

Commonwealth/State Housing Agreement. A second consultant is currently working on review of decisions on assessment of products involving the National Health and Medical Research Council, specifically with regard to the Drugs and Poisons Scheduling functions.

Intellectual property. A discussion paper on review of patents decisions is being prepared.

Informal rule-making. An issues paper is near completion.

Multicultural Australia. The project will concentrate on two communities so that its effect can better be measured. The communities chosen are the Vietnamese in Footscray, Victoria and the Turkish in Auburn, New South Wales. A consultant to the Council has examined material relevant to the problems people of different cultural backgrounds have in dealing with government and using the legal system, with particular reference to government services and to complaints about them. He is now comparing the effectiveness of Commonwealth Access and Equity Plans with their counterparts in the States.

Review of the AD(JR) Act. Submissions on the discussion paper on the furnishing of statements of reasons under section 13 of the AD(JR) Act have been received and are currently being examined. A report is being prepared.

Specialist tribunals. Preliminary meetings of members of the Student Assistance Review Tribunal, the Social Security Appeals Tribunal and the Veterans' Review Board were held in Adelaide on 15 March 1990, in Sydney on 29 March 1990 and in Melbourne on 5 April 1990. Issues arising from the preliminary meetings were discussed at a national conference in Canberra on Thursday 3 May 1990.

Following the conference it has been agreed that future editions of Admin Review should include a regular feature on tribunals, covering:

- . court or AAT cases of general relevance to tribunals;
- . developments in particular tribunals;
- . tribunal practice and procedure;
- . research or other working papers prepared by individual tribunals, of broader relevance; and
- . membership news.

Administrative Appeals Tribunal

NEW JURISDICTION

Since the last issue of Admin Review new jurisdiction has been conferred on the AAT under the following legislation:

- . Aboriginal and Torres Strait Islander Commission Act 1989
- . Air Navigation (Aerodrome Curfew) Regulations 1989
- . Customs Regulations as amended by Customs Regulations (Amendment) Statutory Rules No 8 of 1990
- . Defence (Area Control) Regulations 1989
- . Excise Regulations as amended by Excise Regulations (Amendment) Statutory Rules No.7 of 1990

- Great Barrier Reef Marine Park Regulations as amended by Great Barrier Reef Marine Park Regulations (Amendment) Statutory Rules No. 368 of 1989

KEY DECISIONS

Compensation: tribunal precedents

Ganchov and Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees (29 March 1990) was a claim for compensation which involved consideration of earlier tribunal decisions. The AAT noted that it is not legally required to apply a strict doctrine of precedent. Deputy President Todd remarked, however, that

'unless decisions of the President are followed by all within the Tribunal, and unless decisions of Presidential Members (which of course includes Deputy Presidents) clearly dealing with a point in issue are followed within the Tribunal, the Tribunal could gain a reputation for inconsistency if not disarray. In critical cases it is certainly in my view open to a member to note his or her disagreement with a precedent decision, but it is not desirable for members to adhere to views that appeal to them when the point has been decided otherwise at a higher level. That is not to say however that members are not entitled to express their own view for the record, as I have done here. For the rest, as the whole question of following previous decisions is related solely to questions of law, a disappointed party has a right of appeal if the view of such a would-be dissident from the precedent case is seen as compelling...it could be added that decision-makers at lower levels can hardly be expected to treat Tribunal decisions as precedents if the Tribunal does not'.

Standing to apply to the AAT

In Island Voice and Great Barrier Reef Marine Park Authority (23 February 1990) the applicant, an unincorporated association, sought AAT review of a decision by the Great Barrier Reef Marine Park Authority (GBRMPA) to grant a permit to establish a marina and associated infrastructure at Magnetic Island. Island Voice, which had been formed at a public meeting in 1986, had been actively concerned in investigating and opposing the proposed development.

The Great Barrier Reef Marine Park Regulations provide for review by the AAT, but GBRMPA challenged the right of Island Voice to apply. It was argued that Island Voice was not a 'person' as defined in the Acts Interpretation Act 1901, and therefore did not have standing to apply to the AAT. The AAT considered whether the decision related to a matter included in the objects or purposes of the organisation, and whether the term 'person or persons' in the AAT Act included an unincorporated association. It answered both questions in the affirmative and concluded that Island Voice had established its standing to bring an application for review.

