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# A tort of maladministration

# Government stuff-ups

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Lachlan Roots

*In times of increasing government bungling should there be a right to damages for wrongful administrative action?*

The proliferation, in recent years, of autonomous and quasi-autonomous administrative bodies exercising a diverse range of powers has meant the increased likelihood of wrongful administrative action being taken by those bodies. This raises the need for a means of formal redress for individuals who suffer loss.

One means of providing redress is to develop a new and unique tort in administrative law, a 'tort of maladministration', by which a remedy of damages for wrongful administrative action could be sought.

Existing law fails to recognise a tort of maladministration. In *Takaro Properties Ltd v Rowling* [1978] 2 NZLR 314, a New Zealand court held a claim for damages could not be founded simply on an invalid administrative act causing loss:

... in the present state of the law (although it may well be developing in the area) an invalid administrative act or decision is still incapable, by itself, of supporting a civil claim for damages. The relevant facts must give rise, independently of the invalidity, to a remedy in damages that is already recognised by the civil law in general. [at 326]

(For a more recent statement of the present position see *Macksville & District Hospital v Mayze* (1987) 10 NSWLR 708.)

Thus, a person aggrieved by an administrative decision, declared wrongful by the court who wishes to recover for any loss ensuing from the impugned decision, is entitled to bring a claim for damages, provided she/he can establish that the claim relates to an existing tort cause of action, such as trespass, false imprisonment, or negligence. Indeed, the existing categories of tort causes of action are the only bases on which damages should be able to be claimable in administrative law for wrongful administrative action:

There is clearly no general principle of liability in tort for causing loss through the medium of an invalid administrative decision. Nor does such a principle seem likely to emerge in the future nor even to be desirable. The development of the law must therefore take the form of the adaptation of existing torts to deal with the problem of how far compensation should be awarded to those who suffer loss arising from faults occurring in the administrative decision-making process.<sup>1</sup>

No doubt the existing tort-based claims for damages are important and essential in providing a more complete and effective means of redress to persons aggrieved by wrongful administrative action. An obvious, and famous, example is *Cooper v Wandsworth Board of Works* (1863) 14 CB (NS) 180, where Cooper, having failed to give the Board the required seven days' notice of intention to build, the Board demolished his uncompleted building. While the Board had statutory power to do so, it was held that the power was not exercisable until the Board had accorded the person concerned a hearing; the action taken was in denial of natural justice and void; and the Board had committed a trespass for which Cooper was able to recover damages.

But what of those situations where the loss suffered is no less significant, yet not able to be pigeonholed — as, for example, in *Dunlop v Woollahra Municipal Council* [1982] AC 158 — into an existing tort cause of action? Should the person aggrieved be left to bear that loss? The case concerned a council's resolutions on building restrictions that caused economic loss to a land developer. The resolutions were subsequently declared void. Is it acceptable that people suffering loss because

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of wrongful administrative action succeed in damages because they are fortunately able to ground that loss in some existing category of tort, while others, with equal or more significant loss, have no similar redress because there is no tort category available?

These questions indicate the inequities and injustices existing under the present system of judicial review in relation to the recovery of damages. As Schwartz has potently pointed out:

A system of administrative law which fails to provide the citizen with an action in damages to make him whole . . . is actually but a skeletonised system. If individuals are to be protected adequately, an action for damages is the necessary complement of the action or review, which results only in the setting aside of improper administrative action.<sup>2</sup>

I argue that the elements of a tort of maladministration should consist of the provision of damages in two respects:

- for the wrongful administrative action *per se*;
- for losses caused by that wrongful administrative action.

Such a tort would constitute a new and unique form of remedy having its basis in a purely public law context and directed specifically at proceedings for judicial review.

In *Dunlop v Woollahra Municipal Council*, a distinction was drawn by the Privy Council between administrative action which is 'unlawful' and therefore illegal on the one hand, and administrative action which is 'invalid' and therefore void on the other. I have chosen the more neutral word 'wrongful' to describe any administrative action which would be held unlawful, illegal, invalid, void or voidable in proceedings for judicial review.

