
P E R S O N A L I A

Administrative Appeals Tribunal

Mr Justice Davies, President of the AAT, resigned from the AAT on 30 June 1987, whereupon he ceased to be an ex officio member of the Council. As yet there has been no announcement of a successor to Justice Davies nor has an acting President been appointed.

Deputy President Mr A.N. Hall retired from the AAT on 25 June 1987 for health reasons.

Mr Kevin Brady retired as a senior member of the AAT on 1 June 1987.

STOP PRESS: The government on 13 August 1987 announced the appointment of Mr Trevor Hartigan, QC, a barrister from Queensland, as the new President of the AAT.

Commonwealth Ombudsman

Ms Lindsay Shaw was appointed on 23 April 1987 to the position of Deputy Ombudsman for a 7 year term.

Air Vice Marshal J.C. Jordan, AO, (Rtd) resigned as Deputy Ombudsman (Defence Forces) on 8 July 1987 and was succeeded by Air Vice Marshal R.E. Frost, AO, (Rtd).

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F O C U S

Justiciability of Cabinet Decisions

Two recent cases have dealt with the question of the extent to which a decision of the Cabinet may be amenable to judicial review. In Cohen v Peko-Wallsend Ltd (full court of Federal Court, 7 September 1987) the previously unlitigated question whether a decision of a Westminster-style Cabinet may be the subject of judicial review was squarely raised. The question also arose as a peripheral issue in South Australia v O'Shea (High Court, 2 September 1987).

(1) Cohen case

Peko-Wallsend Ltd has certain mining interests in the area covered by stage 2 of Kakadu National Park. Before the Federal Court the questions at issue were whether, in making the decision to nominate stage 2 of the park for the World Heritage List, the Cabinet was bound by the principles of natural justice to afford Peko-Wallsend an opportunity to be heard and whether it had failed to do so.

The application to the Federal Court at first instance was brought under section 39B of the Judiciary Act 1903, presumably because of doubts whether the Administrative Decisions (Judicial Review) Act 1977 would apply to the decision of the Cabinet. Justice Beaumont had granted the application and had declared that the decision of the Executive (ie, the Cabinet) to nominate stage 2 was void (see (1986) 70 ALR 523). His decision is discussed in [1987] Admin Review 14-15. It was from this decision that the Commonwealth appealed to the full court of the Federal Court.

Decision of full court

The full court allowed the appeal. The central judgment is that of Justice Wilcox. Both Chief Judge Bowen and Justice Sheppard expressed general agreement with the reasons of Justice Wilcox, while making separate observations of their own. All judges agreed that the Cabinet decision was not amenable to judicial review and that, even if it were, Peko-Wallsend had, in the circumstances, been accorded natural justice. However, the separate observations of the 3 judges make it difficult to say with certainty what the considerations are which the Federal Court considers will