

under the Regulations. The applicant managed a goat-breeding and goat-meat and cashmere wool production business of his father. It was argued that as a small number of the animals were owned by the applicant, he was similarly engaged in business. The AAT held that his activities were too miniscule to amount to the carrying on of a business and, moreover, the activities merged with his father's business so as to lose any identity they might otherwise have. The primary decision was affirmed.

Substantial Dependency

In Re DFRB Authority and Brown (19 August 1985) the Tribunal considered whether the legal wife of a deceased defence force member, who was living separately from him at the time of his death, was "substantially dependent" upon him for the purposes of being eligible for a widow's pension under the Defence Force Retirement and Death Benefits Act 1973. The Tribunal concluded that a spouse is "substantially dependent" if the spouse is either being paid or provided with support or has a maintenance order or a prima facie legal right to support which probably would be effectively enforced, which support is required by the spouse for the supply of necessities of life so long as that support is not trivial, minimal or nominal and is less than total. At the time of his death the deceased was not making any payment or providing any support to his wife and, therefore, the Tribunal held that she was not entitled to the widow's pension.

Freedom Of Information

Secrecy Provision Exemption

In Re Maher and Attorney-General's Department (17 July 1985) the President of the AAT (Mr Justice Davies) held that reasonable grounds existed for the claim that release of two paragraphs of a letter from the Attorney-General of the United States to the Australian Attorney-General regarding international arrangements on anti-trust proceedings could reasonably be expected to cause damage to the international relations of the Commonwealth and that disclosure would divulge information on a matter which was communicated in confidence between the US and Australian Governments. Therefore, disclosure was considered to be contrary to the public interest and access to the two paragraphs of the letter was denied to the applicant.

Jurisdiction

In Re Anti-fluoridation Association of Victoria and Secretary to the Department of Health (31 July 1985) the Tribunal held that it had jurisdiction to review a decision of an officer denying that a document was a document of the agency to which the request for access was made. The matter related to a document for which a thorough search had been made but which could not be located. The Tribunal held that there was a deemed decision refusing access to the document. Section 58 of the Freedom of Information Act 1982 was held to confer power on the Tribunal to decide as to the extent of the search which should be undertaken for the document by the agency. The Tribunal held that the agency had discharged its obligation to locate a document to which access was requested and the Tribunal did not give any directions requesting the respondent to make any further search.

Employment Selection Reports

In Re Williams and Registrar of the Federal Court of Australia (22 August 1985) the Tribunal held that three documents relating to an employment position unsuccessfully sought by the applicant were not exempt documents under the Freedom of Information Act 1982. The documents included an interview report in relation to the successful candidate which was confined to an evaluation of the candidate's work capacity and performance, and a comparative assessment and ranked order of merit of the most highly rated candidates. In its decision the Tribunal held that 'personal affairs' was intended to refer to matters of private concern to an individual. Ordinarily information as to work capacity and performance of a person is not private in that sense.

The Tribunal considered that in deciding whether disclosure would be 'unreasonable', private and public interest should be balanced. All the circumstances should be considered, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person would not wish to have disclosed without consent, and whether the information has any current relevance.

Information as to the personal affairs in the three documents was extremely limited and it was not unreasonable to disclose the limited amount of personal information e.g. the date of birth of the successful candidate.

Taxation Assessments

In Re Swiss Aluminium (Aust) Ltd and Commissioner of Taxation & Ors (10 September 1985) the Tribunal considered the question of access to a document which recommended the issue of a number of assessments of the amount of taxable income of the applicant and the amount of tax payable on that income. The document also referred to the affairs of another taxpayer. The issue was whether the prohibition in section 16 of the Income Assessment Act 1936, which prevented disclosing certain information, was absolute or was subject to the exceptions or qualifications of section 38 of the Freedom of Information Act 1982. Section 16(2) broadly provides that an officer shall not "except in the performance of any duty as an officer" divulge any information about the affairs of another person acquired by the officer. The Tribunal held that even if "information relating to the affairs of any other person" satisfied the specificity required by section 38, the exception "except in the performance of any duty as an officer" was of such an indefinite nature as to rob the prohibition of the specificity required.

Costs

In Re Paterson and Department of Arts, Heritage and Environment (No. 2) (2 August 1985), the Tribunal considered whether it should exercise its discretion to recommend payment of costs. In Re Paterson (No. 1), which was referred to at [1985] Admin Review 53, the Tribunal held that it had jurisdiction to recommend costs. In the second decision, however, the Tribunal declined to recommend to the Attorney-General that the costs be paid by the Commonwealth because of the absence of financial hardship, the commercial benefit to the applicant of the information and the fact that the decision to refuse access was reasonable at the time it was made.

FOI APPLICATIONS: 1 January 1983 - 30 September 1985

The following table shows a steady increase in the number of FOI applications to the AAT between January 1983 and September 1985.

YEAR	Jan = March	April = June	July = Sept	Oct = Dec	TOTAL
1983	26	32	59	63	180
1984	43	46	85	87	261
1985	50	99	100	=	249

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Commonwealth Ombudsman
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Section 17 report to Parliament

Section 17 of the Ombudsman Act 1976 provides that where the Ombudsman has furnished information to the Prime Minister on a report concerning an investigation which he has conducted, he may also forward copies of the report to the President of the Senate and the Speaker of the House of Representatives, for presentation to both Houses of Parliament.

On 10 September 1985 a report under section 17 of the Ombudsman Act was tabled in the Senate and the House of Representatives. This was the first such report in the eight years of the Ombudsman's operations and relates to the investigation of a complaint about the ABC. At this stage the report has not been debated by the Parliament.

FOI Requests

In recent months several requests under the Freedom of Information Act 1982 have been made either to the Ombudsman's office or another agency, for access to documents relating primarily to the personal