### The tort of maladministration

Should a tort of maladministration be included in our system of administrative law? Deane J in *Oceanic Sun Line Special Shipping Co. Inc. v Fay* (1988) 165 CLR 19 at 252, said when confronted with an invitation to consider the adoption of a new principle, due regard should be paid to 'three main reference points': 'legal principle, decided authority and policy' (at 252).

### The purposes which the tort would serve

In a private law remedial context, tort damages are designed to compensate the innocent party for losses inflicted by the wrongful conduct and acts of the wrongdoer. They are designed to compensate and indemnify the injured party and to place her/him in the same position as if the tort had not been committed. There are alternative remedies to damages, for example restitution. Restitution is particularly interesting in this area, especially given the decision of the House of Lords in *Woolwich Equitable Building Society v Inland Revenue Commissioner* [1992] 3 WLR 366, which posits a *prima facie* general right of recovery based solely on payment of money pursuant to an *ultra vires* demand by a public authority. However, restitution differs materially from damages and is not discussed here.

While a tort of maladministration should compensate a person aggrieved for any losses sustained as a result of wrongful administrative action, when considered in an administrative law context, such a remedy would also serve additional and different purposes, such purposes to be found in the purposes of judicial review.

Judicial review is the supervisory jurisdiction of the court, whereby it 'may only review the original decision on matters of law', 'may not substitute its own decision for the original one', but 'merely declare the original decision to be a nullity, or quash it, or prevent its being implemented, or compel the decision maker to redecide according to law, as the case may be'.<sup>3</sup> Judicial review is concerned with protecting the process, but not the correctness, of administrative decision making, but for what apparent purpose?

T.R.S. Allan argues the protection of the decision-making process is centred on a theory of individual rights protection:

As the ambit of judicial review is extended to meet the exercise . . . of public power, its rigour will also depend on how far individual rights can plausibly be identified and accorded suitable protection. [emphasis added]

Accordingly, judicial review in 'public law is [best] understood as protecting specific individual interests against excess of abuse of public power[s]'.<sup>4</sup>

T.G. Ison posits judicial review exists for the protection of aggregate public interests, and the furtherance of public policy objectives implicit in the exercise of administrative discretion, but the decided cases, particularly those concerned with justiciability, where public policy objectives are at their foremost, tend to reject and discredit Ison's view.<sup>5</sup> In *Minister for Arts, Heritage and Environment v Peko-Wallsend Ltd*, (1987) 75 ALR 218, Peko-Wallsend Ltd sought to challenge a Cabinet decision to nominate Stage 2 of Kakadu National Park for inclusion in the World Heritage List on the ground of denial of natural justice. The court held the decision to be non-justiciable, Bowen CJ commenting:

. . . it would . . . be inappropriate for this court to interfere to set aside a Cabinet decision involving such complex policy considerations . . . even if the private interest of the respondents was thought to have been inadequately considered. The matter . . . appears to lie in the political arena. [at 225]

Speaking of this decision, Sir Anthony Mason said:

In the Peko-Wallsend (Kakadu) case . . . the Cabinet decision related to a matter of foreign affairs, the implementation of the World Heritage Convention. That was a *complex political matter involving international and domestic policy considerations, rather than a determination of matters personal or particular to Peko-Wallsend*.<sup>6</sup> [emphasis added]

This illustrates that judicial review is concerned with the protection of individual rights and interests by ensuring that the decision-making process is carried out with regard to legal propriety. Although concerned with the relations between the government and individuals (a public law concern), judicial review in fact concentrates on the protection of individual interests (a private law concern), and attaches to individual 'rights and interests'. As Sir Gerard Brennan cogently suggests:

The line between powers whose exercise is exempt from [judicial review] . . . and the powers whose exercise is [susceptible of judicial review] . . . depend[s] on whether an exercise of the relevant power is apt to affect distinctively the interests of individuals rather than the interests of the public at large or a large section of the public. The courts assume jurisdiction to review procedures when individual interests are involved but the procedures affecting the interests of the public at large are left to political control.<sup>7</sup>

There are other theories of judicial review which suggest its primary concern is with communal, rather than individual, interests, illustrated by cases such as *Australian Conservation Foundation v The Commonwealth* (1980) 146 CLR 493,

*Chaelundi* (1991) 73 LGRA 126, and *Gouriet v Union of Post Office Workers* [1977] 3 All ER 75, where more than individual interests are at stake. Rather, there is a concentration on public interest issues of a political or policy nature such as the environment, apartheid, and freedom of communication with which the courts have considerable problems. It is arguable even here, that these communal interests boil down to individual interests.

