
Freedom of Information

Amendment of records

In Nguyen and Department of Immigration, Local Government and Ethnic Affairs (29 June 1989) the AAT examined an application for review of a decision by the Department to refuse amendment of a Departmental record relating to entry to Australia.

Mr Nguyen and his family had left Vietnam by boat in June 1981 and for some time resided in a refugee camp in the Philippines. During that time his wife's brother lodged a sponsorship for the family to migrate to Australia. In it the brother gave the date of birth of one of Mr Nguyen's daughters as 30 October 1979. The same birth date was given in the papers provided by Mr and Mrs Nguyen and again, after the family's arrival in Australia, in their application for registration under the Aliens Act 1947. Mr Nguyen later obtained access to the records under the Freedom of Information (FOI) Act, and requested that his daughter's date of birth be altered to read '30 October 1976'.

The situation had arisen in part because the family had understood that it would expedite the family's resettlement in Australia, and be better for the child's education, to lower her age. The AAT noted that refugees have used migration documentation as a surrogate for birth, death or marriage certificates or for other evidentiary purposes.

In the absence of public documents, the AAT had to rely on evidence from the child's mother and father, and from other persons said to have been present at her birth, as well as evidence from inspection. Despite the difficulties it found in trying to establish the facts in a cross-cultural situation, it concluded that the child's date of birth was in fact 30 October 1976. It decided that in the circumstances alteration of the record was a more satisfactory procedure than merely making a notation; but that the alteration should be effected in such a way that the previous information remained legible.

Access to social security documents

Liddell and Department of Social Security (28 June 1989) involved the problem of assessing confidentiality in the provision of information used in the enforcement or administration of the law. Mr Liddell had sought access to documents on his unemployment and sickness benefit file, relating to the reported non-disclosure of income from rentals. The Department had claimed exemptions for some of the documents.

The Department has a policy that all information supplied by the public concerning alleged breaches of the Social Security Act will be kept confidential. It claimed exemption in this case on the grounds that release of the material sought would disclose,

or enable a person to ascertain, the existence or identity of a confidential source of information; that statutory secrecy provisions applied; and that it would involve unreasonable disclosure of someone's personal affairs.

The AAT concluded that the Department's policy on confidential sources was only one aspect of the case and could not determine the issue by itself. It noted that the file gave no indication of the informer's name nor whether he sought to have his identity kept confidential. It was also not satisfied that release of the document in question would disclose the identity of a confidential source.

However the AAT concluded that applications for residential tenancy in the properties concerned related to the personal affairs of the persons who had completed the forms. The documents had been obtained without the knowledge of the persons submitting the applications and without their authority for disclosure, but had current relevance. They were therefore exempt documents.

The Courts

Taxation: superannuation deductions

In Commissioner of Taxation v Arklay (28 February 1989), the Full Bench of the Federal Court examined the considerations to be taken into account by the Commissioner of Taxation in determining whether a deduction claimed for a contribution to a superannuation scheme was allowable.

In 1982 Mr Arklay, a temporary porter with the Queensland Railways, paid \$120 to the Wales Retirement Fund. He then claimed that amount as a deduction in his income tax return. The Commissioner, however, decided that it was reasonable to expect that Mr Arklay on his retirement would receive superannuation benefits other than from his own contributions and he was therefore not entitled to the deduction. As a temporary employee Mr Arklay was not eligible to contribute to the State superannuation scheme, though long-term temporary staff were entitled to a 'retiring allowance'.

The AAT, in reviewing the decision not to allow the deduction, had decided that the question whether a person is an eligible person is 'one of fact and degree', depending on whether there were grounds in existence on which one could predict with reasonable confidence that superannuation benefits would be payable in retirement. In Mr Arklay's circumstances at the time the prospect of him continuing in the service, attaining permanent status and joining the State superannuation scheme was uncertain. The Court concluded that the Tribunal correctly construed and applied the legislation, and dismissed the Commissioner's appeal.