

through the guidelines and partly through lack of sufficient funding to provide assistance in all cases that comply with the new guidelines.

The guideline for appeals in relation to social security and other Commonwealth benefits now provides 2 levels of assistance:

Assistance in order to obtain instructions and necessary reports and prepare submissions for appeals to the AAT may be granted where

- (i) the case relates to an overpayment exceeding \$5000; or
- (ii) the applicant is at significant risk of prosecution; or
- (iii) the applicant cannot afford to pay for medical reports and the appeal is about the health of the applicant or of someone for whom the applicant has parental responsibility; or
- (iv) the applicant by reason of disability or disadvantage cannot adequately prepare or present the case; or
- (v) the appeal raises important or complex questions of law.

For actual representation in Tribunal proceedings, assistance may be granted where

- (i) the applicant may incriminate himself/herself; or

- (ii) the case is complicated; or

- (iii) the applicant by reason of disability or disadvantage cannot adequately prepare or present the case; or

- (iv) the appeal raises important or complex questions of law.

War Veterans' Matters

The Committee noted (para 7.36) that the July 1998 guidelines restrict eligibility to war-caused disability pension entitlements or assessment claims. Funding for AAT appeals in respect of war related disability pensions is now subject to a means test.

However, the Committee noted that the Attorney-General's Department is conducting a national review of the provision of assistance in veterans' matters.

Australian Law Reform Commission report *Australia's Federal Record: A Review of the Archives Act 1983*

The Australian Law Reform Commission Report *Australia's Federal Record: A Review of the Archives Act 1983* was tabled in Parliament on 2 July 1998.

The Report is concerned that during the past two decades since the *Archives Act 1983* was drafted, technologies for the capture, storage and transfer of records electronically have developed rapidly. This has compelled records managers and archivists to define clearly what is meant by a record and to recognise the distinctions between the terms record, information (which may be included in

a record) and document (which is a device by which either a record or information may be physically presented).

While existing legislation acknowledges that records can exist in electronic media such as disks or tapes, it falls down in its description of them as physical objects rather than as a gateway to a complex world of "virtual" records.

To address this, the report recommends that the term "record" be redefined as "recorded information, in any form, including data in computer systems, created or received or maintained by an organisation or person in the transaction of business or the conduct of affairs and kept as evidence of such activity".

The Report expresses concern at the present arrangement in which "there are wide variations in the extent to which Commonwealth agencies have adopted electronic record-keeping technologies". Most Commonwealth records are now created electronically, but in many cases this merely means that they are created on a person computer networked within a group or agency.

"The record may be transmitted electronically and become part of an accumulation of electronic records" the Report says. "Yet the 'record-keeping system' to which it belongs is often no more than a server filled with an unstructured mass of records which are difficult to locate and subject to intermittent purges. In such cases reliable and enduring record-keeping still depends on record creators printing all records of more than transient value and ensuring that they are incorporated into a structure paper-based record-keeping system.

Among the range of recommendations contained in the report is that the

National Archives of Australia be reconstituted as a stronger independent authority empowered to set record-keeping standards, monitor the application of those standards, and bringing the entire process under the scrutiny of the Auditor-General.

In addition, the Report also urges a stronger public-access regime along the lines of the Freedom of Information legislation. In particular, it calls for:

- a statutory right of public access to all Commonwealth records which are 30 years old, subject only to applicable exemptions;
- a requirement for the Commonwealth to respond to all access applications within 90 days;
- clearly defined categories of exemption;
- a requirement to provide written reasons in support of any exemption; and
- a right to internal and external review of any decision to exempt records from public access.

Freedom of Information Act 1982 : Annual Report 1996-97

This is the fifteenth report on the operation of the *Freedom of Information Act 1982* (the FOI Act).

The Attorney-General's Introduction to the Report notes that there was a marked decline in the number of applications made under the Act during the year. He says that this may be due in part to a change in the practice of the Australian Taxation Office which is now making more information available outside the FOI Act.