There is also a particularly important secondary purpose ascribed to judicial review, fundamental to the achievement of its primary purpose of 'safeguarding individual interests against affection by illegal or irrational administrative action', and concerned to ensure a high qualitative standard of administrative decision making, referred to by Sir Gerard Brennan as: 'One of the important purposes of judicial review is the definition of principles to govern administration' (at 35).

Judicial review serves to ensure and engender better quality decision making which is a further protection of individual 'rights and interests', since, if decision making is improved, there is less likely to be arbitrary, illegal, irrational, and improper administrative action. (Although as a corollary of this secondary purpose, there is a possible third: administrative action be made subject to review by the courts as a principle of our democratic system of government.)

What are the 'rights and interests' protected by judicial review? They are different from those private law rights and interests found in tort (although these rights and interests do of course impede into public law), since they are related to the very nature of government decision making reposed in administrative bodies and agencies and susceptible to judicial review by the courts.

They are 'rights and interests' associated strictly with the process of administrative decision making with which judicial review is concerned. We speak of a 'right' of, or 'interest' in, procedural fairness, and similarly it is possible to speak of a 'right' to, or 'interest' in, the exercise of administrative powers *intra vires*, and the making of decisions by having regard to relevant, and exclusive of irrelevant, considerations. Since judicial review is concerned to ensure the propriety of administrative decision making and to protect the process involved in reaching a decision by means of the traditional remedies, so too should a tort of maladministration serve the purpose of protecting and ensuring the propriety of that process for the individual aggrieved. The new tort, by enabling damages, is capable of serving as a particularly potent device to ensure that standards of administration are improved, since to reach a valid and unimpeachable decision, a more cautious approach will be adopted.

The new tort would enable damages in administrative law to achieve two things: the private law purpose of compensation for losses suffered, normally associated with damages, and both the primary and secondary purposes of judicial review (and arguably more effectively than the current remedies). The primary purpose of damages in a public law context would be to compensate the aggrieved person who incurs loss from wrongful administrative action and the subsidiary purpose would be to protect the 'rights and interests' of that person which underlie the loss suffered — a remedy in damages for the wrongful administrative action *per se*.

This theoretical analysis presents a persuasive but previously uncanvassed argument for the award of damages through a new tort as a necessary element in an overall system of admin-

istrative law designed to protect individual rights and interests. While in terms of abstract theory a tort of maladministration is compelling, what are the practical considerations for or against it?

### Legal principle

Is there anything in terms of legal principle which might militate against the adoption of a tort of maladministration?

The distinction between 'public' law and 'private' law raises concerns in terms of legal principle for such a tort. What is meant by 'public' law and 'private' law? Sir Harry Woolf regards:

public law as being the system which enforces the proper performance by public bodies of the duties which they owe to the public . . . [And] private law as being the system which protects the private rights of private individuals or the private rights of public bodies.<sup>8</sup>

'Public' law deals with relations between individuals and the state, whereas 'private' law deals with relations between one individual and another. Because of the differing relationships involved in public law there should be different, and more extensive, consequences for administrative bodies which interfere with, wrongfully, the rights and interests of individuals. Precisely because administrative action is taken in the public interest and for the benefit of the community at large, the remedies in public law must be capable of ensuring that action is taken for that purpose alone, and the action taken has due regard to the procedural protections required to ensure action taken is not susceptible to adverse judicial review.

