

Customs (anti-dumping). The Council has received submissions on issues raised in its discussion paper which was circulated in July, and is now in the process of preparing a final report on the review of decisions taken pursuant to anti-dumping legislation.

AAT. The Council's Committee on Divisions of the AAT met in October to consider a discussion paper relating to the divisional structure of the Tribunal. A report is now being prepared.

AD(JR) Act. Work on Stage Two of the AD(JR) Act project is currently proceeding.

Visitors. A number of members of the Senate Standing Committee on Constitutional and Legal Affairs attended the August meeting of Council for discussions on matters of mutual interest. Those attending were Senator Michael Tate (Chairman), Senator Nick Bolkus, Senator Barney Cooney and Senator Robert Hill. During August the Secretariat was also pleased to welcome Sir Frederick Deer CMG who served on the Council from its inauguration in 1976 until November 1982, and Professor Stephen Wood from Brigham Young University in Utah U.S.A. Professor Wood was interested in obtaining an update on the Australian administrative law system.

Administrative Appeals Tribunal

NEW JURISDICTION

Since the last issue of Admin Review new jurisdiction has been conferred on the AAT under the following legislation:

- . Apple and Pear (Conditions of Export) Regulations
- . Australian Capital Territory Taxation (Administration) Act 1969
- . Australian Citizenship Act 1948
- . Australian Meat and Livestock Corporation Act 1977
- . Bank Account Debits Taxation Administration Act 1982
- . Children's Services Ordinance 1986 (A.C.T.)
- . City Area Leases Ordinance 1936 (A.C.T.)
- . Dairy Produce Act 1986
- . Dairy Produce Levy (No.1) Act 1986
- . Estate Duty Assessment Act 1914
- . Export Control (Unprocessed Wood) Regulations
- . Fringe Benefits Tax Assessment Act 1986
- . Gift Duty Assessment Act 1941
- . Grape Research Levy Collection Act 1986
- . Health Legislation Amendment Act 1986
- . Income Tax Assessment Act 1936
- . Leases (Special Purposes) Ordinance 1925 (A.C.T.)
- . Loan (Drought Bonds) Act 1969
- . Pay-roll Tax Assessment Act 1941
- . Pay-roll Tax (Territories) Assessment Act 1971
- . Prevention of Cruelty to Animals Ordinance 1986 (A.C.T.)

- . Sales Tax Assessment Acts (Nos.1-11) 1930
- . Taxation Administration Act 1953
- . Taxation (Unpaid Company Tax) Assessment Act 1982
- . Trust Recoupment Tax Assessment Act 1985
- . Wool Tax (Administration) Act 1964

KEY DECISIONS

Veterans' entitlements

Re Dell and Repatriation Commission (29 August 1986) involved a remittal from the Federal Court which had heard an appeal from the Repatriation Review Tribunal on a refusal to accept the applicant's disability as war-caused. Before completion of the AAT hearing, the Veterans' Entitlements Act 1986 came into force. Because of the changes in the law that had occurred since the applicant lodged his claims for disability pension, the Tribunal said that the crucial issue in the case was which standard of satisfaction was to apply to the determination of the claims. The Tribunal considered the various standards of proof that might be argued to apply to the case and concluded that the question was whether there was a reasonable hypothesis for the applicant's claim that a fall from a moving Lambretta taxi after a fight with a US Army soldier in Vietnam was connected with his degenerative spinal condition. The Tribunal concluded that a reasonable hypothesis had been raised connecting the applicant's disease of the spine with the circumstances of the particular service rendered by him, and the Tribunal was unable to be satisfied, beyond reasonable doubt, that there was no sufficient ground for determining that the applicant's disease was war-caused.

Re Fahey and Repatriation Commission (29 August 1986) was concerned with the provision of the Veterans' Entitlements Act 1986 which provides for the special rate of pension for veterans who are totally and permanently incapacitated (s.24). The issue was whether, by reason of the applicant's inability to undertake remunerative work, the applicant was 'suffering a loss of salary or wages, or of earnings on his own account' (s.24(1)(c)). The Tribunal held that those words did not equate with suffering a loss of income generally. Thus, the Tribunal rejected an argument from the respondent that because the applicant, who had been a grazier, was receiving more income as interest on the banked proceeds of the sale of his property than he did from running that property, he had not suffered a loss of salary or wages, or of earnings on his own account. Accordingly, the applicant was entitled to the pension at the special rate.

