

before it at the hearing. In dismissing the appeal the full court of the Federal Court mentioned that one of the difficulties about the case was that there was no transcript available of the proceedings before the Tribunal. Although the court held that there was no legal obligation on the Tribunal to keep a record of what takes place before it, it said that it was desirable that such a record be kept.

At a time when the AAT is coming under pressure to do without transcription services as a cost cutting measure, the decision of the full court illustrates the difficulties which a party contemplating an appeal may face if no transcript of the proceedings of the AAT is available.

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Commonwealth Ombudsman

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#### Telecommunications (Interception) Amendment Act 1987

Under section 82 of the Telecommunications (Interception) Amendment Act, proclaimed on 1 September 1988, the Ombudsman is required to perform inspections at least twice a year of documents that the Act requires the Australian Federal Police and the National Crime Authority to maintain. The first of these inspections is planned to take place before the end of the year.

#### Taxation: late lodgment amnesty

The Ombudsman recently raised with the Commissioner for Taxation apparent inequities raised by complaints he had received in the wake of the taxation amnesty. The amnesty was designed to encourage people who have not lodged income tax returns for many years or who have never lodged to come forward and lodge their returns. These non-lodgers are benefitting from the amnesty while mere late lodgers are not. The Commissioner's power to remit late lodgment penalties is not being exercised for late lodgers. They are required to pay late lodgment penalties throughout the course of the amnesty, on the basis that they lodged their returns 'in the ordinary course of business'. The Ombudsman has taken issue with this approach, principally on the basis that the late lodger class should not be treated more severely than taxpayers who have persistently avoided their income tax responsibilities.

#### Tax effect on lump sum payments

Over the years the Ombudsman has received many complaints from taxpayers who had been required to pay more tax than they should have on lump sum payments for arrears of entitlements such as worker's compensation and certain pensions. For the purposes of the tax legislation this income has been treated as derived in

the year in which it was received rather than spread over the years in which the arrears accrued. This has meant that taxpayers often found that their marginal rates of tax were increased and they faced a larger tax bill overall.

In June 1986 the Ombudsman recommended to the Commissioner of Taxation that the Income Tax Assessment Act be amended so that arrears of income could be attributed to the financial years to which it properly related. A recent budget announcement is the long-awaited outcome. As part of the budget package, the Treasurer announced amendments to the Income Tax Assessment Act which will reduce the tax effect on lump sum payments of arrears. The amendments will apply to payments received after 1 July 1986.

#### Changes to 1988/89 migration program

In February this year the Department of Immigration, Local Government and Ethnic Affairs instructed all its overseas missions to suspend processing of applications to migrate to Australia. This was due to an increase in applications to migrate, which according to the Department left about three years' work in the pipeline at that time. The next step, in June 1988, was the introduction of a new selection procedure whereby the points required in the Independent and Concessional category increased from 70 points to 80.

The Department holds that the relevant policy is that in force at the time of the decision, not the one in force when the application was made. The Ombudsman received complaints from persons whose applications were lodged some time prior to the change in the points requirement but not processed due to the 'freeze' from February to June, and which were subsequently refused for not meeting the 80 point pass mark. The Ombudsman is currently considering the reasonableness of refusing to refund application fees and review fees where the rules are changed with retrospective effect, as in this case.

#### Social Security: compensation components for past and future losses

As a result of the May 1987 Economic Statement the government changed the Social Security Act to restrict 'double-dipping' of Social Security benefits and compensation or damages payments. The administration of these changes, however, led to difficulties and hardship for some social security clients.

One case involved an instruction by the Department of Social Security that the components of a lump sum payment attributed to economic loss were not to be separated into past and future loss for the purposes of calculating the period in the future that a person would be precluded from receiving social security benefits. The Ombudsman has been concerned that the formula applied by the Department to calculate the time clients must wait before receiving benefits includes no discretionary provisions for special circumstances such as hardship, and the

Department has taken no specific action to publicise the changes within the legal profession and others who advise its clients. In addition, subsequent amendments have merely corrected earlier drafting errors. The crucial provisions remain retrospective to May 1987.

Australian Customs Service: procedural change

As a consequence of a complaint about payment of import duty, the Australian Customs Service has instituted a new procedure whereby officers are now required to consult with importers and seek an explanation from them, prior to issuing letters of demand. This is to be normal procedure except under particular circumstances, which the ACS has detailed and which the Ombudsman has accepted as reasonable. In addition, the form of words used in standard letters of demand has been changed; and such letters are to contain a concise statement of reasons when issued without prior consultation.

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Social Security Appeals Tribunal to be given determinative powers

The Social Security (Review of Decisions) Bill 1988 has been introduced in the Parliament. The Bill, which gives effect to the Council's Report No. 21, The Structure and Form of Social Security Appeals, provides for the setting up of the Social Security Appeals Tribunal (SSAT) on a statutory basis. The Bill provides for the SSAT to exercise determinative powers in a 2-tier appeal system which has the AAT as the second tier. Both applications to the SSAT and the Secretary to the Department of Social Security may appeal to the AAT from decisions of the SSAT.

The second reading debate on the Bill in the House of Representatives (12 October 1988) contains some interesting views about the virtue of 2-tier appeal structures and about the role of administrative review in government administration.

Fees for review

The Minister for Community Services and Health recently proposed the imposition of a lodgment fee of \$500 for all new applications for fee reviews under section 40AE of the National Health Act. In addition, he proposed a processing fee of \$500 per half day for applications already lodged but not yet referred to a Fees Review Committee, and for all new applications.

The National Health Act permits persons to appeal to the Minister against national health fees determinations. The legislation requires that such reviews be first considered by a National Health Fees Review Committee of Inquiry. There is no right of appeal to the Administrative Appeals Tribunal but the AD(JR) Act applies. Legislation to give effect to the proposals is due to be introduced shortly.