A strict adherence to the public/private law distinction may well suggest that damages should not be a part of public law, because, in terms of historical jurisprudence, damages are a creature of private, and have no place in public, law and, even where damages are claimed on judicial review, they may only be 'awarded against the administration provided always that a cause of action exists in private law'.<sup>9</sup> Such a strict jurisprudential and historical adherence is misconceived. First, although, jurisprudentially, declaration and injunction are purely private law remedial concepts, they have been adopted and adapted as public law remedies, specifically in the situation where there has been wrongful administrative action. Second:

jurisprudentially tort is a part of private law, and the tort of negligence has no place in that branch of the legal system which is concerned with public law.<sup>10</sup>

Both these points suggest there has been a degree of overlap between public and private remedies and, accordingly resort to legal principle to deny damages for wrongful administrative action *per se*, as a matter of historical analysis, would be unjustified and inconsistent.

In terms of the distinction between public and private law, nothing militates against the concept of a tort of maladministration as a matter of legal principle. If anything, resort to the public/private law distinction leads to the opposite conclusion.

Ultimately, the question whether our system of administrative law should provide a general right to damages for wrongful administrative action is probably one of balancing the competing policy considerations.

### Negative policy considerations

A plethora of negative policy considerations has been advanced by reform commissions, commentators and judges

against the adoption of a general right to damages for wrongful administrative action. I shall only deal with the most important of these.

#### *Negligence and other torts available*

The New Zealand Committee suggested: 'the expanding tort of negligence already provides a remedy over a broad area of local body action and decision making'.<sup>11</sup>

The existing torts are inapplicable to wrongful administrative action *per se* and consequent losses, the subject of a tort of maladministration. Damages are currently only available where the wrongful administrative action conforms to a known and existing tort, such as trespass, false imprisonment, the *Beaudesert* tort (*Beaudesert Shire Council v Smith* (1966) 120 CLR 145), breach of statutory duty, negligence, and misfeasance in a public office.

In order to establish misfeasance in a public office it must be proved the administrator acted maliciously or knowingly in abuse of the office. Often this will be difficult to prove, especially when the vast majority of wrongful administrative action is the result of administrative inefficiency and incompetence. Real problems are involved with negligence in determining whether a duty of care is owed and whether it has been breached. The requirement that something more than wrongful administrative action must be shown before damages can be recovered involves people aggrieved attempting to force wrongful administrative action into the mould of existing torts in order that damages might be recovered, a path likely to fail as *Dunlop v Woollahra Municipal Council* and *Chan Yee Kin v Minister for Immigration, Local Government and Ethnic Affairs* (1991) 103 ALR 499, indicate.

Precisely because of the limitations of existing torts in public law, a new and unique remedy is required, one such remedy being the introduction and development of a tort of maladministration.

#### *Pecuniary remedies available already*

As a reason for not recommending 'a broad new liability to pay damages for loss suffered in consequence of unlawful administrative acts or decisions' the New Zealand Committee also contended 'the law already provides a pecuniary remedy for many kinds of unlawful acts (para. 25). There are two means by which damages are already provided by the law: where a claim is made on the basis of an existing tort category; and where the Ombudsman recommends the payment of an *ex gratia* amount.

The argument that pecuniary remedies are available on the basis of existing tort categories is pointless and illogical: it is premised on the notion that because there is a remedy for X, no remedy is needed for Y.

Although *ex gratia* payments have been paid by the Ombudsman for wrongful administrative action, problems associated with this form of relief make it inadequate as a remedy sufficient to counter the need for a general right to damages. *The Commonwealth and Defence Force Ombudsman, Annual Report 1987-1988*, has stated:

... on occasions, the only remedy that will adequately compensate a person for defective administration is an act of grace [*ex gratia*] payment. A person affected by defective action will not have a legal claim but the unfairness flowing from the departmental conduct over which the person affected had no control should be recognised and remedied as far as possible. [at 23]

First, the number of matters brought before the Ombudsman are small compared with the number of successful judicial review proceedings in the courts. Consequently, '[i]t is surely highly undesirable that the present situation, where the Ombudsman is able, in effect, to award compensation when the courts cannot to do so, should continue . . .'<sup>12</sup>

