

Australian Federal Police Act 1979

It is understood that recommendations made in the Council's 15th Report, Australian Federal Police Act 1979 : Sections 38 and 39 will be considered when proposed amendments to the principal Act are made during 1985.

Air Pollution Ordinance

The Air Pollution Ordinance 1984 (A.C.T.) implements recommendations made by the Council, including the conferral of jurisdiction on the AAT in relation to a number of decisions by the Pollution Control Authority (see Third Annual Report 1979, paras 64-68).

Administrative Appeals Tribunal

JURISDICTION

The following recent legislation confers jurisdiction on the AAT:

- . Air Pollution Ordinance 1984 (A.C.T.)
- . Bounty (Computers) Act 1984
- . Bounty (Electric Motors) Act 1984
- . Business Franchise (Tobacco and Petroleum) Ordinance 1984 (A.C.T.)
- . Meat Inspection General Orders 1984
- . Meat Inspection (ACT) Orders 1984
- . Meat Inspection (NSW) Orders 1984
- . Pharmacy (Amendment) Ordinance 1984 (A.C.T.)
- . Registration of Deaths Abroad Act 1984
- . Water Pollution Ordinance 1984 (A.C.T.)

KEY DECISIONS

Social Security

Unemployment Benefits. Decisions not to grant unemployment benefits to applicants who were members of unions involved in industrial action were affirmed by the AAT in four cases, all heard together: Re Hennessy and Secretary to the Department of Social Security, Re Schol-Pena and Secretary to the Department of Social Security, Re Beleff and Secretary to the Department of Social Security, and Re Baker and Secretary to the Department of Social Security (4 January 1985).

Invalid Pensions. The AAT has held that reciprocal social security legislation between Australia and New Zealand enabled the aggregation of periods of residence in both countries for the purposes of pension entitlement, and that payment of a New Zealand pension precluded payment of an Australian pension: Re Wilson and Director-General of Social Security (3 December 1984).

Widow's Pension. A decision refusing a widow's pension to a man was affirmed by the AAT in Re Harley and Director-General of Social Security (5 October 1984). The Tribunal stated that sub-section 59(1) of the Social Security Act 1947 was not subject to section 23 of the Acts Interpretation Act 1901 (which provides that words importing a gender include every other gender) as it evinced a contrary intention by defining the word 'widow' in exclusively female terms, nor was it subject to the Sex Discrimination Act 1984 because of the specific exemption granted under section 40 of that Act. However, the Tribunal noted that this instance of discrimination between men and women in similar circumstances may be contrary to Australia's obligations under international covenants.

Customs and Excise: Diesel Fuel Rebate

The AAT has held that there must be a 'sufficient' and not merely 'tenuous' connection between the use of fuel and 'mining operations' in order to obtain a diesel fuel rebate under section 78A of the Excise Act 1901. A decision denying a diesel fuel rebate was set aside by the Tribunal in a case involving the use of fuel to generate power for a mining town: Re Cliffs Robe River and Associates and Collector of Customs (2 November 1984). In Re Australian National Railways Commission and Collector of Customs, South Australia (28 November 1984) the Tribunal held that a diesel fuel rebate was

payable for fuel used in hauling lead and zinc concentrates, and generating electricity in 'camp trains'. However, the Tribunal found that a rebate was not payable in respect of the hauling of livestock, fertiliser and grain as there was not a sufficient connection between these activities and 'primary production', i.e. the rearing of livestock, the cultivation of the soil, and the cultivation and gathering of grain. Appeals have been lodged with the Federal Court in both these cases.

Statistical Trends

The table below indicates the continuing decline in the number of IPTAAS applications following the requirement that resort be made to reconsideration processes before AAT review. A less marked decline in the number of applications has occurred generally and, in particular, in the social security and compensation areas, due perhaps to the normative effect of AAT decisions. The major increase in the number of applications has been in the FOI area, possibly because of increased public awareness of the FOI Act.

<u>Jurisdiction</u>	<u>No. of Applications to the AAT</u>			
	Jan/Mar 1984	Apr/Jun 1984	Jul/Sep 1984	Oct/Dec 1984
Social Security	180 (35.57%)	175 (40.98%)	180 (37.19%)	147 (35.59%)
IPTAAS	144 (28.46%)	102 (23.88%)	84 (17.36%)	20 (4.85%)
FOI	43 (8.50%)	27 (6.32%)	77 (15.91%)	94 (22.76%)
Compensation	74 (14.62%)	55 (12.88%)	59 (12.19%)	39 (9.44%)
Other	65 (12.85%)	68 (15.93%)	84 (17.36%)	113 (27.36%)
TOTAL	<u>506</u>	<u>427</u>	<u>484</u>	<u>413</u>

Commonwealth Ombudsman

Visit of the United Kingdom Select Committee

The Select Committee of the House of Commons on the Parliamentary Commissioner for Administration will be visiting Australia in February 1985 and will meet at some stage with the Commonwealth Ombudsman, officers from the Attorney-General's Department, and the Chairman and Director of Research of the Administrative Review Council. The Committee is particularly interested in the operation of Australian Ombudsmen and how they handle complaints, including investigations in the following areas:

- . complaints against police;
- . public service grievances; and
- . freedom of information disputes.

Investigation Documents Held to be Exempt Under Victorian FOI Act

See report on the Victorian County Court decision in Deasey-v-Geschke (1 November 1984) at page 14 below.

Statistical Trends

The table below shows the increasing trend towards the making of oral, as opposed to written, complaints. The month of October saw the peak number of new complaints and also the largest percentage of oral, rather than written, complaints in the last six months of 1984.

No. of Complaints Received/On Hand

	Jul	Aug	Sept	Oct	Nov	Dec

Complaints received:						
Oral	1196 (80.76%)	1503 (81.07%)	1530 (84.76%)	1836 (85.51%)	1633 (82.73%)	1385 (85.28%)
Written	285 (19.24%)	351 (18.93%)	275 (15.24%)	311 (14.49%)	341 (17.27%)	239 (14.72%)
TOTAL Complaints on hand	<u>1481</u>	<u>1854</u>	<u>1805</u>	<u>2147</u>	<u>1974</u>	<u>1624</u>
	1967	1996	1959	2011	2002	1960
