

Mr Justice Burchett granted the interim relief on the basis that there was a serious question to be tried in the applications by the Koreans for judicial review of the decision to deport them. It appeared that the Koreans were the innocent victims of an illegal migration scheme and the evidence indicated that, despite deportation orders having been made, proposals were put to them by officers of the Department suggesting that they could stay in Australia if they were prepared to give prosecution evidence in the hearing of criminal charges against principals of the scheme. The Koreans had agreed to this and it was indicated to them that they would be released from detention and would be issued with entry permits. Nothing had, however, happened for 3 months and ultimately the Koreans complained to the Ombudsman. Following that complaint, the Department had moved to execute the deportation orders.

In Waniewska v Minister for Immigration and Ethnic Affairs (27 November 1986) review was sought under the AD(JR) Act of a decision to deport the applicant. Mr Justice Keely granted the application on several grounds. He held, first, that the delegate of the Minister had failed to accord the applicant natural justice by not giving her an opportunity to respond to a suggestion in the submission on which the delegate founded his decision that the applicant attempted to extend her stay in Australia by arranging a marriage that was a pretext. His Honour also held that the delegate had failed to take into account relevant considerations in failing to have regard to the applicant's claim as to events in Poland and the likelihood of her arrest on her return.

The decision of Mr Justice Keely as to the latter ground for relief does not appear to be consistent with the view concerning relevant considerations in deportation matters taken by Mr Justice Sheppard in Chhinda. The decision in Chhinda is not referred to in Mr Justice Keely's judgment.

COMMONWEALTH OMBUDSMAN

Report by Senate Standing Committee on Constitutional and Legal Affairs on Ombudsman's special reports

As noted in [1986] Admin Review 165, on 22 August 1986 the Senate referred to its Standing Committee on Constitutional and Legal Affairs the following Commonwealth Ombudsman's Special Reports to the Parliament made under section 17 of the Ombudsman Act:

- . Special Report No. 1, The Cotton Case involving the Australian Broadcasting Commission (AGPS, 1985)
- . Special Report No. 2, The Industrial Sugar Mills Case involving the Department of Defence (AGPS, 1986).

At the same time the Senate resolved that, unless otherwise ordered, all section 17 reports are to be automatically referred to the Committee.

The Committee had sought and obtained these references following a meeting of the Committee with the Administrative Review Council at which members of the Council had expressed the view that there was a need for a body such as the Committee to play a more active role in the parliamentary scrutiny of the Ombudsman's special reports.

The Committee held a public hearing on the two special reports on 22 October 1986. The hearing was attended by the Commonwealth Ombudsman, representatives of the ABC and the Department of Defence, and others.

On the Cotton Case the Committee examined the attempt of the new Commonwealth Ombudsman, Mr Kolts, to arrive at a compromise solution even after the presentation of his special report, and concurred with his view that the Ombudsman's role should not be exhausted by the presentation of a section 17 report. In the Committee's view, 'The Ombudsman should be able to attempt to resolve any dispute arising out of any matter of administration, even after the presentation of a special report upon the matter'. It recommended that if necessary the Ombudsman Act should be amended to ensure that the legislation allowed the Ombudsman to act in that way.

Although the Committee was not satisfied that the statement finally broadcast by the ABC after discussions between the Ombudsman and the new Chairman of the ABC, Mr Hill, was adequate redress for Mr Cotton, it expressed the opinion that, with the aid of the public hearing, the ABC could quickly move to a resolution of the matter.

Of greater general importance were the Committee's conclusions concerning the Industrial Sugar Mills ('ISM') case (see [1986] Admin Review 139-40 for a discussion of that case). The case concerned the failure of a government department to award a contract to ISM because of a misreading of the basis of a tender submitted by ISM. Following the Ombudsman's report to him, the Prime Minister had written to the Ministers for Defence and Finance reiterating his view that 'it is only in the most exceptional circumstances that a recommendation by the Ombudsman should be set aside', but in the upshot he had expressed agreement with the view of the Minister for Finance that the possibility of creating a precedent amounted to 'exceptional circumstances'.

In essence the Committee agreed with the Ombudsman's conclusion that there had been defective administration which merited compensation under the Audit Act. On the figures to date, the 'floodgates' argument was not persuasive, and in the Committee's view -

... it is not justifiable to set aside an Ombudsman's recommendation merely because compliance with it may tend to establish a precedent. It is not necessarily true that

compliance will establish a precedent; and it is not necessarily true that the precedent, if it were to be established, would be undesirable.

The Commonwealth Government enjoys a position of special strength in the commercial community. It should therefore be prepared to accept additional responsibilities ...

A government response to the Committee's report is awaited with interest. In any case, Admin Review welcomes the involvement of the Committee with special reports of the Ombudsman and believes that its interest in these matters will benefit both the Ombudsman and public administration generally.

A D M I N I S T R A T I V E L A W W A T C H

Inter-departmental report on costs
of freedom of information

The report of the Senate Standing Committee on Constitutional and Legal Affairs on the operation of the freedom of information legislation is awaited with interest. An inter-departmental committee has also recently considered the FOI legislation and, in particular, has examined the costs of the legislation. The IDC has reported to the government and a copy of its report has been provided to the Senate Standing Committee. Amongst the recommendations made in the IDC report are the following:

. That, in limited circumstances, direct agency access upon the receipt of a request be provided to the AAT to obtain directions as to further processing (eg where there is a more appropriate avenue, vexatious applicant, etc) including 'no further action' direction (cf s.6 Ombudsman Act).

. That the review functions of the Federal Court, the AAT, the Ombudsman and the proposed Data Protection Agency be clarified to minimise duplication and overlap of external review functions.

. That appropriate action be taken to encourage the AAT to place more emphasis on investigation and conciliation and to conduct hearings with less formality, for example:

. greater use of preliminary conferences;

. no counsel without leave of AAT;

. telephone hearings wherever convenient;

. less duplication of oral and documentary evidence.