Is it just or right that damages be recoverable for *per se* wrongful administrative decisions by those who obtain a favourable recommendation from the Ombudsman, but not by others, either because they did not resort to invoking the review powers of the Ombudsman, or the Ombudsman did not have jurisdiction to intervene, or the Ombudsman declined to be involved either as a result of limited resources or because the issue did not have more wide ranging effects? These anomalies suggest one of two solutions: either the Ombudsman's power in this area be abolished, or preferably and more equitably, damages for wrongful administrative action be extended through the courts to all who suffer loss as a result thereof.

Second, the Ombudsman's recommendation to make an *ex gratia* payment has no binding force and may be rejected by the administrative body responsible for having acted wrongfully. This is most unsatisfactory because the administrative body is given discretionary authority over compensatory payments about its own wrongful action. If wrongful administrative action occasions loss, compensation should be awarded.

#### *Judicial restraint on the scope of judicial review*

It is said 'a very real danger' in allowing a general right to damages would be a reluctance by the courts to widen the scope of judicial review in 'borderline' cases since they will be hesitant to quash decisions which would lead to a claim for damages. While this argument has some merit in that it would be undesirable for the courts to limit the scope of judicial review, it is unconvincing for a number of reasons.

First, the courts may well view a tort of maladministration as a further protection in the remedial armoury and, arguably, be more inclined to use this remedy together with a more expansive judicial review to secure the required protections. There would be no distortion of the judicial review process.

Second, the courts have been perennially concerned with this type of dilemma in other areas of the law. With the tort of negligence a whole range of possibly 'borderline' cases have involved considerable liability, yet the courts have been undeterred from expanding negligence into areas such as nervous shock and negligent misstatement.

#### *Overkill*

In *Rowling v Takaro Properties Ltd* [1988] 1 AC 473 Lord Keith of Kinkel considered it a real concern that the imposition of damages liability for wrongful administrative action may actually lead to reduced, rather than increased, standards of administration because the threat of liability is likely to cause the administrator to be over-cautious in reaching decisions and to unnecessarily increase the time and cost of the decision-making process, with the result that the 'cure may be worse than the disease' (at 502).

While this constitutes a legitimate policy concern because significant problems may be caused to administrative bodies in the short term, the long-term implications are the more important, if justice is ultimately to be done.

If judicial review is concerned to protect individual rights from arbitrary, illegal, irrational and improper administrative action, and to ensure a higher standard of administrative decision making, then remedial damages can be of cogent force in ensuring that these objectives are achieved. The existing remedies are ineffective to ensure the second objective of judicial review, and *ex hypothesi* the primary objective. There needs to be some form of 'bite' which compels administrative bodies to consider more carefully and conscientiously their decision-making processes. The provision of a tort of maladministration would ensure administrative bodies act more carefully and meticulously in reaching their decisions in accordance with law. This not only decreases the likelihood that losses may be caused to the subjects of the decisions, but also ensures a higher degree of administrative decision making overall.

Do we deny compensation to the person aggrieved because, in the short term, administrative bodies are likely to be inhibited in their decision-making functions, or do we, accepting the risk of short-term disruption and inhibition, focus on the long-term benefits of higher quality administrative action, the reduction of loss caused to individuals, and relief for those aggrieved in both the short and long term, and allow compensation? Obviously the latter option is the more equitable and definitely preferable.

#### *Need to seek legal advice*

Maybe a new tort would cause administrators to obtain legal advice before making decisions, thereby occasioning unnecessary delay in the decision-making processes of administrative bodies. Of all the policy considerations militating against a general right to damages, this is arguably the most persuasive, largely because it is not limited to the short, but persists into the long, term.

This need to seek legal advice may only arise in a small number of 'borderline' cases, from which two possible courses of action will be open to administrative bodies on the basis of cost-benefit analysis: either more expediently and efficiently by-pass obtaining legal advice and simply pay out damages if and when the action is declared wrongful by the court, or obtain the legal advice, even if inefficient delay occurs in some few instances, without any major disruption to its normal decision-making functions.

