

- . advice to the Government concerning issues and problems emerging from the current system of Commonwealth administrative review e.g. the Council's report on the overlapping functions of the Ombudsman and the Administrative Appeals Tribunal, and its recommendation that magistrates' decisions in committal proceedings be reviewable by State courts and not by the Federal Court under the Administrative Decisions (Judicial Review) Act; and
- . further rationalisation and development of the system of administrative review e.g. in its report on review of customs decisions the Council recommended that many more such decisions should be subject to review by the Administrative Appeals Tribunal.

Administrative Appeals Tribunal

NEW JURISDICTION

The following recent legislation confers jurisdiction on the AAT:

- . Great Barrier Reef Marine Park Regulations
- . Bounty (Agricultural Tractors and Equipment) Act 1985
- . Bounty (Metal Working Machines and Robots) Act 1985
- . Passports Regulations

KEY DECISIONS

Student assistance

The AAT has held that it has jurisdiction to review a recalculation of entitlement and the consequential recovery of an overpayment of TEAS. In Re Church and Secretary to the Department of Education (29 October 1985), the AAT held that the decision to recover the overpayment was an administrative decision made by authorised persons in the general administration of the Student Assistance Act, and was reviewable under that Act. To the extent of any inconsistency between the Student Assistance Act and the AAT Act, section 22 of the former Act, being a later enactment, overrode section 25(1) of the AAT Act.

Veterans' entitlements

Re McPherson and Repatriation Commission (11 November 1985) is the first substantive AAT decision under the new veterans' appeals regime. It was an application to review a decision of the Veterans' Review Board (the VRB) assessing the applicant's incapacity resulting from service-connected disabilities. The principal basis of appeal related to one particular source of disability, but the AAT noted that it was incapacity flowing from all disabilities which it should examine. It held that a veteran could reach the level of "total incapacity", as that term is used in the Repatriation Act 1920, prior to reaching the stage where he was "unable to earn in remunerative occupation except on a part-time basis or intermittently: an incapacity can be total notwithstanding that it does not continually interfere with all aspects of a veteran's life. A disability which affects only capacity for work or only family and social life is total for the purposes of the general rate of pension if of such magnitude as is equivalent to that of the other incapacities which the schedules of the Act treat as entitling a veteran to 100% of the general pension rate.

Staying a decision of the VRB

In two recent cases the AAT has considered applications by the Repatriation Commission for orders staying the implementation of decisions of the VRB which were the subject of the Commission's applications for review. In Re Repatriation Commission and Delkou (31 October 1985) the VRB decision was that the respondent was entitled to be assessed at an increased rate of pension. The Commission sought a stay in relation to the sum of arrears already paid and the ongoing entitlement. The AAT held that it had no power to make orders affecting the decision relating to arrears - that decision had already been implemented and there was nothing left to stay - but it did have the power to stay the VRB decision in so far as it related to the ongoing entitlement. In the circumstances, staying the decision secured the effectiveness of the application for review by preventing it being rendered nugatory in the event it was successful.

In Re Repatriation Commission and Bramston (5 November 1985) the AAT dismissed the stay application. The Commission had sought orders in relation to a VRB decision that the Commission was liable to pay a pension to the respondent. The AAT had regard to discretionary considerations - e.g. financial hardship to the respondent and his rights to the fruits of his success before the VRB - in addition to ensuring that the parties be given enough time for the preparation of their cases, and held that grant of the stay was neither

necessary nor desirable to secure the effectiveness of the hearing of the application for review. It ordered the Commission to determine the rate of pension and to pay the ongoing entitlement.

Categorisation of private hospital

Re Hobart Clinic Association and Minister for Health (10 December 1985) is the first private hospital case to come before the AAT. The AAT set aside the Minister's categorisation of a private psychiatric hospital in Tasmania and specified a different categorisation which would result in the hospital receiving increased Commonwealth funding.

The Health Insurance Act 1973 provides for the categorisation of private hospitals and for the Commonwealth to make a daily bed payment accordingly. Categorisation is generally done in consultation with State Ministers for Health. The crux of this matter was whether the State Minister's recommendation ought to be accepted. A State Minister, in making a recommendation, should have regard to the need for various types of health services in the State and to the cost of providing them, and it seemed in this case, so the AAT found, that the Tasmanian Minister had properly had regard to the need for adequate private psychiatric care and its cost. It said also that while it was unnecessary for the Minister to publish the criteria which he would be considering, as he had done in this case, once he had done so, he could not make a decision contrary to them.

Deportation decision

The correct procedure to be followed when a deportation order is to be reviewed was considered by the AAT in Re Bardek and Minister for Immigration and Ethnic Affairs (29 November 1985). The applicant had been convicted in 1978 and sentenced to life imprisonment, and the Minister had ordered his deportation under section 12 of the Migration Act, to take effect on his release from prison. The applicant sought review of the Minister's order alleging that it was premature because of the dynamic nature of the criteria which were considered in making such an order - e.g. the possibility of recidivism, the person's contribution to the community and his family and social ties, among other things. He sought removal of his case from the AAT's list with a right of reinstatement. The Minister submitted that it was in the best interests of the efficient administration of the migration laws that, subject to any appeal procedures, a deportation order be capable of being put into effect as soon as possible after the deportee was released from prison, and that the right to AAT review should not remain unexercised for an indefinite period of time. The AAT ruled that because of the

seriousness of the issues raised, the matter should not be decided at a procedural hearing but should be set down for a hearing on the merits.

STATISTICAL TRENDS

The following figures indicate the types of matters lodged with the AAT in the period from 1 July 1985 to 30 September 1985. The total number of matters is 544. It will be seen that social welfare accounted for almost half of the matters, with freedom of information also accounting for a large proportion.

Jurisdiction	Number of matters	(Total)
<u>ACT Ordinances and Regulations</u>		
City area leases	2	
Rating - valuation	1	(3)
<u>Bounties and subsidies</u>		
Bounties	3	(books)
Export development and expansion	28	
Industrial research and development	1	(32)
<u>Customs and excise</u>		
Customs - classification	20	
Diesel fuel rebate	4	(24)
<u>Employment and retirement benefits</u>		
Employees' compensation	56	
Superannuation	8	(64)
<u>Health</u>		
Medical and hospital benefit organisations	2	
Nursing homes	2	
Pharmacists	1	
Private hospitals	2	
Other	1	(84)
<u>Immigration and citizenship</u>		
Australian citizenship	7	
Migration - deportation of criminals	9	
Passports	1	(17)

Jurisdiction	Number of matters	(Total)
<u>Information</u>		
Freedom of information	102	(102)
<u>Personal and professional qualifications</u>		
Air navigation	3	
Customs agents	1	
Tax agents	2	(6)
<u>Postal</u>		
Loss, damage and delay	3	(3)
<u>Primary industry</u>		
Fisheries	14	(14)
<u>Social welfare</u>		
Home owners' assistance	7	
IPTAAS	25	
Social security	151	
Students' assistance	2	
Veterans' entitlements	84	(269)
<u>Miscellaneous</u>		
	2	(2)
<u>Total</u>		544

Freedom of information

Commonwealth/State relations

Documents relating to wood-chipping, which had come into the respondent's possession from Tasmanian State authorities, have been held to be exempt from disclosure in Re Angel and Department of Arts, Heritage and Environment & Ors (13 November 1985). Most of the documents were correspondence between wood-chipping companies and Tasmanian departments or authorities, and the applicant, a director of the Total Environment Centre, argued that disclosure was in the public interest as it would enable comprehensive submissions to be made to the Federal Government on a forthcoming environmental