of the investigation as constituting reviewable decisions. The notices, however, were reviewable as formal acts which impose obligations upon the recipients.

The Court stated further that if any challenge is made to the investigation, the onus lies on the challenger to establish lack of bona fides etc., especially in a case in which the ASC appears to have grounds for inquiry into a possible contravention.

Little River Goldfields also submitted that the Court should make an order declaring the ambit of the investigation so as to ensure that the investigation did not trespass into other areas. Mr Justice Davies found that the approval for the investigation contained no clearly identifiable limits but that it was not necessary for it to do so. [GF]

The Ombudsman

Proposed legislative amendments

The *Prime Minister and Cabinet Legislation Amendment Act 1991*, which effects some amendments to the *Ombudsman Act 1976* ('the Act'), came into force on 18 December 1991. The purpose of the amendments to the Act is:

- to enable the Ombudsman to refer a matter to the Administrative Appeals Tribunal for an advisory opinion; the present section 11 of the Act provides only that he may recommend that the relevant principal officer (usually the Secretary to the agency concerned) seek such an opinion;
- to ensure that the Ombudsman's powers to obtain information under section 9 of the Act are not circumscribed by the provisions of any other enactment and that a claim of legal professional privilege is not available to deny him access to information which has passed between an officer of a body over which he has jurisdiction and another person; and
- to provide that the Ombudsman's role is not necessarily exhausted when he reports to the Parliament under section 17 of the Act, but that he may discuss any matter to which the report relates with the relevant principal officer for the purpose of resolving the matter.

Review of the Office of the Commonwealth Ombudsman

The report by the Senate Standing Committee on Finance and Public Administration, released in December 1991, concluded a review of the Of-

fice of the Commonwealth Ombudsman, which review was suggested in December 1990 by the former Commonwealth Ombudsman, Professor Pearce, upon his retirement . The Committee undertook its inquiry by holding public hearings in May and June 1991, accepting submissions from individuals and organisations, and visiting the Melbourne office of the Commonwealth Ombudsman.

The report makes 31 recommendations, covering matters such as the role, powers, jurisdiction, performance and resources of the Ombudsman. Of particular interest are the following matters:

- The Committee recommended that the Ombudsman Act be amended to require the Government to respond in Parliament to any report by the Ombudsman under section 17 of the Act within three months of the tabling of the report.
- After agreeing with the Council's submission relating to the Ombudsman's jurisdiction over government business enterprises and agencies with commercially-oriented activities, the Committee recommended that government companies and all other government bodies be within jurisdiction unless specifically excluded.
- The Committee considered that there are some classes of activity carried out by some agencies which are not appropriate for review and the Ombudsman Act should be amended to exclude those classes of activity. The Committee appeared to have in mind, and mentioned only, 'purely commercial activities'.
- The Committee recommended that, in the case of specialist ombudsman functions such as the handling of telecommunications complaints, the Government give consideration to assigning specialist ombudsman functions to the Commonwealth Ombudsman to be handled as a discrete function by a specialist unit within the office.
- Where distinct specialist review functions are assigned to the Ombudsman, the Committee recommended that those tasks be funded through charges on the organisations subject to review, with the charges being set in proportion to the number of complaints against each organisation.
- The Committee accepted the Council's suggestion that the Ombudsman develop a promotional program to be aimed at low-income and disadvantaged groups.
- The Committee recommended that an increase in funding be made to cover a number of projects, including the cost of the promotion of the Office's existence and services. [PG]

Commonwealth and Defence Force Ombudsman: Annual Report 1990-1991

During the reporting year, Professor Dennis Pearce completed his term of appointment as Commonwealth Ombudsman. Mr Alan Cameron was appointed to the position on 1 April 1991.

The Ombudsman's Office received 31 318 complaints and inquiries during the year, an increase of 5 662 over previous year. Oral complaints were dealt with quickly, 90% being finalised within a few days. This is a pleasing result as the great majority of approaches are made orally. The approaches can be broken down into 4 068 written complaints, 10 173 oral complaints and 17 077 oral inquiries; inquiries being distinguished from complaints because they consist of general inquiries and inquiries about agencies and subject matters outside of the Ombudsman's jurisdiction.

