

The best solution is to have a two-tiered structure of appeals in high volume jurisdictions, as exists at present in relation to both social security and repatriation entitlements. Such a system involves a first-tier tribunal which provides speedy, informal, and economical review at which level it is expected that most appeals will be resolved to the parties' satisfaction and a second-tier of appeal involving the AAT which gives detailed consideration to the more complex cases and develops principles of general application for the guidance of primary decision makers and the first-tier tribunal alike. The role and function of the two review tribunals in such a structure are quite distinct but are nevertheless complementary.

A two-tiered structure of appeals was recently established in the repatriation area, largely in accordance with the Council's advice in its Report No. 20 Review of Pension Decisions Under Repatriation Legislation. The system has been in operation since the beginning of 1985 and appeals are now starting to flow through from the Veterans' Review Board to the AAT. It may be some time before the AAT's decisions begin to affect the quality of primary decision making and the lower level of review but it is expected that this jurisdiction will eventually follow the pattern which has been established in social security.

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## R E G U L A R R E P O R T S

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### Administrative Review Council

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#### COUNCIL PUBLICATIONS

#### Report No. 22: The Relationship Between the Ombudsman and the AAT

On 21 May 1985 the Council's 22nd Report, The Relationship Between the Ombudsman and the AAT was tabled in Parliament by the Attorney-General. This report compares the different nature, functions, scope, remedies and review procedures of the Ombudsman and the AAT. It also describes and analyses the legislative provisions which establish links between the Ombudsman and the AAT, such as: the discretion of the Ombudsman not to investigate complaints where alternative avenues of appeal exist; advisory opinions of the AAT in Ombudsman cases; the Ombudsman as general counsel before the AAT in FOI cases; and certification of delay by the Ombudsman in relation to certain decisions reviewable by the AAT. The report refers to the overlap of Ombudsman and AAT jurisdictions. Such an overlap is considered desirable so that

aggrieved individuals are offered a satisfactory range of review options. No wastage or duplication is considered to result from the overlap.

Several amendments to the Ombudsman Act 1976 and the Administrative Appeals Tribunal Act 1975 were recommended by the Council in order to improve the relationship between the two review bodies. These proposals are that:

- . criteria should be spelled out in legislation to guide the Ombudsman's discretion not to investigate a complaint;
- . the Ombudsman and the AAT should be empowered to refer matters to each other where appropriate; and
- . the Ombudsman should be empowered to seek directly from the AAT an advisory opinion in relation to any action under investigation, instead of being required (as at present) to refer a question via the principal officer of the department or authority concerned.

#### CURRENT WORK PROGRAM

- . Access. As noted in the last issue of Admin Review, Stage One of the Access Program is the Notification of Review Rights project. The Council's Secretariat is currently conducting detailed questionnaires on the notification practices of various departments and statutory authorities.
- . AD(JR) Act. The nature of this project was described in the October issue of Admin Review. Interim advice was provided by the Council to the Attorney-General on 4 July 1985 relating to a proposal to exclude decisions taken by magistrates in committal proceedings for Commonwealth offences from review under the AD(JR) Act.
- . Customs and Excise. Report No. 23, Review of Customs and Excise Decisions: Stage Two, was transmitted to the Attorney-General on 28 June 1985. Report No. 24, Review of Customs and Excise Decisions, Stage Four: Censorship will be transmitted during August. A Discussion Paper on Stage Three, dealing with the review of decisions under the Customs Tariff (Anti-dumping) Act, is being prepared.
- . Damages in Administrative law. The preparation of a draft Discussion Paper is continuing.
- . Migration. A draft Report will be considered by the Council at its October meeting.

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Administrative Appeals Tribunal

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NEW JURISDICTION

The following recent legislation confers jurisdiction on the AAT:

- . Bounty (Ships) Amendment Act 1985
- . Bounty (Injection-Moulding Equipment) Amendment Act 1985
- . Broadcasting and Television Amendment Act 1985
- . Customs Amendment Regulations 1985
- . Customs and Excise Legislation Amendment Act 1985
- . Dairy Produce Market Support Act 1985
- . Dairy Products (Export Inspection Charge) Collection Amendment Act 1984
- . Electricity (Amendment) Ordinance 1985 (ACT)
- . Excise Amendment Regulations 1985
- . Export Inspection (Charge Collection) Act 1985
- . Health Legislation Amendment Act 1985
- . National Occupational Health and Safety Commission Act 1985
- . Petroleum (Submerged Lands) Amendment Act 1985
- . Prescribed Goods (General) Orders 1985
- . Sales Tax Laws Amendment Act 1985
- . Statute Law Miscellaneous Provisions Act (No. 1) 1985

KEY DECISIONS

Social Security

Invalid Pensions. The Tribunal has called for the introduction of a special benefit for persons over 50 or 55 years of age who, having been unemployed, have no realistic expectation of finding work again: Re Summerfeld and Secretary to the Department of Social Security (16 April 1985). In that case, the applicant suffered from two medical conditions but, in the Tribunal's opinion, it was more the applicant's advanced age and current economic conditions which limited his ability to engage in