

Court decided that a former student of Monash University was entitled to access to his marks in several subjects undertaken at the University. Whether Commonwealth tertiary educational institutions will be required to follow suit should be clarified when a decision is handed down in a recent case heard by the AAT involving applications by five former students at the Australian National University who are seeking access to records held by the University's Department of History (Re James and Others and Australian National University).

Access to Taxation Records

A taxpayer's success in a comprehensively argued case before the AAT involving access to documents relating to the applicant's personal, individual and partnership returns for three successive years has clarified to a large extent questions about individuals' rights of access to their taxation records (Re Murtagh and Commissioner of Taxation (1984) 54 ALR 313).

Conclusive Certificate : Relevant Documents

A conclusive certificate issued in respect of certain documents pursuant to the Freedom of Information Act also applies to copies of those documents (Re Peters and Public Service Board; Re Peters and Department of Prime Minister and Cabinet, 10 August 1984).

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

The New (State) Administrative Law
Recent Developments

IN BRIEF

Major proposals for reforms in administrative review in Victoria and South Australia appear to have been largely modelled on key elements of the Commonwealth's administrative law system. In Victoria, the Administrative Appeals Tribunal Bill 1984 proposes the establishment of a general appeals tribunal similar to the Commonwealth AAT, while in South Australia the Law Reform Committee has proposed a number of administrative law reforms, including a general appeals tribunal and an Administrative Decisions (Judicial Review) Act, both closely resembling the Commonwealth models.

INNOVATIONS AND DEVIATIONS

For observers of the Federal administrative law scene the significance of the proposals lies in the innovations and in the deviations - other than those of a purely local nature - from the Commonwealth model.

Victoria

Generally speaking, the composition, powers and procedures of the Victorian AAT closely resemble the Commonwealth AAT. The major differences would appear to be as follows.

The President. The Victorian Bill requires the President of the Tribunal to be a person who is, or is qualified to be, appointed as, a judge of the County Court, while the Commonwealth Act requires the President to be a Judge of Federal Court of Australia.

Policy Directions. The Victorian Bill (sub-cl. 25(3)) requires the tribunal to comply with certain Ministerial policy directions binding on the primary decision maker whose decision is under review. The Commonwealth AAT would be bound by similar directions but the Victorian scheme evinces an intention to restrict the review of Ministerial policy on a wider basis than occurs in practice with respect to the Commonwealth body.

Representation. As introduced into the Parliament, the Bill provides that, except in taxing matters, a person may only be represented before the Victorian tribunal with the tribunal's consent. The Commonwealth legislation provides no impediment to representation.

Reasons for Decision. The Victorian Bill provides for a right to request the reasons for a decision which is subject to review by the tribunal, but initially only a "short statement of reasons" may be requested. Upon receipt, a more detailed statement identical to the Commonwealth model may be requested.

Vexatious and Frivolous Applications. The Victorian Bill empowers the tribunal to dismiss an application it considers to be vexatious or frivolous without proceeding to review the decision or complete the review. The Commonwealth AAT has no equivalent power.

Costs. The Victorian tribunal will be able to award costs. However, it seems that, except in taxing matters, an award will not be automatic, but will depend on the particular circumstances of the case. The Federal AAT is only empowered to award costs in its jurisdiction with respect to the Compensation (Commonwealth Government Employees) Act.

Independence Advice. Neither the Victorian Bill nor the Minister's Second Reading Speech refer to the possibility of the establishment of a source of independent advice to the Government about the development of administrative review. The Commonwealth Government's independent adviser is, of course, the Administrative Review Council.

A final point of significance raised by the Victorian proposal is the abolition of the Victorian Taxation Board of Review and the incorporation of its jurisdiction in the Victorian AAT. In the Commonwealth sphere, the Administrative Review Council recommended in June 1983 that the Commonwealth Taxation Boards of Review be abolished and their jurisdiction transferred to the Commonwealth AAT. A final decision has not yet been made on that report.

South Australia

The eighty-second Report of the Law Reform Committee of South Australia, Administrative Appeals (1984) recommends:

- establishment of a general appeals tribunal with similar composition, powers and procedures as the Commonwealth AAT;
- enactment of a basic code of administrative procedure;
- enactment of an Administrative Decisions (Judicial Review) Act in virtually identical terms to the Commonwealth Judicial Review Act; and
- the establishment of an Administrative Review Committee similar to the Commonwealth Administrative Review Council, with the function to oversee the development of the reforms in State administrative law.

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

The following recently published works relating to administrative review may be of interest.

Bayne, Peter

'Freedom of Information : What You Can't and Can Get and How to Get it' (1984) 9 Legal Service Bulletin 121