

(see the Council's Report No.12, Australian Broadcasting Tribunal Procedures (AGPS, 1981)). The Council is now proceeding with a reconsideration of the broadcasting area.

Review of the AD(JR) Act, Stage 2. Though this project is still some distance from completion, progress has been made since the last issue of Admin Review.

---

Administrative Appeals Tribunal

---

NEW JURISDICTION

Since the July issue of Admin Review new jurisdiction was conferred on the AAT under the following legislation:

Broadcasting Amendment Act 1987  
Business Franchise (Tobacco and Petroleum Products)(Amendment) Ordinance 1987 (A.C.T.)  
Financial Institutions Duty Ordinance 1987 (A.C.T.)  
Payroll Tax Ordinance 1987 (A.C.T.)  
Stamp Duties and Taxes Ordinance 1987 (A.C.T.)  
Taxation (Administration) Ordinance 1987 (A.C.T.)  
Taxation Laws Amendment (Company Distributions) Act 1987

KEY DECISIONS

Student assistance

In Stone and Department of Education (6 August 1987) the Tribunal set aside the decision made by a Student Assistance Review Tribunal (SART) affirming a primary decision that the applicant was not entitled to assistance under the Tertiary Education Assistance Scheme, due to the operation of regulation 34 of the Student Assistance Regulations in force under the Student Assistance Act 1973. Regulation 34 is one of the more complex of a particularly complex set of regulations and one where decisions are most commonly appealed. It relates to eligibility under different circumstances - in Stone's case a transfer between courses. After re-calculating the appropriate formula, the AAT remitted the matter to the respondent for reconsideration in accordance with the direction that regulation 34 did not render the applicant ineligible for assistance in respect of the fourth year of his approved course.

Refusal of pilot's licence

In Father Flynn and Department of Aviation (14 August 1987) the Tribunal reviewed a decision to refuse to grant a private pilot licence. The applicant had a long and chequered history in aviation. His licence and radiotelephone licence were originally cancelled in 1980. That decision was subsequently

affirmed by the AAT. In 1981 the applicant obtained a Papua New Guinea private pilot licence and in 1981 he was regranted an Australian student pilot licence. The respondent opposed the granting of a licence on the grounds of the applicant's poor pilot record before and after the cancellation of his licence in 1980, his training history, and flight test and air safety incidents dating back to January 1977. The issue before the Tribunal was whether the applicant was a 'fit and proper person' to hold a private pilot licence within the meaning of regulation 255(1)(c)(ii) of the Air Navigation Regulations. The Tribunal, after considerable hesitation, took the view that the applicant should be given the opportunity to undergo all necessary tests to qualify again for the grant of a private pilot licence. Though it accepted that the decision under review was the correct one at the time (ie in 1983), in the light of evidence concerning the applicant's subsequent flying history and attitude it set aside the decision and remitted the matter to the respondent for reconsideration.

#### Non-appearance of party

In Brady and Secretary to the Department of Social Security (24 August 1987) the Tribunal discussed the options available to it when a party fails to appear at a hearing. In this case, given that the decision sought to be reviewed was a decision to recover a substantial sum of money and given the need, in the interests of good administration, for the matter to be finalised, the AAT decided that the matter should proceed to be heard in the absence of the applicant in accordance with section 40(1)(b) of the AAT Act.

#### Departmental guidelines

In Bryer and Secretary, Department of Social Security (23 September 1987) the AAT considered whether the disability of phenylketonuria (PKU) suffered by the applicant's child Aaron required constant care and attention so as to qualify the applicant for a handicapped child's allowance pursuant to section 102 (previously 105J) of the Social Security Act 1947. The Tribunal held that the applicant's case for the allowance was established and the present guideline used by the Department of Social Security relating to PKU children produced an unjust decision in its application to Aaron.

---

#### Freedom of Information

---

#### Use of conclusive certificates

In Association of Mouth and Foot Painting Artists Pty. Ltd. and Commissioner of Taxation (29 July 1987), the AAT