

federal law or depends upon the federal law for its enforcement (whether or not the controversy involves the interpretation of the law) then a matter will have arisen under that law. This head of jurisdiction will be enlivened when it is necessary to determine whether the Commonwealth law in question confers a right or affords a defence which is an issue in the litigation or when a claim is made by one of the parties which is based upon that law ie the statute is relied upon as giving a right claimed or as the direct source of a defence asserted.

Other propositions to be derived from the cases are:

- (a) it does not matter that the questions to be determined arise from a controversy involving a person to whom the Act or other statutory provision is not directed;
- (b) if the question involves the interpretation of a statute to ground a declaration of the extent or limitation of the rights provided thereunder a matter will have arisen under the Act;
- (c) the fact that the relief sought is declaratory will not prevent the jurisdiction being federal in character ie where declaratory powers are to be exercised with regard to a matter arising under a Commonwealth Act;
- (d) a matter may arise under a law of the Parliament either in whole or in part;
- (e) a matter may arise under a law of the Parliament by reason of matters raised in a statement of claim or in a defence or in a reply;
- (f) a matter may arise under a law of the Parliament where the suit could be disposed of by deciding the matter so arising whether or not the suit is so disposed of;
- (g) a claim for damages for breach of a contract or a claim for relief for breach of trust is a claim arising under federal

law if the contract or trust is in respect of a right or property which is the creation of federal law ie the subject matter of a contract or trust exists as a result of federal law;

- (h) the entitlements in question may arise under an Act or under regulations made under such an Act;
- (i) a matter arising under a law of the Parliament may also be a matter arising under the Constitution or involving its interpretation.

The important cases include -

*R v Commonwealth Court of Conciliation Arbitration Ex parte Barrett* (1945) 70 CLR 141, 154; *Felton v Mulligan* (1971) 124 CLR 367; *Moorgate Tobacco Co Limited v Philip Morris Limited* (1980) 145 CLR 457; *LNC Industries Limited v BMW (Australia) Limited* (1983) 151 CLR 575, 581-2; *O'Toole v Charles David Pty Limited* (1991) 171 CLR 232, 307 and *Re Tooth (No 2)* (1978) 34 FLR 112, 139-140.

In terms of administrative law, the impact of the new provision will be primarily in relation to actions for declarations, particularly against the Commissioner of Taxation, which were often commenced in the High Court. The impact will also be in judicial review action strictly speaking where a Commonwealth body corporate is involved (and thus no officer of the Commonwealth within section 39B) and where the decision in question was not within the AD(JR) Act because it is legislative rather than administrative or because it is within Schedule 1 to that Act and thus excluded from it.

## The Ombudsman

### 20th Anniversary Publication

To commemorate the Ombudsman's 20 year anniversary, the Ombudsman's Office has published "twenty years of the Commonwealth Ombudsman 1977 - 1997". This document is a record of the office and poses some ques-

tions for the future of the Commonwealth Ombudsman in Australia.

The booklet documents the achievements of the office, and the people who conceived, established and operated the Commonwealth Ombudsman's Office for the past 20 years.

The publication contains a visual summary of the work of the Office which provides a guide to:

- growth of complaints;
- the main sources of complaints;
- major changes in the Ombudsman's jurisdiction; and
- the number of staff in the Office.

The anniversary document includes contributions from the Hon. John Howard, Prime Minister of Australia; the Hon. Kim Beazley, Leader of the Opposition; Senator Cheryl Kernot, then Leader of the Australian Democrats; the Hon. Sir Gerard Brennan, Chief Justice of the High Court; Professor Jack Richardson and Professor Dennis Pearce, former Ombudsmen; Roberta Jamieson, Ontario Ombudsman; Sir John Robertson, former New Zealand Chief Ombudsman; and Robert Fitzgerald, the President of the Australian Council of Social Services.

Copies of the report can be obtained from Maria Ford in the Ombudsman's Office on phone (02) 6276 0124 or email [Maria.Ford@comb.gov.au](mailto:Maria.Ford@comb.gov.au)

### **Training for RAAF investigators**

As a direct result of recommendations by the Ombudsman about problems with administrative investigations within the Australian Defence Force and about lack of training for investigators, the Royal Australian Air Force commissioned Charles Sturt University to develop an accredited course on Investigations process and investigation management for the Australian Defence Force. The Ombudsman's office has had significant input into the course, with presentations and case studies addressing investigation problems and issues such as procedural fairness. The course has now been run twice, in January and June 1997.

In addition, the Australian Defence Force has set up a tri-service team to assist with the implementation of the Ombudsman's recommendations following an own motion investigation into the way the Australian Defence Force responds to serious incidents and offences. The recommendations include the need to ensure that appropriate guidance and training is available to investigators.