

Committee to Advise on Australia's Immigration Policies
(CAAIP) - exposure draft of Migration Bill

The Committee to Advise on Australia's Immigration Policies (CAAIP) was established in September 1987. CAAIP initially was to report by the end of March 1988 but the report was delayed. CAAIP appointed a legal panel to look specifically at reform of the Migration Act 1958. The panel produced a draft Bill for discussion. It was the subject of a seminar held by CAAIP on 12-13 February 1988.

Some of the initial proposals of the legal panel of CAAIP were that:

- . the legislation specify principles and criteria for decision making;
- . there be a one tier system of external review on the merits by the AAT complemented by an effective internal review system; as a consequence, Immigration Review Panels be abolished;
- . internal review be triggered by an appeal to the AAT;
- . standing to appeal be available to any person physically in Australia who has been the subject of an adverse immigration decision (not including unsuccessful refugee status claimants) and also to most Australian sponsors;
- . in all cases except revocation of resident status on criminal or security grounds, the AAT have determinative powers in merits review.

The Council in Report No. 25, Review of Migration Decisions had recommended a two tier review on the merits structure comprising immigration adjudicators at the first level and the AAT at the second level with review by adjudicators being a prerequisite to AAT review in most cases. The Council in its Report did not envisage the unusual provision that internal review would only be triggered by an appeal to the AAT and thus would follow, rather than precede, the approach to an external review body.

Council discussion paper on review of decisions under the
Commonwealth R&D scheme and under the Management and
Investment Companies program

As mentioned above, the Council on 6 April 1988 released a discussion paper suggesting that certain key decisions affecting the tax deductibility of expenditure incurred by Australian companies on industrial research and development should be made subject to review by the AAT. The paper also argues that certain decisions under the Management and Investment Companies Program which are not presently reviewable should be made subject to review by the AAT. A particular argument of interest in the paper is the argument that it is inappropriate for the AAT to review decisions of

bodies which have been specifically designed to make expert decisions and which have been given a wide discretion to do so. The paper suggests that expertise in itself is not a sufficient reason for precluding review.

Copies of the paper can be obtained by telephoning the Council secretariat on 434671.

Joinder of AD(JR) Act and section 39B proceedings under the Federal Court Rules

Order 54A of the Federal Court Rules has been amended to provide that an application under section 39B of the Judiciary Act 1903 and an application under the AD(JR) Act in respect of the same subject matter are to be made in the one application. The amendments of the rules came into operation on 26 April 1988 and are published as Statutory Rules 1988, No 54.

This amendment should overcome the practical problems involved in a system where 2 separate proceedings can be brought in the one court, one under the AD(JR) Act and one under section 39B of the Judiciary Act, in respect of the one set of circumstances, with both cases having as their object substantially similar orders.

The issue of the desirability of, or need for, such a bifurcated review path is being examined as part of the Council's present review of the operation of the AD(JR) Act.

Referral of matters between the Ombudsman and the AAT

The Ombudsman and the President of the AAT have agreed on a set of administrative arrangements for the referral of matters between the Ombudsman and the AAT. The arrangements give effect to recommendations made by the Council in its Report No. 22, The Relationship between the Ombudsman and the Administrative Appeals Tribunal.

R E C E N T P U B L I C A T I O N S

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