
Administrative Appeals Tribunal

NEW JURISDICTION

The following recent legislation confers jurisdiction on the AAT:

- . Bounty (Ships) Amendment Act 1985
- . Bounty (Injection-Moulding Equipment) Amendment Act 1985
- . Broadcasting and Television Amendment Act 1985
- . Customs Amendment Regulations 1985
- . Customs and Excise Legislation Amendment Act 1985
- . Dairy Produce Market Support Act 1985
- . Dairy Products (Export Inspection Charge) Collection Amendment Act 1984
- . Electricity (Amendment) Ordinance 1985 (ACT)
- . Excise Amendment Regulations 1985
- . Export Inspection (Charge Collection) Act 1985
- . Health Legislation Amendment Act 1985
- . National Occupational Health and Safety Commission Act 1985
- . Petroleum (Submerged Lands) Amendment Act 1985
- . Prescribed Goods (General) Orders 1985
- . Sales Tax Laws Amendment Act 1985
- . Statute Law Miscellaneous Provisions Act (No. 1) 1985

KEY DECISIONS

Social Security

Invalid Pensions. The Tribunal has called for the introduction of a special benefit for persons over 50 or 55 years of age who, having been unemployed, have no realistic expectation of finding work again: Re Summerfeld and Secretary to the Department of Social Security (16 April 1985). In that case, the applicant suffered from two medical conditions but, in the Tribunal's opinion, it was more the applicant's advanced age and current economic conditions which limited his ability to engage in

remunerative employment. In comparison, a decision refusing an invalid pension in Re Maching and Secretary to the Department of Social Security (13 March 1985) was set aside by the Tribunal on the basis that the applicant's inability to find work similar to her previous employment had arisen significantly from her medical condition and not from the state of the labour market.

In Re Ben and Secretary to the Department of Social Security (26 April 1985) the Tribunal held that the applicant was unemployable because his psychiatric condition prevented him from being motivated to seek work at least in the foreseeable future, and if he did seek work, it was unlikely that he would be successful given the physically deforming manifestations of his psychiatric illness.

Compensation

In Re Blackwell and Commonwealth of Australia (26 April 1985) the Tribunal set aside a determination refusing to redeem further compensation payments. An important issue was the manner in which the amount of the lump sum is to be determined. The Tribunal held: firstly that the sum is to be calculated on the basis that liability to pay compensation will continue for the remainder of the applicant's life; and secondly, that a discount rate be applied as in common law personal injury claims, but the 3% rate there applied (see Todorovic v Waller (1981) 150 CLR 402) was not apposite as there is in such cases a reduction for future notional income tax. Using the Todorovic rate as a yardstick, the Tribunal concluded that 4.5% was an appropriate rate.

Isolated Patients Travel Accommodation Assistance Scheme

In Re Jones and Secretary to the Department of Health (30 April 1985) the Tribunal rejected a proposition that sub-section 12(2) of the National Health Act 1953 provided an exhaustive definition of a 'specialist' and that only practitioners who had been recognised as such by the Specialist Recognition Advisory Committee fell within that category. On the facts of the case under review, however, the Tribunal held that the general practitioner was not a specialist simply by reason of his experienced performance of one medical procedure.

Migration

A deportation decision was affirmed in Re Van Den Berg and Minister for Immigration and Ethnic Affairs (17 April 1985). Although the Tribunal accepted that it was unlikely that the applicant would offend again, he had no real ties in Australia and it was unlikely he could make any significant contribution to the Australian community.

Export Development Grants

In Re Hawker Pacific Pty Ltd and Export Development Grants Board

(4 April 1985) the Tribunal set aside a decision of the Export Development Grants Board applying section 16 of the Export Expansion Grants Act 1978 to the applicant's claim. Section 16 makes provision for the Board to reduce an applicant's entitlement to a grant where some act or thing "...would result in an increase in the total of the amounts paid as grants without there being a corresponding increase in the total of the amounts of the export earnings of persons in the grant years...". It was held that word "corresponding" did not require a comparison between what would have been the grant and the export earnings calculated had the act or thing not been done, and such amounts if the power of the Board were not exercised. An increase in export earnings is "corresponding" if it is simply responsive to the thing or act done. The Tribunal compared the export earnings in the first grant year with the export earnings in later years, and held that there must be an appreciable increase, but there need be no proportionality. The assignment of businesses to the applicant, which the Board had submitted resulted in an increase in grants without a corresponding increase in export earnings, was held by the Tribunal to have led to a substantial increase in export earnings because of the more effective conduct of the businesses.

