was unlawful. In addition, the Court expressed the view that 'pending deportation' means during such time as is required for the implementation of the deportation order, and 'does not authorise the indefinite detention in custody of a person for some ulterior purpose, such as...being kept available as a witness in a pending criminal prosecution'. It concluded that the Koreans were entitled to a declaratory order that the detention was unlawful, in addition to an order formally quashing the deportation orders on which that detention was based.

Grouped proceedings in the Federal Court

On 11 December 1989 the Leader of the Australian Democrats introduced the Federal Court (Grouped Proceedings) Bill in the Senate. The Bill is based on a 1988 report (No. 46) by the Law Reform Commission of Australia on grouped proceedings in the Federal Court, which arose from a reference from the Attorney-General in 1977 concerning access to the courts.

The reference required the Commission to report on two separate questions: the standing of persons to sue in Federal and other courts whilst exercising federal jurisdiction or in territory courts; and class actions in such courts. Report No. 46 dealt with the second question.

The Commission examined the barriers to access and found a number of examples where a grouping procedure would be desirable. It proposes a scheme for the grouping of claims in the Federal Court, and includes in the report a draft Bill giving the suggested legal basis for the scheme. The suggested procedure would operate mainly in the areas of:

- proceedings against the Commonwealth;
- claims under federal laws such as the Trade Practices Act 1974;
- federal administrative law;
- federal tax law; and
- federal industrial and intellectual property law.

In the Second Reading Speech on the Bill, Senator Haines said that the Bill 'will enhance enormously Australian consumers' rights to redress'. She agreed with the report that, in an age of mass production and distribution of goods and services, the potential for loss or damage to be caused on a mass scale is high, though the damage incurred by an individual may be relatively small in proportion to the cost of legal proceedings. The Bill provides for a scheme which aims to achieve the goals of access and court efficiency by allowing the grouping of claims in the Federal Court.

Tenure of appointees to Commonwealth tribunals

In November 1989 the Joint Select Committee on Tenure of Appointees to Commonwealth Tribunals released its report. Included in the Committee's terms of reference was one to inquire into the principles that should govern the tenure of office of quasi-judicial and other appointees to Commonwealth tribunals.

The Committee concluded that, in order to perform their functions, quasi-judicial tribunals require people of superior

talents and integrity and need to ensure that they will not be influenced in their decisions by outside or irrelevant considerations. In particular, they should not be in any way influenced by the government of the day or any alternative government.

It stated that the nature of the tenure must ensure:

- an adequate term of office;
- removal from office before expiration of that term is for cause specified in the relevant legislation;
- adequate procedures for removal;
- where grounds for removal must be established, a proper legal proccess is provided;
- Ministers, Members of Parliament and senior officials should not seek to bring any public or private pressure to bear on the members of tribunals;
- members are provided with a reasonable opportunity for performing such work as fits their particular talents, as long as they are able to do so;
- members are provided with appropriate salaries and conditions of service;
- members should themselves remain independent from party political activity.

The Committee also outlined principles to be borne in mind when considering the abolition of a quasi-judicial tribunal. These were that:

- abolition of a tribunal should not be used to remove the holder of a quasi-judicial office unless the removal procedures applying to that office are followed;
- legislation to change the structure and jurisdiction of a quasi-judicial tribunal should, if possible, refrain from abolishing the tribunal;
- where the tribunal is abolished or restructured, all existing members of the tribunal should be re-appointed to its replacement; and
- when a tribunal is abolished and not replaced, compensation should be paid to the members of the tribunal who have lost their positions and for whom no alternative position can be found.

In addition, the Committee made several general recommendations concerning the right of appointees to perform the duties of office, and about specific matters relating to former Justice Staples. These included statements that:

- 'A tribunal president should have the power to allocate work and the only interference with that power should be the right of an aggrieved tribunal member to approach an

appropriate court to test the ambit of such power. The Committee does not believe the power to allocate work should be used to effect the de facto suspension of a tribunal member'; and

. 'A member of a tribunal who is deprived of work is entitled to receive reasons from the president of the tribunal for such a decision'.

National Health Regulations

The National Health (Pharmaceutical Benefits) Regulations (Amendment) Statutory Rules 1989 No 330 were tabled in the Senate on 14 December 1989. The new Regulations amended aspects of the 'Safety Net' provisions of the Pharmaceutical Benefits Scheme to 'enhance financial control of the scheme, add further information to prescription record forms and entitlement cards and limit the potential for hoarding or squirreling of drugs towards the end of a Safety Net year'. The Regulations were tabled by an Opposition member, Senator Patterson. On 22 December 1989, on the motion of Senator Puplick, the Senate disallowed the Regulations. Senator Publick's main reasons for this were the way in which they were processed in the Senate; the lack of proper consultation with the pharmacy profession; and a failure to provide adequately for emergency situations in a way which would allow patients the maximum degree of flexibility in the management of their own health care concerns.

Subordinate legislation: Parliamentary approval

The Therapeutic Goods Bill 1989 was introduced into Parliament on 5 October 1989. Parliament passed the Bill subject to an amendment that the Act does not commence until the day after Parliament approves regulations under the Act.

Parliament also passed the Community Services and Health Legislation Amendment Bill (No. 2) 1989 with amendments in respect of certain instruments to be made under the National Health Act 1953 and the Aged and Disabled Persons Homes Act 1954. Under the latter Act, for example, a 'Charter of Residents' Rights and Responsibilities' is to be drawn up. The amendments made by Parliament provide that such instruments do not take effect until 15 days after tabling in Parliament, where Parliament does not wish to amend them, or where Parliament wishes to amend them, until approved by Parliament.

Provision for Parliamentary approval of a subordinate instrument, subject to amendments, appears to be a novel development.

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R E C E N T P U B L I C A T I O N S

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Barnes, J.
'Law reform: streamlining of judicial review system proposed', Australian Business Law Review, 16, 1988:469-70