In the absence of empirical data, there is a range of countervailing considerations which, although never overcoming the need to seek legal advice, indicate that its seeking has probable, desirable, rather than undesirable, long-run consequences.

Damages can have a curative effect on decision making by serving as an extra, and more potent, accountability mechanism requiring administrators to have proper due regard to the legality, rationality, and propriety of the processes required to arrive at an unimpeachable decision, the seeking of legal advice being but an inevitable consequence. The seeking of legal advice is likely to improve and ensure a higher quality of administrative decision making in the long term.

The need to seek legal advice may lead to a more equitable loss distribution between the administration and the individual by actually reducing losses caused to people aggrieved, since legality is likely to be determined before a possible faulty decision is made. Assume an *ultra vires* decision causes loss. If damages are unavailable, the decision will simply be quashed, with no incentive for the administrator to seek legal advice on the limits of his/her powers. If damages were available, greater caution would be exercised by him/her and legal advice obtained to determine whether the proposed decision is *ultra*

or *intra vires*. If the former is advised, no decision will be made, and ostensibly no loss will be suffered; if the latter, again no loss results, since the decision is within power. Damages potentially shift the possible loss of people aggrieved onto the administration in the form of a prolonged decision-making process, since decisions made after the obtaining of legal advice are more likely not to involve wrongful administrative action.

One argument against the efficacy of seeking legal advice is that the legal advice may be incorrect. Even so, the overall benefits outweigh the possible costs from incorrect advice being obtained in isolated cases.

## Positive policy considerations

### *Anomalies in the law*

First, damages are permitted where negligence or some other tort is proved but, in their absence, denied although clear illegality, or wrongfulness, is established. Second, some people may receive a compensatory award for loss caused by wrongful administrative action by an *ex gratia* recommendation from the Ombudsman, while others receive no compensation because they have not, or cannot, obtain her/his assistance. Third, Sadler, considering the tort of misfeasance in a public office, points out the anomaly that whereas wrongful administrative action involving 'conscious abuse' is not tolerated by the law, wrongful administrative action not having that mental element is not, indicating that: "The plaintiff's loss after all, is no greater because of the defendant's motive. His loss is caused by the defendant's act, not his motive."<sup>13</sup>

Each of these indicates there is significant inequity and injustice in our system of administrative law capable of redress by the provision of a tort of maladministration.

### *Loss distribution*

Government decision making and administrative action is a 'public enterprise', decisions being made about individual members of the community but for the benefit and in the interests of the community as a whole. If loss is occasioned to an individual by a decision made in the public interest, it should be the administration and, more broadly speaking, the community generally, which should bear the costs of that wrongful administrative action.

## Conclusion

Whether considered from the perspective of judicial review theory, legal principle, or policy, there are compelling reasons for the introduction into our system of administrative law of a new and unique tort of maladministration and enabling damages to be claimed on two bases: one a remedy of damages for wrongful administrative action *per se*; the other a remedy of damages for losses caused by wrongful administrative action.

All that would be required to establish the tort of maladministration would be that wrongful administrative action had been taken by the administrative body occasioning loss.

The development of any such tort by the courts, in the absence of legislative enactment, would require a careful judicial approach. The courts would need to state categorically that the tort is new and unique and designed for purely administrative law judicial review purposes in order to avoid the thwarted result of the High Court in *Beaudesert Shire Council v Smith*, where the court attempted to develop a new tort based on the old action upon the case.

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tions on police verbal and the rise in the power of the Internal Intelligence Unit of the Corrective Services Department. (Brown and Duffy 1991, above, pp.198-202). But some of the individual cases investigated by the ICAC occurred prior to the Yabsley regime and the IIU was established in 1985. It may have been worth investigating whether another condition for the rise of prison informants was the state of the internal administration of the Department of Corrective Services during and after the scandal surrounding the early release on licence scheme in NSW in the early 1980s and the role of key senior officials common to both periods. The Jackson licence release scheme was referred to the ICAC in August 1988 by then Premier Greiner (*SMH* 'Jackson's jail release scam to go to ICAC' 19 August 1988). For a detailed treatment of this period see Chan, Janet, *Doing Less Time*, Sydney Institute of Criminology, 1992.

