

if a tribunal accepts evidence without any objection being made to its admission then there can be no reason why it should not be treated as probative and credible evidence. The Tribunal concluded that, as there was no reason advanced by the Department for rejecting the evidence in support of the claim, the case be decided in Mrs Aronovitch's favour. [PG]

### **Australian Capital Territory AAT:**

#### ***Whether it is desirable to follow Commonwealth AAT decisions***

*Re Weetangera Action Group and Department of Education and the Arts* (31 January 1992) arose after the issue of a conclusive certificate under section 36 of the *Freedom of Information Act 1989* (ACT). The ACT Administrative Appeals Tribunal, constituted by its President, Mr R K Todd, considered an application to gain access to documents relating to the closure of schools in the ACT, in particular the Weetangera Primary School.

President Todd discussed several Commonwealth AAT decisions including *Re Aldred and Department of Foreign Affairs and Trade* (1990) 20 ALD 264. President Todd considered that that decision was not consistent with the spirit and intention of the ACT FOI Act, nor with the earlier decisions to which he had referred. He determined that he was not obliged to follow the *Aldred* decision as he was sitting as the President of the ACT AAT. However, he noted that he would have been required to follow *Aldred* if he were considering an application as a Deputy President of the Commonwealth AAT because *Aldred* had been decided by the then President of that tribunal.

He concluded that there were reasonable grounds for deciding that releasing the documents would be contrary to the public interest and upheld the original decision. [PG]

## **Freedom of Information**

### **Amending medical reports**

In *Re Gordon and Department of Social Security* (23 September 1991), the Tribunal, constituted by Senior Member Balmford and Members Rodopoulos and Gillham, considered an application, under section 48 of the FOI Act, to amend documents. Section 48 allows people to ask to have their personal records amended if the infor-

mation which is recorded is 'incomplete, incorrect, out of date or misleading'.

Mr Gordon wanted a number of documents amended, including several medical reports and some file notes. Before the hearing, the Department had agreed to add a notation to each of the documents pointing out that Mr Gordon's views should be read in conjunction with the documents. Mr Gordon was dissatisfied with that proposal, so the issue before the Tribunal was the method of amendment.

In particular, Mr Gordon argued that several medical reports should be removed from his file. These were reports which did not support his claim for an invalid pension, which had been subsequently granted. The Tribunal made three points about amending medical reports on the basis that they were 'incomplete, incorrect, out of date or misleading':

- simply because the reports did not support the decision which was ultimately made did not necessarily mean they were incomplete etc;
- there needed to be medical evidence presented to the Tribunal before it could decide if the reports were incomplete etc (neither Mr Gordon nor the Department had arranged for any medical evidence to be presented); and
- in any event, the Tribunal considered that the medical reports should stand as representing the view of that doctor at the date of the examination.

Finally, the Tribunal determined that the power to amend documents would not extend to completely removing them from the file. [PG]

## **The Courts**

### **Bias: previous dealings with a party**

*Re Polites; Ex parte Hoyts Corporation Pty Ltd* (1991) 65 ALJR 445, concerned circumstances in which Deputy President Polites had been hearing a matter in the Industrial Relations Commission ('IRC') that had run, so far, for 27 days. At that juncture, a party discovered that the Deputy President had provided advice to the other party before he joined the IRC and objected to his continuing to sit. Deputy President Polites decided to discontinue sitting. The party that had not raised the matter initiated proceedings to obtain a writ of mandamus to compel Deputy