

- 17 Cf. §§48, 49 of the Act 1976 (A translation of the Act is given as Appendix II in M Singh's book, *supra* note 9)
- 18 Detmold, *supra* note 3, pp31
- 19 A suit for invalidity has to be filed within one month from the date when the appeal decision of the authority is delivered (§74 of the Administrative Courts Act 1960). Before filing a suit for invalidity the legality and expediency of an administrative act have an administrative appeal authority; these "appeal proceedings" have to be filed within one month after the delivery of the administrative act (§§68, 70)
- 20 See article at II 2
- 21 Cf. Wandsworth London Borough Council v Winder, 1985 AC p461 ff. In German law, however, the rent increase would not be regarded as a public law matter
- 22 Cf. §44 section 2 of the Administrative Procedure Act. Thereafter an act is void, eg if the act is taken by an authority outside its local competence, if for factual reasons nobody can perform it or if it conflicts with good morals
- 23 Smith v East Elloe Rural District Council 1956 AC p736 ff, pp769; the very same "forehead" formula is used, curiously enough, in textbooks on German administrative law
- 24 Cf. Cocks v Thanet DC, (1983) 2 AC p286 ff, pp293, where Lord Bridge held that a decision of the housing authority created rights and obligations "in the field of private law". Instead of subjective public rights there is a "two stage process" (cf Roy v Kensington and Chelsea FPC, 1991, 1 AllER (HL), p705 ff, pp727 per Lord Nourse in the Court of Appeal): proceedings and decision under public law; and rights and their enforcement under private law
- 25 Cf. Blackburn's cases in (1968) 2 QB p118 ff; 1973 QB p241 ff; (1976) 1 WLR p550 ff; The Times 7 March 1980
- 26 R. v Her Majesty's Treasury ex.p. Smedley, 1985 QB p657 ff
- 27 R. v IRC ex.p. National Federation of Self-Employed and Small Businesses Ltd 1982 AC p617 ff, pp644

REGULAR REPORTS

Administrative Review Council

Reports, submissions and letters of advice

Since the last issue of Admin Review, the Council has provided:

- letters of advice to the Attorney-General on
 - a proposal to abolish the Security Appeals Tribunal;
 - the National Witness Protection Program;
 - changes to the immigration portfolio;
 - the Draft Seafarers' Rehabilitation and Compensation Bill; and
 - superannuation, concerning the provision of an external dispute resolution mechanism; and
- a submission to a parliamentary committee on the role of Parliament in an age of Executive dominance.

Current work program – developments

Community Services and Health

The Council has recently redirected this project towards investigating the scope of

merits review of decisions made under Commonwealth funding programs.

Intellectual property

A draft discussion paper on review of patents decisions is being prepared by a consultant, Dr Margaret Allars of Sydney University.

Specialist tribunals

As a result of resource difficulties, publication of a draft report on this subject is expected to be delayed until some time in 1993. The second Conference of Commonwealth Review Tribunals was held in Sydney on October 16 and 17, 1992. Details on the conference will be provided in the next issue of *Admin Review*, as this issue was ready to go to press at the time the conference was held.

Government business enterprises

The Council is working on a draft report on the extent to which GBEs should be subject to administrative review. This is expected to be available towards the end of this year. Anyone interested in obtaining a copy of the draft report should contact Robyn Johansson, the responsible Project Officer at the Council, ☎ (06) 257 6115.

Environmental decisions

The Council has engaged a consultant, Professor Julian Disney of the Centre for International and Public Law of the Australian National University, to examine the issue of merits review of environmental decisions.

Administrative Appeals Tribunal

New jurisdiction

Since the last issue of *Admin Review* jurisdiction has been conferred on the AAT, or existing AAT jurisdiction has been amended, by the following legislation:

- *Bankruptcy Amendment Act 1991*
- *Coal Tariff Legislation Amendment Act 1992*
- *Customs Legislation (Tariff Concession and Anti-Dumping) Act 1992*
- *High Court of Australia (Fees) Regulations (Amendment)*
- *Industrial Chemicals (Notification and Assessment) Amendment Act 1992*
- *Migration Amendment Act (No 2) 1992*
- *Migration Amendment Act (No 3) 1992*

AAT decisions

Veterans' Affairs – making of AAT review applications

Re Roberts and Repatriation Commission (4 March 1992) concerned the question of when an application for AAT review of a decision of the Veterans' Review Board is both "made" for the purposes of section 177(2) of the *Veterans' Entitlements Act 1986* and "lodged" within the meaning of section 29 of the AAT Act. Section 177(2) sets out the manner in which a pension may be paid, depending on whether the application is made to the Tribunal within three months of service of the VRB decision on the applicant under section 177(2)(a), or more than three months from that time under section 177(2)(b). Section 29 requires that an application be "lodged" with the Tribunal within the prescribed time.

The application by Mr Roberts had been made on the wrong form and sent to the Department of Veterans' Affairs

(DVA). A delay in forwarding the application to the AAT meant that it was received by the Tribunal more than three months after the VRB decision had been served on Mr Roberts. It was argued for Mr Roberts that the forwarding of his application to the DVA was sufficient to comply with section 177(2)(a). The answer to the question raised was important for Mr Roberts because his pension, which the Repatriation Commission had indicated it was liable to pay, would have been payable from a significantly earlier date if the application were held to have been made within three months of the VRB decision being served on him.

The Tribunal, constituted by Justice O'Connor, decided that it was not sufficient for the purposes of either the AAT Act or the Veterans' Entitlement Act for the application to have been received by the DVA. A valid application must be lodged with the Tribunal within the prescribed time limit, with lodgement meaning a physical acceptance of the document by an officer of the Registry, whether the document was sent or deposited in person. It was further decided that the time limits set by the Veterans' Entitlement Act must be complied with strictly and that substantial compliance would not suffice.

The Tribunal referred this case and similar cases existing in AAT registries to the Ombudsman for investigation.

Summons for production of documents

Lego Australia Pty Ltd v Collector of Customs (10 April 1992) dealt with several aspects of the power to issue a summons under section 40(1A) of the AAT Act. Lego had sought review of a Customs decision to demand an amount of duty said to be owing in relation to goods imported from Denmark. On 14 November 1991, while the matter was pending, a search of Lego's premises by members of the Australian Federal Police, under a warrant issued on 30 October 1991, took place. A large amount of Lego's documentation was taken during the search.

On 17 December 1991, the AAT matter was listed in a callover and was stood over for a Directions Hearing in March 1992. At that hearing, Justice Moss, constituting the Tribunal, was informed by Lego that a summons dated 4 February 1992 had issued from the Tribunal Registry seeking, in