an error since it had proceeded to dismiss the applications on the basis of a consent which was erroneously dated. The incorrect date should have put the Tribunal on notice as to the applicant's confused state of mind, and should have caused it to confirm the applicant's true intentions before dismissing the applications.

The respondent argued that, as a general rule, the Tribunal had no power to reinstate an application once dismissed by it and that a valid exercise of the Tribunal's powers under subsection 42A(1) had the effect of exhausting the Tribunal's jurisdiction with respect to that particular application so that the only way a matter could be deal with further was by a fresh application. Should a consent agreement be vitiated by lack of consent, it was within the ambit of a superior court to correct, and not that of the Tribunal which made the original order. The 1993 amendments merely gave effect to exceptions to these general rules, allowing the Tribunal to correct dismissal orders consequent upon an error of its own. The respondent also relied upon the wording of paragraph 56 of the Explanatory Memorandum and to several authorities to this effect which the respondent argued should be preferred to *Re Thomson and Comcare.*

The Tribunal noted that central to the issue between the parties was the meaning of the word 'error'. Deputy President Burns said:

> The 'error' referred to in s.42A(10) is the error of the Tribunal bearing in mind the words 'dismissed in error'. The focus of the sub-section is upon the reinstatement of applications which have been dismissed in error, ie. in a belief in something untrue... the basis for the Tribunal's error may well lie in an error or belief on behalf of one or more of the parties...
>
> The above meaning of 'error' will also include administrative error by the Tribunal and in this respect, the Tribunal would indicate that had Parliament intended to limit s.42A(10) to only those applications dismissed through administrative error on the part of the Tribunal (as the respondent submits), it could have quite simply said so but it has not. The wording of paragraph 56 [of the Explanatory Memorandum] is not to be substituted for the wording of the subsection as passed by Parliament.

The Tribunal then went on to decide that the applications in question had been dismissed in error as the dismissals were solely based on a belief that each side had consented to such a course. Accordingly the Tribunal had jurisdiction to entertain the applications for reinstatement and the parties were given an opportunity to make submissions on the question whether subsection 42A(10) imports a discretion to reinstate and, if it does, what circumstances should be taken into account in the exercise of that discretion.

The Company and the Commissioner of Taxation (No. NT98/41, NT98/43, NT98/47 -48 and NT98/42; AAT No.12865)

Senior Member Block
Circumstances justifying remittal of decisions to decision maker for reconsideration – whether claim that decision maker's reasons were inadequate is sufficient

These were a group of cases in four of which a certain private company and, in the remaining case, another applicant had sought review of tax assessments. At a directions hearing before the Tribunal the applicants had each applied for an order under section 42D(1) of the *Administrative Appeals Tribunal Act 1975* (the AAT Act), which provides:

> At any stage of a proceeding for review of a decision, the Tribunal may remit the decision to the person who made it for reconsideration of the decision by the person.

A considerable part of the applicants' contentions dealt with the respondent's reasons for the decisions which were the subject of the review applications These included that the respondent did not deal or had not dealt adequately with the grounds of objection to assessments made by the Company, that the respondent's reasons were such that the Company was entitled to assert that the respondent did not comprehend or consider certain grounds of objection and that, in general terms, the Company is entitled to assert that the reasons were "a sham".

The Tribunal did not consider it necessary to deal in any detail with the Company's complaints in respect of the respondent's reasons, although he noted that allegations of "sham" or allegations that the respondent did not read or comprehend aspects of the Company's objection, were entirely without foundation. The Tribunal referred to the decision of Deputy President Forgie in *Re Lavery and Registrar, Supreme Court of Queensland and Others (No. 2)* (1996) 23 AAR 52, which outlined the requirements in relation to a statement of reasons noting, in particular, that a decision maker may seek to support the decision on a basis completely different from that upon which it was originally made and that, equally, a person applying for review of a decision may seek to have it set aside on a basis completely different from that which he or she originally put to the decision maker.

On the other hand, the Tribunal noted that it was not clear in what circumstances the Tribunal should exercise its power under subsection 42D(1). The Tribunal observed that

> It may perhaps be correct to say that the power should be exercised where the reasons are so unsatisfactory that it is fair to infer that the decision maker has not applied his or her mind, or where the reasons are indeed aptly categorised as a "sham", but that is very far from being the case in this instance. It may be that the Respondent's reasons could perhaps be refined but this is not an aspect in respect of which this Tribunal need (or indeed should) attempt to be specific.

The Tribunal decided that it did not consider that the reasons furnished were indicative of the fact that the respondent did not understand the relevant objections or that he failed to apply his mind or that they amounted to a "sham" and that no good purpose would be served by remitting the decisions in question to the decision maker for reconsideration.

Streeter and Secretary to the Department of Employment, Education, Training and Youth Affairs (No. Q 97/590; AAT No.12730)

Senior Member Beddoe

Freedom of Information – anonymous telephone information recorded by one agency and passed to another agency – application of exemptions under paragraph 37(1)(b) and subsection 41(1) of the FOI Act.

The applicant sought access under the *Freedom of Information Act 1982* (the FOI Act) to certain documents held on the respondent's files in relation to the applicant's AUSTUDY claims. The documents had come into the possession of the respondent Department from another agency which