8. *Lance William Chaffey & Ors v Independent Commission Against Corruption* Supreme Court of NSW Administrative Law Division 29 January 1993 unreported.
9. *Independent Commission Against Corruption v Chaffey & Ors* NSW Court of Criminal Appeal 30 March 1993 unreported.
10. Under s.31(1) of the *Independent Commission Against Corruption Act* 1988 the Commissioner has a discretion to hold hearings 'in public or in private, or partly in public and partly in private'. The legislation had been amended in 1990, the earlier form of s.31(1) providing that 'a hearing shall be held in public, unless the Commission directs that the hearing be held in private'.

The amendment was prompted by the concerns of the Joint Parliamentary Committee of Parliament set up under s.63 of the *ICAC Act* 'to monitor and to review the exercise by the Commission of its functions' that 'reputations can be unfairly and unnecessarily damaged in public hearings'. Under s.31(3) 'the Commissioner is obliged to have regard to any matters which it considers to be related to the public interest.' Section 12 provides that 'in exercising its functions, the Commission shall regard the protection of the public interest and the prevention of breaches of public trust as its paramount concern'.

11. A further development in this inquiry is the laying of a charge of contempt of the ICAC against *Sydney Morning Herald* reporter Ms Deborah Cornwall. The charge relates to her refusal to reveal her sources in relation to an article in which she quoted an unnamed police officer stating that 'it was Neddy who dopped in' a nominated prisoner for a murder and that this person 'might be interested to know that. He is doing life at the Bay as well'. Mr Temby has argued that the statement was wilfully false information designed to discredit Smith and warn off other potential ICAC informants. The journalists code of ethics protecting the confidentiality of sources is not usually regarded as extending to the provision of knowingly false information. While Ms Cornwall appeared to acknowledge before the ICAC that she had been misled, in a later hearing before the Supreme Court her counsel challenged the contention that the statement was obviously false. The matter has been set down for late April. See Malcolm Brown, 'Herald reporter to face contempt charge', *SMH* 26.3.93; Brown, Malcolm, 'Contempt charge to go to hearing', *SMH* 27.3.93.

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Solicitors advising farmer retirees might well bring proceedings testing the applicability of these methods of calculating pensions when faced with particular needs of their clients. Resolving this uncertainty would certainly help farmer retirees take more decisive action over the handing down of the family farm. Another uncertainty is the fact the *Social Security Act* is always being amended.

The eligibility of farmers for pensions depends on findings of fact which are subjective in nature, and by implication, unpredictable. The current approach to assessing pensions is based on a new government policy as yet untested in the courts. The implication is that farmers are welfare recipients, not the holders of clear entitlements.

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**LAWYERS AND SOCIAL WORKERS IN COLLABORATION**

The School of Social Work at the University of New South Wales is conducting research into ways of facilitating and improving collaboration between social workers and lawyers. The project is funded by the Law Foundation of New South Wales and aims to examine areas of practice in which the roles of the two professions overlap or where they share common skills and knowledge.

The research will identify the respective tasks undertaken by social workers and lawyers in these areas, and the clarity of mutual understanding. It will place particular emphasis on articulating and publicising innovative strategies for collaboration between the two professions. A further aim is to develop new methods of teaching such skills and strategies to undergraduate students and in continuing education.

The researchers will conduct interviews with practitioners of both disciplines as well as convening group discussions on key issues identified. The results of the research will be published in early 1994 and will be disseminated as widely as possible.

The coordinator of the project, Mick Hillman, is the social work placement supervisor at Kingsford Legal Centre in Sydney. The centre is a compulsory placement for students enrolled in Australia's only combined Social Work/Law degrees program.

If you are interested in discussing or participating in this research, please contact Jane Hargreaves, (02) 697 4764 or Mick Hillman (02) 398 6366.