

applicant believes the notice is inadequate.

The AAT may overturn any decision made by the Minister or the Department, except where a conclusive certificate has been issued. A conclusive certificate may be issued where the requested documents are claimed to be exempt as affecting the national security, defence, international relations and relations with States; or are Cabinet documents or Executive Council documents. Where such a certificate exists, the AAT may only determine whether reasonable grounds exist for claiming such an exemption. Where a certificate is issued under s.36, claiming that the documents sought are internal working documents, the AAT may determine whether there are reasonable grounds for the claim that disclosure would be contrary to the public interest.

Complaints to the Ombudsman

An applicant may complain to the Ombudsman if dissatisfied about the way a request has been handled.

Where the complaint to the Ombudsman has been made, the AAT has no jurisdiction to hear an appeal until the Ombudsman informs the applicant of the result of his or her investigation.

Representation before the AAT

Section 52F of the *FOI Act* gives the Ombudsman power to represent or arrange for the representation of applicants before the AAT in relation to FOI matters.

In deciding whether to represent an applicant, the Ombudsman may consider the importance of the principle involved in the matter under review, the likelihood that the proceedings will establish a precedent in future proceedings, the financial means of the applicant, the applicant's prospect of success and the reasonableness of the decision under review.

Use of appeals

The DSS received the most number of requests for access under the *FOI Act* of all agencies for the period 1 December 1982 to 30 June 1983 (1177 requests or 20% of total requests).

The DSS is also the most appealed against agency in respect of decisions under the *FOI Act*. In the period above, 18.5% of all applications for internal review to agencies were made to the DSS. Upon review, the original DSS decision was varied in about one-third of cases. Appeals to the AAT in respect of FOI decisions made by the DSS accounted for 18.8% of all appeals at that level in the same period. While only one of these appeals had been decided by the end of June 1983, over half had been conceded by the Department.

Up to 7 June 1984, there had been 33 appeals to the AAT against FOI decisions by the DSS. Of those 33, 13 re-

mained current. The remainder had been disposed of as follows:

conceded by DSS	8
withdrawn by applicant	5
no jurisdiction	5
dismissed under s.42A	1
decision affirmed	1

That is, the Tribunal has decided only one FOI appeal against a DSS decision. That was the case of *Munsie and Director-General of Social Security* (1983) 5 ALD 189. The Tribunal (consisting of J.B.K. Williams) decided that the Department was not obliged to reveal the name of an informant, who had alleged to the DSS that Munsie (a supporting parent) was living in a de facto relationship.

In *Munsie*, the AAT based its decision principally on s.38 of the *FOI Act*, which prevents the disclosure of documents where disclosure is specifically prohibited by another enactment. The Tribunal said that this provision preserved the prohibition, in s.17 of the *Social Security Act*, on disclosure of 'information with respect to the affairs of another person'.

The approach taken in *Munsie* must now be regarded as discredited by the Federal Court decision in *News Corporation v National Companies and Securities Commission* (1 March 1984) which gave a much more limited operation to s.38 of the *FOI Act*.

Statistics

This table of applications lodged with and decided by the AAT, is compiled from information provided by the Department of Social Security.

	Jan. 84	Feb. 84	Mar. 84	Apr. 84
Applications lodged*	62	49	70	48
Decided by AAT	19	22	23	25
Withdrawn	18	14	28	30
Conceded	30	38	32	29
No jurisdiction	5	2	3	3
Awaiting decision at end of month	1164	1137	1121	1082

* Applications lodged: type of appeal

Medical appeal	48	31	44	26
Other appeals	14	18	26	21
FOI	0	0	0	1

State where application lodged

ACT	0	0	0	0
NSW	24	12	25	16
NT	1	0	0	0
Qld	9	8	4	6
SA	5	7	11	4
Tas.	2	3	4	1
Vic.	15	17	21	16
WA	6	2	5	5

STATISTICS: A LONGER VIEW*

In the first four years of the AAT's social security jurisdiction (1.4.80 to 31.3.84) there have been 3037 applications for review lodged. Of these, 2075 were medical appeals (invalid pensions, sickness benefits and handicapped child's allowances) and 962 were non-medical appeals.

The rate at which these appeals were lodged has followed a clear pattern, rising gradually to a peak of 129 appeals lodged during May 1983 and falling sharply from that peak in the following months (in February and March 1984, only 41 and 53 new appeals were lodged).

Over that period, New South Wales and Victoria have dominated the AAT's caseload, as the following table demonstrates:

ACT	26
NT	5
WA	143
Tasmania	101
SA	209
Queensland	479
NSW	1107
Victoria	967
	3037

In the same period, 2016 appeals have been resolved. In 121 there was no jurisdiction; in 743 the DSS conceded the

applicants' claim, and in 528 the applicant withdrew her or his appeal. In a further 110, the AAT adjourned the application indefinitely. The remaining 514 appeals were decided by the Tribunal as follows:

Affirmed:	280
Set aside:	221
Varied:	13

(The proportions of 'decisions affirmed' and 'decisions set aside' have been fairly constant throughout this period, as has the ratio between DSS concessions and applicant withdrawals.)

The busiest period of the Tribunal's social security jurisdiction appears to have been the 1983 year, when it decided 251 appeals. In 1982, by comparison, it decided 146 appeals; and, in the first quarter of 1984, it decided 59 appeals — below the 1983 rate but perhaps depressed by the relatively inactive January vacation period.

As at 31 March 1984, there were 1021 appeals awaiting decision. Of these, 66 had been heard and were awaiting decision, 8 were part heard and 712 had been listed for hearing.

* This note is based on statistics prepared by the Administrative Appeals Tribunal.