Drug trafficking in deportation policy

Loh and Minister for Immigration, Local Government and Ethnic Affairs (15 January 1990) involved a detailed examination by

the President of the AAT of the Minister's policy, announced in December 1988, and various AAT and Federal Court decisions concerning considerations relevant to a decision to deport. He noted the wide discretion conferred upon the Minister by the Migration Act 1958, and accepted that the AAT may be expressly required by an Act conferring a right of appeal to regard itself as bound by principles formulated by the Minister. This, however, is not the case under the Migration Act. The policy is a relevant factor, but the AAT is not entitled to abdicate its function of determining whether the decision made was, on the material before the AAT, the correct or preferable decision.

Mr Loh, a Singaporean, was convicted of dealing in heroin. He subsequently married, became a model prisoner, and was released on parole in January 1988. In examining the decision to deport, the President commented on each of the factors to be taken into account for and against deportation in this case, and decided that Mr Loh's rehabilitation would not be affected by deportation. He then concluded that the factors against deportation taken together did not outweigh the factors in favour of deportation. The President concluded that Mr Loh's contribution to the Australian community was not such that taken alone or along with other factors he should not be deported. He affirmed the decision under review.

Compensation: previous consideration of claim

In Grundy and Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees (Comcare) (15 March 1990) the AAT heard an application for review of a decision with regard to a matter on which the Tribunal had recorded an agreement reached by the parties at a preliminary conference. Mr Grundy subsequently lodged a further claim for 2 days in late January and February 1988. Comcare wrote to him refusing to consider the claim on the grounds that it had been covered by the agreement, which stated that the relevant condition had ceased by 3 January 1988.

The AAT was not satisfied that Mr Grundy was not claiming a contribution to his condition arising out of matters occurring after 3 January 1988. Nonetheless, it found that Comcare's letter, which had not been written by a delegate of the Commissioner and was not a decision on reconsideration, did not contain a reviewable decision. While it expressed the view that this was a situation in which a formal determination of the claim should have been made, that matter was not within the AAT's jurisdiction. It therefore found that the AAT did not have power to determine the application for review.

Marine navigation: suitability for engagement

Jonsson and Marine Council (14 March 1990) was an attempt by the Marine Council to have an application by Mr Jonsson for review of a decision by the Council dismissed. The Marine Council argued that the decision in question had been revoked and nothing remained for the AAT to review. Mr Jonsson claimed that the decision could not be revoked once an application to review it had been lodged with the AAT.

Mr Jonsson was a seaman who had been dismissed from his ship for alleged assault. The Marine Council investigated his

suitability to engage as a seaman, under the Navigation Act 1912, and decided that he be considered unsuitable 'pending receipt of a submission from Jonsson when the case will be reconsidered'. When the case was reconsidered the Council revoked its original decision. Some 9 months later, however, the Marine Council made virtually the same decision again.

The Navigation Act at the time provided that a determination of unsuitability by the Marine Council would be suspended if an application were made to the AAT, until that application was resolved. Although the relevant section was subsequently repealed, the AAT took the view that this could not be retrospective. The AAT also decided that, though the Navigation Act contemplated a situation where a decision could be revoked once an application for review had been made to the AAT, this could only be done for a specific reason. It was not otherwise open to the decision-maker to alter a decision once it had become the subject of an application to the AAT.

In this case, however, the AAT did not have evidence of the reasons why the determination was revoked. The available material suggested it may not have been due to any change in the Council's opinion of Mr Jonsson's suitability for employment as a seaman. The AAT adjourned the case to enable the parties to provide further evidence on this point.

Freedom of Information

Exemptions for foreign investment decisions

Macphee and Department of the Treasury (14 December 1989) concerned a request by Mr Ian Macphee for documents relating to the takeover of the Herald and Weekly Times by News Ltd in January 1987, and to the decisions by the Treasury and the Foreign Investment Review Board that the takeover was not contrary to the national interest. Mr Macphee sought review of the decision to delete material in one document, and of the Department's failure to make a decision on 40 other documents. The documents in dispute were subsequently narrowed to two. The Treasury claimed exemption for these on several grounds, including the grounds that release could jeopardise the maintenance of effective decision-making by creating misleading and false impressions of the deliberative process, that it could lead to uninformed public speculation or misrepresentation of the reasons for the decision and that it would prejudice the integrity of the deliberative process. The AAT agreed with the Treasury on public interest grounds and affirmed the decisions under review.

Exemptions for sensitive documents

In Aldred and Department of Foreign Affairs and Trade (8 February 1990) a Member of the House of Representatives, Mr Ken Aldred, sought access to documents on proposals by the Soviet Union for Soviet fishing vessels to operate in Australian waters. The request involved a total of 82 documents. For 71 of these the Department claimed exemption either in whole or in part. Certificates were provided by the