

geographically discrete communities, and so be able to measure the effectiveness of the various activities which it is undertaking.

The two communities chosen were the Turkish community in Auburn, Sydney, and the Vietnamese community in Footscray, Melbourne. While both these communities are considered to be disadvantaged, both have good community support networks, including newspapers and radio programs in their own languages. Without this it would be very hard for the Project team to make and maintain contact.

The Project's basic strategy is simple. In March 1990 it commissioned a survey which confirmed that members of the two target communities do not have much understanding of administrative review. It is now carrying out a series of intervention exercises designed to improve knowledge and understanding. Early in 1991 the survey will be repeated to assess the success of the Project.

The intervention strategies are divided into three main areas:

- . to improve knowledge and awareness within the general community;
- . to give detailed training and familiarisation to those people and organisations who commonly serve and advise the community; and
- . to encourage Commonwealth agencies - particularly those which have a good deal of contact with the public - to be more accessible to members of ethnic communities and more aware of the problems which affect them.

Administrative Appeals Tribunal

NEW JURISDICTION

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

- . Customs (Prohibited Imports) Regulations as amended by Customs (Prohibited Imports) Regulations (Amendment) Statutory Rules No.39 of 1990
- . Customs (Cinematograph Films) Regulations as amended by Customs (Cinematograph Films) Regulations ((Amendment) Statutory Rules No.40 of 1990
- . Designs Act 1906 as amended by Industry, Technology and Commerce Legislation Amendment Act (No.2) 1989
- . Hazardous Waste (Regulation of Exports and Imports) Act 1989
- . Industrial Chemicals (Notification and Assessment) Act 1989
- . Honey Levy Collection Act 1962 as amended by Primary Industries and Energy Legislation Amendment Act (No.3) 1989

KEY DECISIONS

Social security: de facto spouse

In Secretary to the Department of Social Security and Villani (29 March 1990) the Department challenged a decision by the Social Security Appeals Tribunal (SSAT) that overturned the cancellation of Ms Villani's widow's pension. The pension had been cancelled when the Department discovered that Ms Villani had, since April 1988, shared a residence with a male friend, who some years earlier had fathered Ms Villani's child. The Department contended that this circumstance amounted to a de facto marriage thereby excluding Ms Villani from eligibility for the pension.

The AAT decided that the relevant provisions were the definitions of 'widow' and 'de facto spouse' applying between April and November 1988, when the pension was cancelled. However as Ms Villani's circumstances had remained unchanged, the AAT considered the evidence in the light of all subsequent legislative changes to those provisions.

After considering the legislative changes to the eligibility provisions relating to widow's pensions, the AAT determined that the only substantive alteration was that where evidence concerning the nature of a relationship is equivocal, the Secretary is required to determine that there is a de facto relationship in existence. However, there is a primary obligation to obtain sufficient evidence to make a determination so that it will be rare that a case would be equivocal.

In this case, the AAT decided that Ms Villani was not 'living with a man as his wife on a bona fide domestic basis'. It therefore affirmed the decision under review.

AAT procedures: relevance of Information Privacy Principles

In Pasla and Australian Postal Corporation (the APC) (30 April 1990) the AAT, constituted by 3 members, considered whether the APC should disclose at the commencement of proceedings evidence, in the nature of a film of Mr Pasla, that the APC was alleged to possess. This question was affected by arguments that the procedures of the AAT are subject to the Information Privacy Principles (the IPPs) created by the Privacy Act 1988.

The case involved an application for review of two determinations by the Commissioner for Employees' Compensation that the APC was not liable to pay compensation. At the hearing Mr Pasla sought access to the film he believed the APC possessed. The AAT noted that a film was a 'document' within the meaning of that term in section 37 of the AAT Act and that therefore films need to be lodged with the Tribunal as provided for by that provision. However, it was further noted that section 37(1) required the lodgement of all documents that were in the decision-maker's possession at the commencement of proceedings and did not capture documents later created, as was the film in this case. In considering whether it would require the disclosure of the film under

section 37(2) the AAT expressed concern that the proceedings should not descend into 'trial by ambush' but, in refusing to order disclosure, it stated that the appropriate time for disclosure would depend upon the issues in each application and in particular whether or not the applicant's credit was an issue.

