
F O C U S

AAT fees

The government has announced as part of its budget measures that a filing fee of \$200 is to be introduced for applications to the Administrative Appeals Tribunal. The government has stated that applications relating to 'personal income maintenance matters eg pensions and benefits' will not be subject to the new filing fee. It is intended that the fee should be reimbursed where the application is successful. A further proposed measure is that a fee of \$300 be payable on appeals from the AAT to the Federal Court.

Section 70(2) of the AAT Act provides that regulations may make provision prescribing fees to be payable in respect of applications to the Tribunal and in relation to the refund in whole or in part of such fees where the proceeding terminates in a manner favourable to the applicant. Before the provision was introduced in 1977 the Council advised the then Attorney-General that in the absence of cogent arguments it would feel concerned by the inclusion of this power in the Act. The Attorney-General undertook that in considering any proposal to exercise the power to impose fees, the Council's views would be taken into account (see ARC, First Annual Report, 1977, para. 53).

It is not entirely clear what classes of applications will be exempted from the proposed filing fee under the government's proposals concerning income maintenance applications. However, it may be noted that in the Freedom of Information Laws Amendment Bill 1986 it is provided that certain charges do not apply in relation to applications for a pension, allowance or benefit payable under the Seamen's War Pensions and Allowances Act 1940, the Social Security Act 1947, the Student Assistance Act 1973, or the Veterans' Entitlements Act 1986. It is also provided that applications in respect of any payment of a like nature the purpose of which is to provide income support to persons of inadequate means are also exempted from payment of the charges. It seems likely that the approach taken to exclusion from payment of the AAT filing fee will be similar.

The Council has written to the Attorney-General providing advice to him on the imposition of filing fees.

FOI charges

As part of its budget measures the government has introduced the Freedom of Information Laws Amendment Bill 1986. Principal features of the new legislation include provisions

for new levels of fees in respect of applications, an increase in the hourly rate of charges for searching and retrieving documents, and a new charge (of \$20 per hour) in respect of time spent deciding whether to grant, refuse or defer access to a document. As mentioned above, persons seeking personal income maintenance documents are exempted from the fees and charges. In addition, it is proposed that decisions concerning fees be exempted from AAT review, and that the present public interest grounds to be taken into account in considering whether a charge should be remitted be removed. The legislation also proposes strengthening the grounds on which a request for access may be refused on the basis of workload. Section 45(2) is to be amended to ensure that material provided in confidence to agencies by non-government sources will be protected from disclosure even where it has been incorporated in internal working documents. There are other minor changes.

Costs before the AAT

The suggestion that the AAT would be given a power to award costs against unsuccessful parties before the Tribunal was aired in the press following the Budget. Any proposal to give the AAT a general costs power will require an amendment to the AAT Act and at the time of going to press with this issue of Admin Review no such legislation had been introduced.

At present, the AAT has only limited powers in relation to the costs of persons appearing before it. It has power to order the payment of fees and allowances of persons summoned to appear as witnesses before the Tribunal. It also has power in relation to legal costs in two jurisdictions - Commonwealth employees compensation and FOI. In both jurisdictions costs can only be awarded against the Commonwealth, and the FOI 'power' is recommendatory only.

The Council has recently transmitted advice to the Attorney-General on the matter.

Social Security Appeals Tribunals: Potential for problems?

Social Security Appeals Tribunals have no legislative foundation. They were set up by ministerial directive and their jurisdiction was also granted by ministerial directive. Their powers are limited to recommending that primary decisions be affirmed, varied or annulled. Initially, their jurisdiction was confined to hearing non-medical appeals but an appreciable extension of their jurisdiction occurred in 1980 when, by direction of the Minister, their jurisdiction was extended to include medical appeals involving invalid pensions, sickness benefits and handicapped children's allowances.