The Ombudsman commented that his office's role went beyond resolving particular complaints and included publicising administrative review more broadly. To that end his officers have developed good working relationships with such bodies as the Administrative Appeals Tribunal to enable inquiries which should properly go to the AAT to be re-directed promptly. Officers also participated in the Administrative Review Council's project that attempted to increase the awareness of administrative review among people of a non-English-speaking background (see ARC Report No 34, *Access to Administrative Review by Members of Australia's Ethnic Communities*). [PG]

Reversed onus for migration decision

On 14 November 1991, the Migration Regulations were amended to empower the Minister to declare an organisation or group of persons to be a 'declared body for the purposes of this legislation'. The effect of such a declaration is that each member of a declared body, who is seeking a visa or entry permit, is required to satisfy the Minister, acting personally, that he or she 'is not likely to become involved: (i) in the planning of any criminal or illegal activity to be carried out inside or outside Australia; or (ii) in the carrying out, inside or outside Australia, of any criminal or illegal activity.'

Although the principles of procedural fairness would probably require the Minister to provide affected persons with the substance of any claims made against them, it may still be very difficult to satisfy the Minister. The amendments have a sunsetting provision that terminates them on and after 6 March 1992.

Bankruptcy Amendment Act 1991

The *Bankruptcy Amendment Act 1991* contains an interesting development from the point of view of administrative law. Sections 139ZF (assessments of income and contribution), 149 (objections) and 149ZM (early discharge) provide for review by the Administrative Appeals Tribunal of decisions of:

- the trustee (or Official Receiver in the case of section 149Q), or
- the Inspector-General on the review of a decision under (a), or
- the Inspector-General refusing a request to review a decision.

There are two aspects of interest in this Bill: firstly, that an applicant appears to have the choice whether or not to seek review by the Inspector-General before applying to the AAT for review, that is the AAT has the jurisdiction to review a primary decision before any internal review at all has taken place; secondly, that the review sought in the above provisions may be of a decision of the trustee of a bankrupt, who is not a Commonwealth Officer, but a private person. It remains to be seen whether this kind of development is to become more common in the future. [GF]

Australian Securities Commission

In its 1990/91 Annual Report, the Australian Securities Commission stated at page 27:

> 'As a Commonwealth Government authority, the ASC is subject to a range of administrative law provisions, including Freedom of Information (FOI) legislation and administrative and judicial review. The ASC is unique in that every decision under the Corporations Law, including litigation decisions, could potentially go to the Administrative Appeals Tribunal (AAT). The ASC believes that this goes too far.
>
> 'In fact the *Australian Securities Commission Act 1989* provides for review by the Administrative Appeals Tribunal of decisions under sections 72-75 of the Act, which restrain the exercise of certain rights: that is orders in relation to securities of a body corporate (s72), orders in relation to securities generally (s73), orders in relation to futures contracts (s74) and orders which vary or revoke orders in force under the division (s75). Finally the AAT has the power to review a decision to refuse to vary or revoke an order in force under Division 8 of Part 3 of the ASC Act.'

Section 1317 of the *Corporations Law* provides for review by the AAT of a decision by the Minister, the ASC or the Companies Auditors and Liquidators Disciplinary Board. A number of decisions are excluded from AAT review:

- a decision in respect of which an appeal to, or review by, a court or another tribunal is expressly provided by the Act;
- a decision declared by the Act to be conclusive evidence of an act, matter or thing;
- a decision by the Minister to make or refuse to make a declaration under section 112(3) (that an unincorporated association may carry on a profession or calling of a specified kind);
- a decision by the ASC under section 342 or 350 (cessation of business) or Division 8 of Part 5.6 (dissolution of companies); or
- a decision by the ASC to refuse to exercise a power under section 342 or 350 or Division 8 of part 5.6.