

- . Customs and Excise. A draft Report on rights of review of decisions under the Customs Act and Regulations (other than censorship and anti-dumping matters) is currently being considered by the Council. The preparation of a draft Discussion Paper on the review of decisions under the Customs Tariff (Anti-dumping) Act and related legislation is continuing. Work has commenced on the preparation of a draft Report on censorship decisions.
- . Damages in Administrative Law. The preparation of a draft Discussion Paper is continuing.
- . Impact. A draft integrated Report is being prepared on the basis of four case studies conducted by the Council.
- . Migration. A draft Report will be considered by the Council at its June meeting.

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Administrative Appeals Tribunal

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NEW DIVISION

A Veterans' Appeals Division of the Tribunal has been created by regulations made on 27 November 1984 and action is currently being taken to appoint members to that Division. The AAT has jurisdiction to hear appeals from the newly-created Veterans' Review Board and several such appeals have already been lodged.

## NEW JURISDICTION

The following recent legislation confers jurisdiction on the AAT:

- . Australian Citizenship Regulations (Amendment) 1985
- . Co-operative Societies (Amendment) Ordinance 1985 (A.C.T.)
- . Credit Ordinance 1985 (A.C.T.)
- . Legal Aid (Amendment) Ordinance 1985 (A.C.T.)

## KEY DECISIONS

### Student Assistance

The AAT's decision in Re Kobor and Department of Education and Youth Affairs (29 January 1985) has revealed a legislative anomaly which makes the AAT's jurisdiction to review decisions of Student Assistance Review Tribunals ('SARTs') dependent not on the date of the SART's decision, but on the date on which a request for internal reconsideration was made. Because of this anomaly the Tribunal held that it had no jurisdiction in the particular case.

### Social Security

In Re Sunamura and Secretary of the Department of Social Security (29 January 1985) the statutory requirement that 'special circumstances' exist for extending the claims period in order that payment of family allowance may be backdated was satisfied by the fact that the claimant was unaware of her entitlement and it was not something as to which she could be expected to enquire. In Re Ellis and Secretary to the Department of Social Security (15 February 1985) the Tribunal was

not satisfied that 'special circumstances' existed for extending the family allowance claims period. However, the Tribunal held that the late claim made by the applicant simply constituted notice of circumstances sufficient to bring about payment of family allowance which the applicant was qualified to receive as the parent of a student child.

#### Compensation

The development of compensation neurosis over the failure of the Commonwealth to pay compensation in respect of an allegedly disabling physical condition that is not itself compensable is not a ground for payment of compensation: Re Kirkpatrick and Commonwealth of Australia (30 January 1985).

Air-conditioning which aggravated the applicant's respiratory problems has been held by the Tribunal to be a deleterious work environment which incapacitated the applicant from work: Carey and Australian Telecommunications Commission (21 January 1985).

In Re Canberra College of Advanced Education and Culpin (24 January 1985) the Tribunal held that the suffering of a heart attack during a lunch-time game of squash at the respondent's place of employment was compensable because it occurred at the place of employment during an ordinary recess in employment, it not being necessary to show that the injury arose out of or in the course of employment.

Injury sustained while travelling from home to work the evening before active duty commences is compensable: Re Lockley and Commonwealth of Australia (18 February 1985).

#### Taxation

In Re Austin and Tax Agents' Board (New South Wales) (8 March 1985) the Tribunal held that it had no jurisdiction to review a decision refusing an application for a tax agent's licence, but referred to the fact that in its Second Annual Report (paras 54-56) the Administrative Review Council had recommended that such jurisdiction be conferred on the AAT.

#### Customs

A refusal by the Minister to make a new determination is not a 'decision forming part of the process of making, or leading up to the making of' the decision in question under the Customs Act 1901, and is therefore not reviewable by the AAT: Re Barrington Ingram Pty. Limited and Collector of Customs, Victoria (8 March 1985).

### Export Development Grants

In Re Thompson and Growers Co-operative Company Pty. Limited and Export Development Grants Board (25 January 1985), the Tribunal held that the payment of fees to a consultant who had been engaged principally to increase demand for a flagging product and secure export sales was 'eligible expenditure' for an export market development grant, because it satisfied the requirement that the payment be made for 'the purpose of advertising or other means of securing publicity or soliciting business'.

### STATISTICAL TRENDS

The table below shows a consistently high number of applications in the compensation and FOI areas. There has been, however, a recent trend in the social security jurisdiction of a decreasing number of applications, due possibly to the normative effect of AAT decisions. This trend will no doubt reverse when appeals against valuations made under the Social Security and Repatriation (Assets Test and Budget Measures) Act 1984 eventually come before the AAT.

<u>Jurisdiction</u>	<u>No. of Applications to the AAT</u>				
	Jan/Mar 1984	Apr/Jun 1984	Jul/Sep 1984	Oct/Dec 1984	Jan/Mar 1985
Social Security	180 (36%)	175 (41%)	180 (37%)	147 (36%)	118 (30%)
IPTAAS	144 (28%)	102 (24%)	84 (17%)	20 (5%)	37 (9%)
FOI	43 (8%)	27 (6%)	77 (16%)	94 (23%)	82 (21%)
Compensation	74 (15%)	55 (13%)	59 (12%)	39 (9%)	44 (11%)
Other	65 (13%)	68 (16%)	84 (17%)	113 (27%)	110 (29%)
TOTAL	<u>506</u>	<u>427</u>	<u>484</u>	<u>413</u>	<u>391</u>

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Commonwealth Ombudsman

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Annual Report

The Commonwealth Ombudsman's Annual Report for the year ending 30 June 1984 was tabled in the Parliament on 27 February 1985 and in the ACT House of Assembly on 4 March 1985. Professor Richardson stated that the Ombudsman's office was barely able to cope with the demand on its services because he was unable to obtain additional investigation staff due to Government imposed staff ceilings.

Some points discussed in the Report are outlined below.

- . During the year the Ombudsman's office received a record number of approaches (over 20,000) and the ratio of complaints rose from 76.8 (in 1979-80) to 129.7 per 100,000 of Australia's mean population. The volume of complaints places the office amongst the world's largest Ombudsman offices.
- . There were three major failures to consult with the Ombudsman about legislative developments directly affecting his office - these concerned the National Crime Authority, the Merit Protection and Review Agency and the Australian Protective Service.
- . The Ombudsman was concerned with:
  - continued challenges to his jurisdiction in programming matters by the Australian Broadcasting Corporation; and
  - the inability of the Taxation Office to process cases for transmission to Boards of Review within a reasonable time (at 30 June 1984 there were 53,000 outstanding applications).
- . Because of its inadequate staffing level, the office had experienced considerable difficulties in the FOI area, not only as a subject agency in responding to requests for access and in participating in AAT proceedings, but also in relation to the Ombudsman's new role as general counsel before the AAT. Scarce resources had compelled the Ombudsman to decline to act as general counsel in all but one case.