In considering the application of the IPPs to itself, the AAT stated that it was not a collector of personal information for inclusion in a record. In any event, at the time Mr Pasla sought directions the AAT was not in possession of the film. Finally, the AAT said that it was not for it to carry out the functions of the Privacy Commissioner either to investigate complaints or make determinations under the Privacy Act 1988. It declined to give the directions Mr Pasla sought.

Migration: conditional recommendation to revoke deportation order

Kirakos and Minister for Immigration, Local Government and Ethnic Affairs (23 May 1990) was an application for review of a decision by a delegate of the Minister to deport Mr Kirakos.

Mr Kirakos is a Syrian national who moved to Lebanon when he was eleven and to Australia in 1974, when he was nineteen. He had been a heroin user, had a lengthy criminal record that involved several short gaol terms, and most recently was sentenced to imprisonment for two years for malicious wounding. After his release he had been held in custody for 10 months pending deportation.

The AAT found Mr Kirakos an unsatisfactory witness. It doubted his expressions of remorse and regarded the possibility of him offending again as 'well above a minimal level'. On the other hand, it believed that he would suffer considerable hardship if deported, accepting evidence by an expert on Syrian matters that his criminal record would attract the attention of the authorities.

The AAT commented that if it were possible to deport Mr Kirakos quickly it would have no hesitation in affirming the decision to deport. In view of the difficulty which the Department of Immigration, Local Government and Ethnic Affairs had had in trying to obtain travel documents from the Syrian authorities, the uncertainty that they would ever be obtained and the time Mr Kirakos had already been in custody, it remitted the matter to the Minister and recommended that, if the Department was not able to execute the deportation order within a reasonable time, the order should be revoked.

Superannuation: use of statistical data

Brennan and Commissioner for Superannuation (29 May 1990) involved a decision by the Commissioner that the incapacity that was the reason for Mr Brennan's retirement was caused, or was substantially contributed to, by a condition or conditions specified in his Benefit Classification Certificate (BCC), in existence when he joined the Superannuation Fund. The conditions specified were 'polycystic kidney' and 'hypertension'.

Mr Brennan had retired in May 1983 due to invalidity following the bursting of an intra-cranial aneurysm and subarachnoid haemorrhage. The Commissioner's delegate found in a medical textbook that aneurysms and subarachnoid haemorrhages are more common in association with hypertension and polycystic kidney disease (PKD), and concluded that the conditions listed on the certificate had caused or substantially contributed to the incapacity leading to Mr Brennan's retirement.

Mr Brennan challenged the finding. The Commissioner subsequently accepted that Mr Brennan's blood pressure was under adequate control, and relied only on the perceived statistical association between aneurysms and PKD.

After an extensive review of the medical and statistical evidence, the AAT, constituted by three members, concluded that the Commissioner bore the onus of proof and that he had not established that there was sufficient basis for the opinion that Mr Brennan's retirement was caused by one of the conditions specified on his BCC. There was no evidence of a direct medical connection in this case. Mr Brennan's blood pressure was under control and the aneurysm was acquired, not congenital. The Commissioner's decision was based entirely on deductions made from published statistics. The AAT concluded that their use was inappropriate and misleading in their application to Mr Brennan. The AAT therefore remitted the matter to the Commissioner with a direction that Mr Brennan's incapacity was not caused or substantially contributed to by a condition or conditions specified on his BCC.

Taxation: necessary findings of facts

East Finchley v Commissioner of Taxation (24 November 1989) was an appeal from a decision of the Administrative Appeals Tribunal upon an objection to an income tax assessment.

The Court set aside the AAT's decision because of the failure of the AAT to find the facts necessary to determine the matter, as it was required to do under section 43 of the Administrative Appeals Tribunal Act 1975. Justice Hill said that:

'Where the Tribunal's decision contains no findings on specific questions of fact which are material to the issue before it, the conclusion will ordinarily follow that the AAT has failed to direct its attention to considerations properly relevant to its determination and the proceedings before it will in such a case have miscarried. The Tribunal will have failed to deal, by reference to the relevant considerations, with a matter which arose for its determination and which it purported to determine.'

Freedom of Information

Effect on official advice to politicians

The Freedom Of Information Review for April 1990, pages 14-16 reports the evidence given by Mr Ian Macphee in the course of