

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 Although the relevant section was subsequently repealed, the AAT took the view that this could not be retrospective.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In this case, however, the AAT did not have evidence of the reasons why the determination was revoked.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.

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## Freedom of Information

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### 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

Secretary to the Department of Prime Minister and Cabinet and the Acting Secretary to the Department of Foreign Affairs and Trade that the documents were sensitive and their release would be contrary to the public interest. The question arose whether reasonable grounds existed for the claims that disclosure would be contrary to the public interest.

The President of the AAT, citing his earlier decision in Macphee, first examined the certificates which claimed exemption, to determine whether the claims were reasonable. With relatively few exceptions he found in favour of the Department. Some documents were official records of Cabinet or had been submitted to Cabinet. Others involved the security or international relations of the Commonwealth, or could lead to unproductive public debate. He concluded that release of such documents would be contrary to the public interest.

#### Interview reports in accident investigations

In Associated Minerals Consolidated and Secretary, Department of Transport and Communications (26 February 1990) the decision under review was the refusal of access to two records of interview concerning the preliminary investigation under the Navigation Act 1912 into the loss of the vessel MV Singa Sea.

The AAT accepted that the purpose of conducting a preliminary investigation is to assess safety procedures to ensure that the highest possible standards are maintained in the protection of life at sea, as well as protection of the environment. It also accepted that the release of a statement obtained in the course of a preliminary hearing in the face of objection to its release would lead to a withdrawal of full hearted cooperation and consequent diminution in the effectiveness of the preliminary hearing process. It concluded that this would have a 'substantial adverse effect on the proper and efficient conduct of the operations of the agency'.

The AAT pointed out that in making any assessment under the relevant section of the Freedom of Information Act it must have regard to the circumstances and context in which exemption is claimed. That section of the Act does not restrict consideration only to the person who generated the information in the document in question but also looks at the general effect which the release of such documentation may have on the operations of the agency concerned. In this case the agency dealt with all the industry groups. If it were to lose the confidence of one of those groups, the consequences would be reflected throughout the entire industry. The AAT affirmed the decision under review.

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#### The Courts

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#### AAT hearings in certificate cases

Department of Industrial Relations v Forrest (1990 91 ALR 417) was an application to the Federal Court for review of a decision by Mr Forrest in his capacity as Deputy President of the AAT, involving the nature of the AAT's powers concerning in camera hearings in certificate cases.