Re Woodfield and Repatriation Commission (29 August 1986) is of interest in two respects. First, it drew attention to aspects of the administration of the affairs of veterans. Secondly, it contained comment by the Tribunal on the procedures adopted by the Tribunal where an applicant seeks to withdraw an application for review. The applicant's claims for war-related pension had continued over 10 years. His claims had been through many administrative bodies which had required innumerable medical reports of him. The applicant

was receiving a 50 percent General Rate pension by the time he lodged his appeal with the AAT. Shortly thereafter, and in the face of further medical reports being required by the respondent, the applicant wrote to the Tribunal requesting that his appeal be withdrawn. The Tribunal, having examined the documents which suggested a prima facie case that the applicant was entitled to a TPI pension and being unhappy with the motive for withdrawal, convened a telephone directions hearing. This was the first in a series of hearings, which eventually resulted in the respondent conceding to the applicant a pension at the special rate under s.24 of Veterans' Entitlement Act 1986. The only matter to be resolved by the Tribunal was the date of commencement of his pension and 22 August 1983 was decided upon.

Superannuation

In Re 'AA' (No.2) and Commissioner for Superannuation (29 August 1986) the Tribunal considered whether, in calculating a retiree's pension entitlement under the Superannuation Act 1976, the basis for computation should be the retiree's substantive salary or whether it should include a higher duties allowance. The Tribunal found that the requirement of reg.6(2) of the Superannuation (Salary) Regulations relating to higher duties allowances were not met. The Tribunal then considered whether the higher duties allowance fell within the ordinary concept of 'salary' and was caught by s.5(1) of the Act. It found that the higher duties allowance did fall within the ordinary meaning of the word 'salary' but that, upon an application of the rule expressio unius est exclusio alterius, the regulations had by implication excluded higher duties allowances not caught by reg.6(2). During the course of its deliberations the Tribunal rejected a submission by the respondent that the economic consequences for the Government of a decision constituted a legitimate consideration in the interpretation of legislation.

Kangaroo culling program

In Re Fund for Animals and Minister for Arts, Heritage and Environment (6 June 1986) the Tribunal set aside approval of the management program for kangaroos in Queensland and remitted the matter for reconsideration by the Minister. Approval of the program, designed to conserve various species of kangaroos by regulating export of the animals, was held to be invalid because of significant discrepancies between the program, as approved, and that actually carried out in Queensland. The Tribunal also found the program invalid on the basis that there was insufficient information available concerning the biology and ecology of a particular species, that the inclusion of two similar but separate species in the same quota was inconsistent with requirements relating to the survival of species and that the program did not contain sufficient provision for monitoring and assessment of the effects of culling.

Assets test - hardship

Re Henry and Secretary to the Department of Social Security (27 June 1986) was concerned with the cancellation of Mr and Mrs Henry's age pensions following the introduction of the assets test in March 1985. The Department of Social Security calculated their assets to include an amount of \$190,000 owed to the couple by a family trust. Prior to the AAT appeal the DSS had reviewed the couple's entitlement and paid a reduced rate pension of \$8.50 a fortnight to each of them. The Tribunal was required to decide whether Mr and Mrs Henry could be said to be suffering severe financial hardship because of the assets test. If so the value of the farming property owned by the family trust could be disregarded under the 'hardship' provisions of the Social Security Act. Evidence was given to the AAT that the property would not be a viable proposition even if a substantial amount was to be spent on improving it. However, because the property was close to Melbourne its capital value was appreciating. The Tribunal considered that it was not reasonable that the couple should be supported by the taxpayers so that the trust was able to maintain the farm while it appreciated in value. The DSS's decision was affirmed.

Cohabitation

In Shadbolt and Secretary to the Department of Social Security (7 March 1986) the Tribunal held that an engaged couple who had lived together in a 'total quasi-marriage relationship' both immediately before and after a period of 3 months in separate rooms in Shadbolt's parent's home, were living on a bona fide domestic basis during the 3 months period in the parent's home. During the 3 months period the couple had only engaged in sexual activity when they were away from Shadbolt's parent's home and they had not pooled resources or shared expenses. In affirming the DSS's decision the Tribunal said that a man:

who commences and continues sexual cohabitation with his fiancée for a noticeable period has a very heavy burden to discharge to establish that that relationship has ceased if he continues to occupy the same abode as she does albeit in company with others.

Freedom of Information

Victorian FOI Act decision

In Victorian Public Service Board v Wright (11 April 1986) the High Court (Gibbs C.J., Mason, Wilson, Deane and Dawson JJ.) considered an appeal against a decision of the Full Court of the Victorian Supreme Court in a matter which involved classification of documents as exempt under the Freedom of Information Act 1983 (Vic). Aspects of the case have already