

Reversed onus for migration decision

On 14 November 1991, the Migration Regulations were amended to empower the Minister to declare an organisation or group of persons to be a 'declared body for the purposes of this legislation'. The effect of such a declaration is that each member of a declared body, who is seeking a visa or entry permit, is required to satisfy the Minister, acting personally, that he or she 'is not likely to become involved: (i) in the planning of any criminal or illegal activity to be carried out inside or outside Australia; or (ii) in the carrying out, inside or outside Australia, of any criminal or illegal activity.'

Although the principles of procedural fairness would probably require the Minister to provide affected persons with the substance of any claims made against them, it may still be very difficult to satisfy the Minister. The amendments have a sunset provision that terminates them on and after 6 March 1992.

Bankruptcy Amendment Act 1991

The *Bankruptcy Amendment Act 1991* contains an interesting development from the point of view of administrative law. Sections 139ZF (assessments of income and contribution), 149 (objections) and 149ZM (early discharge) provide for review by the Administrative Appeals Tribunal of decisions of:

- the trustee (or Official Receiver in the case of section 149Q), or
- the Inspector-General on the review of a decision under (a), or
- the Inspector-General refusing a request to review a decision.

There are two aspects of interest in this Bill: firstly, that an applicant appears to have the choice whether or not to seek review by the Inspector-General before applying to the AAT for review, that is the AAT has the jurisdiction to review a primary decision before any internal review at all has taken place; secondly, that the review sought in the above provisions may be of a decision of the trustee of a bankrupt, who is not a Commonwealth Officer, but a private person. It remains to be seen whether this kind of development is to become more common in the future. [GF]

Australian Securities Commission

In its 1990/91 Annual Report, the Australian Securities Commission stated at page 27:

'As a Commonwealth Government authority, the ASC is subject to a range of administrative law provisions, including Freedom of Information (FOI) legislation and administrative and judicial review. The ASC is unique in that every decision under the Corporations Law, including litigation decisions, could potentially go to the Administrative Appeals Tribunal (AAT). The ASC believes that this goes too far.'

'In fact the *Australian Securities Commission Act 1989* provides for review by the Administrative Appeals Tribunal of decisions under sections 72-75 of the Act, which restrain the exercise of certain rights: that is orders in relation to securities of a body corporate (s72), orders in relation to securities generally (s73), orders in relation to futures contracts (s74) and orders which vary or revoke orders in force under the division (s75). Finally the AAT has the power to review a decision to refuse to vary or revoke an order in force under Division 8 of Part 3 of the ASC Act.'

Section 1317 of the *Corporations Law* provides for review by the AAT of a decision by the Minister, the ASC or the Companies Auditors and Liquidators Disciplinary Board. A number of decisions are excluded from AAT review:

- a decision in respect of which an appeal to, or review by, a court or another tribunal is expressly provided by the Act;
- a decision declared by the Act to be conclusive evidence of an act, matter or thing;
- a decision by the Minister to make or refuse to make a declaration under section 112(3) (that an unincorporated association may carry on a profession or calling of a specified kind);
- a decision by the ASC under section 342 or 350 (cessation of business) or Division 8 of Part 5.6 (dissolution of companies); or
- a decision by the ASC to refuse to exercise a power under section 342 or 350 or Division 8 of part 5.6.

The apparent breadth of review must, of course, be read in the light of the decision in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, which reduced the scope of the word 'decision' thereby reducing the scope for both merits and judicial review of decisions. For further discussion on this point, see the Focus Article in this issue. For an example of how the AAT's jurisdiction is diminished, see *Gallivan Investments Pty Ltd v ASC* [1991] *Admin Review* 40. Although the ASC believes that the AAT's power is too extensive, it remains to be seen what use will be made of the available rights of review and what impact the AAT will have on ASC decision-making. [GF]

Official Information

The first of five reports to be compiled as part of the *Integrity in Government* project being conducted by the Australian National University has been published. This report, entitled *Official Information*, deals broadly with issues relating to the handling, use and dissemination of information in the hands of government. It also deals with the controversial topic of whistleblower protection. The report is particularly useful because it covers the relevant law in each of Australia's jurisdictions.

If you are interested in obtaining a copy, you should contact the Law Department of the Research School of Social Sciences in the Australian National University, phone number (06) 249 2331.

TRIBUNAL WATCH

Immigration Review Tribunal: Annual Report 1990-91

This Report was sent to the Minister on 9 October 1991. The Report covers a range of matters including staffing, workload and important decisions. The 1990-1991 year represents the first full year of operation of the IRT. As the IRT is still new, there is not yet a clear picture of the workload that can be expected.

Planners for the IRT anticipated up to 2500 applications being lodged in 1990-1991; 814 applications were actually lodged. The difference between the anticipated number and the actual number may be due to several factors. There were fewer decisions made in cases where the applicant was able to seek review from the IRT than was estimated. Of those cases, which form the pool of potential applications to the IRT, a smaller percentage of cases went on to the IRT than expected.

The Tribunal is concerned about the rate of appeals and has embarked on a program of activities to publicise its work. The activities include:

- producing pamphlets in 15 community languages;
- conducting seminars with ethnic community groups, Migrant Resource Centres, Ethnic Communities' Councils, migration consultants and community workers; and
- advertising its role on ethnic press and radio.

The task the IRT faces in making its work known is complicated by the fact that many of the people who could use it are not in Australia at the time of their application. This is because many decisions capable of being reviewed by the IRT are made at overseas posts. [PG]

Social Security Appeals Tribunal: Annual Report 1990-91

This Report was presented to the Minister on 23 September 1991. One particularly noteworthy feature was an increase in workload. During the year, the SSAT received 7334 applications and finalised 7204 applications. The application rate increased by 20% in the last four months of the year. There was no clear reason for the increase apart from the difficult economic conditions.

During the year under review, the SSAT improved its performance on a number of indicators; reducing the average processing time from lodgement of application to completion and providing written reasons for decisions more quickly. In the previous year the average time to process an application was 14.2 weeks, in the reporting year the average time fell to 10.5 weeks. Likewise, written reasons for decision were provided in an average of 18.7 days previously and in the year under review in 10.4 days.

The SSAT continued to maintain a staff training program to ensure that its members