

the Full Court of the Federal Court (Justices Davies, Cooper and Moore) examined the way this protection worked in relation to an exercise of the right to have a decision reviewed on its merits under the *Social Security Act 1991*.

The decision involved was that Lee owed a debt to the Commonwealth and that the debt should be recovered. Lee sought review (by the Social Security Appeals Tribunal, and subsequently by the Administrative Appeals Tribunal) of that decision. The initial application for review was made the day before certain legislative amendments commenced. These changed the circumstances in which a debt could be waived, and none of the new circumstances applied to Lee. Both tribunals affirmed the decision, and it was the AAT's doing so on the basis that the new law applied that was challenged here. Justices Cooper and Moore decided (Justice Davies dissenting) that Lee had the right, by virtue of section 8 of the Acts Interpretation Act, to have the decision reviewed according to the law applying at the time the primary decision was made, a right that arose at the time the initial application for review was made.

Procedural fairness and the opportunity to test credit

A recent South Australian Supreme Court decision deals with the question whether an employer should, in the interests of fairness, have the opportunity to withhold from production until the hearing of a workers' compensation claim a video of an employee performing activities.

In *BHP Pty Co Limited v Mason and Jennings* (unreported, 7 November 1996), the Court (Justice DeBelle) held that, as a general rule, a court or tribunal should be slow to order production of such a film before cross-examination. The decision sought to be judicially reviewed was made by a 'review officer' under the South Australian *Workers' Rehabilitation and Compensation Act 1986*. The review officer decided that the employer's withholding from production of a video of the worker

would amount to a breach of the rules of procedural fairness.

The review officer had relied heavily on comments made in a line of (federal) AAT decisions (another recent example of which, *Re Prica and Comcare*, is reported in this issue of *Admin Review*). The Court noted that there was contrary judicial authority in South Australia, and rejected the suggestion in the AAT decisions that the Federal Court's decision in *Australian Postal Commission v Hayes* (1989) 23 FCR 320 represented a high water mark and that non-production of a film represents 'trial by ambush'. The Court drew a distinction between the need to disclose to an opposing person the existence of evidence such as a film and a requirement to disclose the contents of the film before its subject gives evidence at a hearing. The Court said that:

"If with the knowledge of the existence of a film the person filmed gives evidence exaggerating the disability occasioned by his injuries, he is not ambushed. He has simply been detected in his untruthfulness, that is to say, caught in a trap of his own making instead of in a trap set by his opponent.

When deciding not to order inspection of such a film before cross-examination, a court makes no assumption about the veracity or otherwise of the person filmed. Truthful evidence has as much capacity to be enhanced by the film as dishonest evidence might be exposed by it."

The Ombudsman

Inquiries into complaints against the AFP and NCA

In mid July 1996 the Australian Law Reform Commission (ALRC) released a Draft Recommendations Paper entitled *Complaints against the AFP and NCA* (DRP 2). The Draft Recommendations Paper is the result of two references made to the Commission during 1995 –

complaints and disciplinary systems of the Australian Federal Police (AFP) and complaints and disciplinary systems of the National Crime Authority (NCA).

The ALRC recommended the introduction of a National Integrity and Investigations Commission (NIIC) with two separate Divisions (physically separated but sharing the same infrastructure and information system). One Division would deal with complaints (the Office of the Commissioner for Complaints) and the other would deal with corruption (the Office for Anti-Corruption). Under the recommendations the Ombudsman, who currently has a complaints investigation role in relation to the AFP, would no longer have this role.

The Ombudsman subsequently provided comments to the ALRC on the draft proposals. In the Ombudsman's view the resources suggested by the ALRC for the NIIC with both complaint handling and corruption-fighting functions were "significantly understated" and that her office would provide a much more cost-effective mechanisms for undertaking the complaint handling function. The Ombudsman is also concerned about the combining of two vastly different functions in the one body and that the focus on complaints handling will be lost in a body concerned with the quite different task of identifying and investigation corruption.

The ALRC has just released its final report and a summary of it will be included in the next issue of *Admin Review*.

Investigation of police treatment of youth

Earlier this year the Ombudsman commenced an own motion investigation into treatment of youth by the AFP. The investigation was commenced as a result of concerns arising from a number of complaints that the Ombudsman's Office had handled in relation to AFP treatment of juveniles, particularly those in custody. Issues being looked at include alleged illegal personal and property searches, failures to comply with legislation, treatment whilst in deten-

tion, photographing people without power to do so and inadequate training of AFP members.

Demographic survey of client base

The Ombudsman's Office has recently undertaken a snapshot survey to gain a better understanding of the demographic make-up of its client base.

The survey involved asking questions of new clients who telephoned the office during the first two weeks of September about their demographic background. The information collected through this survey was intended to supplement information collected annually through a written client satisfaction survey and used to help plan and better target survey delivery.

While the results of the survey are still being compiled, early findings include that 6% of callers were Aboriginal and Torres Strait Islanders, a group which comprises only 1.6% of the Australian population. The result suggested that the Ombudsman's Office outreach strategy to increase awareness of the Office within this group was having an impact.

Government Service Charters and internal complaints handling

On 22 November 1996 the Deputy Commonwealth Ombudsman, John Wood, presented a paper as part of the session on 'Protecting the Citizen' at the IPAA National Conference. He commented favourably on the movement in the federal public administration towards the development of Government Service Charters which he saw as "the evolution of some attempts to understand and apply the principles of quality of service and consumer satisfaction".

The move towards establishment of Government Service Charters has been spurred on by the recent work of the Task Force on Government Service Charters. That Task Force has set out the following principles which are to be embodied in agency charters by departments, agencies and national utilities when

developing their own customer service charters:

- identification of the organisations and its customers;
- communication between agency and its customers;
- acknowledgment of customer service standards and customer rights and responsibilities;
- feedback through comments, inquiries and complaints handling;
- consultation in charter development;
- presentation in format and style appropriate to customers;
- establishment of internal complaints handling mechanisms for resolving customer complaints;
- commitment to monitoring and review; and
- establishment of public accountability measures.

An important feature of the Charter development is the establishment of appropriate internal complaints handling mechanisms.

The Deputy Ombudsman sees the development of Service Charters as important in that it recognises that in addition to the administrative law that applies to agencies – which are effectively externally imposed measures for accountability and quality assurance – importance is being placed on agencies establishing their own mechanisms for dealing appropriately with their clients. He

said that effective dealing with client complaints can provide an agency with “a unique window on its operational effectiveness and impact” and can ultimately result in reduced costs to the delivery agency. Savings would also accrue as a result of cutting down the workload of review bodies such as the Ombudsman’s Office and merits review tribunals.

The Deputy Ombudsman outlined some of the results of a recent survey conducted by the Ombudsman’s Office of internal complaints handling mechanisms within agencies. It was found that very few had a system in place that even approached the requirements of the Australian Standards for complaints handling: AS 4269-1995. While many agencies had formal processes for internal review of decisions most only had ad hoc arrangements for dealing with service complaints. The Child Support Agency and the Australian Taxation Office were noted for their more developed systems.

Citing the increase in complaints to the Ombudsman and in applications to the Administrative Appeals Tribunal in recent years the Deputy Ombudsman stated that there was no doubt that the community was becoming more aware of the various avenues of redress available to them as dissatisfied customers. With the greater use of contracting out of government services and the consequent transfer of risk to the consumer, the Service Charters with their emphasis on internal complaints handling processes are seen as an important service quality measure and a step in the right direction.