Customs and Excise

An applicant claimed for refund of duty in respect of blank video cassette tapes in the case Re National Panasonic (Australia) Pty Limited and Collector of Customs (New South Wales) (5 June 1985) on the ground that the tapes were eligible for by-law admission as they were parts or accessories for video recorders. The Tribunal rejected the applicant's claim by following the case Deputy Commissioner of Taxation v Polaroid Australia Pty Limited (1971) 46 ALJR 32, which held that film packs were not parts or accessories of a camera. The video tapes were not 'parts' as they were not necessary to the completion of the recorders, and did not form an element of the whole. The tapes were not 'accessories' as they were not added or attached to the recorders for convenience.

Repatriation

The AAT has jurisdiction under the transitional provisions of the Repatriation Legislation Amendment Act 1984 to review a decision of the Veterans' Review Board where a pension was applied for before the above Act, which conferred jurisdiction on the AAT, came into force: Re McPherson and Repatriation Commission (14 May 1985).

STATISTICAL TRENDS

The table below shows an overall decline in the number of applications in 1984-85 compared with 1983-84, due perhaps to the general normative effect of AAT decisions and the introduction of internal reconsideration as a prerequisite to AAT review in some

jurisdictions such as IPTAAS. The three highest volume jurisdictions during 1984-85 in descending order were social security, FOI and compensation. In the preceding year, the three highest volume jurisdictions were social security, IPTAAS and compensation. The increase in FOI applications and the decreases in social security and IPTAAS applications have been the most significant statistical change in the year 1984-85 compared with the year 1983-84.

	<u>No. of Applications to the AAT</u>		
	1982-83	1983-84	1984-85
Social Security	1104 (64.1%)	931 (43.9%)	566 (31.3%)
IPTAAS	21 (1.2%)	386 (18.2%)	168 (9.3%)
FOI	59 (3.4%)	210 (9.9%)	318 (17.6%)
Compensation	298 (17.3%)	305 (14.4%)	189 (10.4%)
Customs	68 (4.0%)	57 (2.7%)	171 (9.5%)
Tax Agents	13 (0.8%)	37 (1.7%)	6 (0.3%)
ACT Rates	1 (0.1%)	18 (0.8%)	84 (4.6%)
Superannuation	25 (1.4%)	22 (1.0%)	27 (1.6%)
Export Grants	26 (1.5%)	33 (1.6%)	35 (1.9%)
Veterans' Appeals	-	-	71 (3.9%)
Migration	31 (1.8%)	23 (1.1%)	22 (1.2%)
Other	76 (4.4%)	97 (4.6%)	152 (8.4%)
TOTAL	<u>1722</u>	<u>2119</u>	<u>1809</u>

Commonwealth Ombudsman

The Ombudsman Through the Looking Glass

Arrangements are currently being made for the holding of a seminar at the Australian National University Law School on 7 September 1985 entitled 'The Ombudsman Through the Looking Glass'. The seminar will attempt to bring Ombudsman experience and the theory of the Ombudsman's role together in a public forum. The evolution of the office, future directions, contribution to administrative fairness, and its successes and failures will be examined from a variety of perspectives.

International Ombudsman Consultative Committee Meeting

As noted in the last issue of Admin Review, Australia is scheduled to host the Fourth International Ombudsman Conference in 1988, the Australian bicentennial year. As Chairman of the International Ombudsman Consultative Committee ('the IOCC'), the Commonwealth Ombudsman presided over a meeting of the Committee held in Canberra on 15-17 April 1985 which was attended by Ombudsmen from Canada, Fiji, Ghana, Jamaica, New Zealand, Sri Lanka, Sweden, Switzerland and West Germany. Taking advantage of the overlap of membership with the IOCC, the Board of Directors of the International Ombudsman Institute met in Sydney on 18-19 April 1985.

Recent Address

The Ombudsman gave the second Sir Samuel Griffith Memorial Lecture at the National Press Club, Canberra, on 1 May 1985 concerning the need for greater awareness and utilisation by the legal profession of the Commonwealth administrative law reforms introduced in the last decade.

STATISTICAL TRENDS

The table below shows a substantial increase in the number of complaints received in the first six months of 1985 compared with the first six months of 1984. As noted in the last issue of Admin Review, written complaints generally tend to involve more complex issues and require greater investigative resources to be spent on them than on oral complaints.