

Some modifications to the AAT's normal procedures have been made in relation to taxation matters. As was the case in relation to the reference of objections to the Boards of Review, requests to the Commissioner of Taxation for reference of objections to the AAT will be examined first by the Commissioner, which provides an opportunity for reconsideration of decisions. Contrary to the Council's views in its report, but consistently with the practice of the Boards of Review, all taxation review decisions are to be conducted in private unless the taxpayer requests a public hearing; the identity of the taxpayer will not be revealed in the published reasons for decision. Taxpayers will not be able to obtain statements of reasons from the Commissioner for decisions disallowing objections, but from 1 July 1988 the Commissioner will be required to provide the AAT with a statement of reasons at the time when a matter is referred to the AAT, and a copy of those reasons will be made available to the taxpayer.

Some other changes to existing practice are interesting. The AAT and the Supreme Courts have been given a discretion, in appropriate cases, to permit a taxpayer to widen the grounds for review beyond those stated in the objection. The Commissioner has been given power to extend the time within which an objection may be lodged, and a refusal to do so is reviewable by the AAT. In keeping with the previous provisions, the legislation prohibits the exercise of powers under the provisions of the AAT Act and of the Administrative Decisions (Judicial Review) Act which could have enabled the AAT or the Federal Court to prevent or restrain the recovery of tax pending review of an objection under the new provisions.

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

Administrative Review Council

CURRENT WORK PROGRAM

Access. A report on Stage One of the project, Notification of Decisions and Rights of Review, was considered at the June meeting of Council. Further consideration is currently being given to the report and it is expected that the Council will again consider the matter at its September meeting.

Stage Two of the Access project recently commenced and a research team comprising Mr Tom Brennan (consultant), Mr Bill Hughes (project officer) and Mr Paul Travis (an officer of the Department of Social Security), recently visited Townsville, Brisbane and Sydney in relation to the study. The areas of particular interest were the operation of

the review officer system in the Department of Social Security, the area of access to review of student assistance decisions, procedures for dealing with hardship, and the operation of the isolated patients travel and accommodation assistance scheme (IPTAAS). Useful insights were gained in all these areas. Further study is expected to be conducted in Canberra and Melbourne and a limited survey of student users of the student assistance jurisdiction is being undertaken in Sydney by a consultant to the Council.

Customs (Anti-dumping). The third stage of the Customs project concerns rights of review of decisions taken under anti-dumping legislation: a discussion paper on this topic has been distributed to interested persons and organisations (see 'Administrative Law Watch' below).

Customs (Censorship). Report No. 24, Review of Customs and Excise Decisions: Stage Four: Censorship (AGPS, 1986) was tabled in the Senate on 11 May 1986.

AD(JR) Act. A draft report on Stage One of the project, relating to alleged abuses of the Act, was finalised by the Council at its August meeting, and was transmitted to the Attorney-General on 13 August 1986. Stage Two, on the general operation of the AD(JR) Act, is proceeding.

Administrative Appeals Tribunal. This project commenced recently and is concerned with examining the question of divisions of the AAT and appointment of members to divisions. The AAT Act itself sets up three divisions of the AAT: a General Administrative Division, a Medical Appeals Division and a Valuation and Compensation Division. The Veterans' Appeals Division was established by regulation under the Act on 27 November 1984, and a Taxation Appeals Division was set up with effect from 1 July 1986 (see above).

Advice to the Attorney-General. Since its inception the Council has provided advice to the Attorney-General in the form of letters (as well as formal reports) particularly where advice is required urgently. The Council recently decided to publish the full text of its letters of advice in its annual report, and the first publication of letters will be in Part 2 of the Council's 1985-86 Annual Report.

Visitors. Professor Fred Gruen of the Australian National University and Mr John Lambert of the Australian Customs Service visited the secretariat on 24 March to discuss the relationship between Professor Gruen's report to the government on anti-dumping matters and the Council's project on review of decisions in that area. Mr David Anderson, a member of the Canadian Immigration Appeal Board, exchanged views with members of the Council's secretariat concerning developments in review of immigration decisions in the two countries. The Zimbabwe Minister for Justice, Mr Eddison Zvobgo, Mrs Julia Zvobgo a member of the

Zimbabwe Parliament, and Mr David Zaamchiya, Permanent Secretary of the Zimbabwe Ministry of Justice, held talks with Mr E.J.L. Tucker, Chairman of the Council, Deputy Presidents AN Hall and R.K. Todd of the AAT, the Director of Research and Mr Ron Fraser, the Council's Principal Project Officer. The Zimbabwe Government is in the process of drafting a new constitution and discussion centred on the operation of the Commonwealth administrative review structure. The Secretary to the Attorney-General's Department, Mr P. Brazil, visited the Council's secretariat at the invitation of the Director of Research.

Administrative Appeals Tribunal

NEW JURISDICTION

The following legislation confers new jurisdiction on the AAT:

- . Bounty (Commercial Motor Vehicles) Amendment Act (No. 2) 1985
- . Customs and Tariff (Stand-by Duties) Act 1985
- . Health Legislation Amendment Act (No. 2) 1985
- . Prescribed Goods (General) Orders (No. 2 of 1986)
- . Sales Tax Assessment Act (No. 11) 1985
- . Taxation Boards of Review (Transfer of Jurisdiction) Act 1986
- . Telecommunications (General) By-laws (notified 27 March 1986)
- . Veterans' Entitlements Act 1986

KEY DECISIONS

Overpayments and functions of the AAT

The decision of the AAT in Re Church and Secretary, Department of Education (No. 2) (21 May 1986) follows an earlier decision of the AAT that it had jurisdiction to consider an application for review of decisions to raise an overpayment in relation to TEAS benefits paid to the applicant and to make a demand for recovery of the overpayment (Re Church and Secretary, Department of Education (1985) 8 ALD 441) (see also 7 Admin Review 85). In the earlier decision the AAT had concluded that, as a matter of interpretation of the Student Assistance Act 1973, it had jurisdiction to review those decisions even though they had not been made in the exercise of powers conferred by an enactment. The AAT had also determined that, as a decision to seek recovery was not determinative of legal rights, review by it would not involve an exercise of the judicial power of the Commonwealth.