

relief where an alternative remedy was available.) The new paragraph reverses the effect of Kelly v Coats (1981) 35 ALR 93 in which the Federal Court said that the onus under section 10(2)(b) of the Act is on those seeking to persuade the court that it should not exercise the jurisdiction conferred under the Act to hear the application.

The change to the AD(JR) Act made by this amendment is an important one. It is to be hoped that the court takes a liberal view of the expression 'the interests of justice' in cases where the alternative right of review is unsatisfactory (see Australian Telecommunications Commission v Colpitts (1986) 67 ALR 301, 310) or where it is hedged around with practical barriers.

A particular concern about use of the AD(JR) Act which was addressed in the Council's report was concern about its use during the course of administrative proceedings before a tribunal in circumstances where the particular decision could be challenged at the conclusion of those administrative proceedings. Concerns of this kind were raised with the Council in particular in relation to the inquiry of the Australian Broadcasting Tribunal concerning the granting of a third commercial television licence for Perth. These concerns are addressed by proposed new paragraph 10(2)(d) set out in clause 2 of the Bill. However, the paragraph goes further than the Council recommended by requiring the court to refuse to grant the application unless the applicant satisfies the court that the interests of justice require that it should not refuse to grant the application. In its report the Council considered that it should be left to the court's discretion to refuse to grant an application in these circumstances (recommendation 1(4)(a)).

There are other related amendments proposed by the Bill. For a discussion about alleged abuse of the AD(JR) Act which forms the background to the Bill, readers are referred to the Council's report.

R E G U L A R R E P O R T S

Administrative Review Council

ANNUAL REPORT

The Council's Tenth Annual Report, 1985-86, was tabled in the Parliament on 26 November 1986. An innovation in the 1985-86 annual report is the inclusion of the text of letters of advice provided by the Council to the Government during the year.

AD(JR) ACT REPORT

Report No. 26, Review of the Administrative Decisions (Judicial Review) Act 1977 - Stage One, was tabled in the House of Representatives on 25 November 1986.

LETTERS OF ADVICE

During November-December 1986 the Council's letters of advice to the Attorney-General included letters on: the jurisdiction of the AAT in relation to nursing home approvals, a proposed Nature Conservation (Amendment) Ordinance of the A.C.T., migration matters, review of the operations of the AAT and the Disability Services Bill 1986.

CURRENT WORK PROGRAM

Access to administrative review. Work is proceeding on the three phases of this project. A draft report on the review of hardship cases is currently in preparation and the collection of statistical data is continuing in respect of the provision of financial and legal assistance. A detailed survey of several aspects of the social security review officer system is presently being planned and experts in survey work are to be consulted. It is hoped that the bulk of the data collection on the review officer system will be undertaken in February-March.

Student assistance. Much of the preliminary work on this project has been completed and work has started on the preliminary drafting of several chapters of the Council's report. The Student Assistance Committee of the Council will be closely observing the effects of legislative changes to the Student Assistance Act which came into effect on 1 January 1987 (see 'Administrative Law Watch' in this issue) and which will result in an increased number of students becoming eligible to appeal to the Student Assistance Review Tribunal and the AAT.

Customs (anti-dumping). A draft report on review of decisions under the Customs Tariff (Anti-Dumping) Act is expected to go before the Council at its first meeting for the year on 6 February 1987.

AAT. There have been meetings of the Council's committee on divisions of the AAT, and, at the meeting on 8 December, it was agreed that the project should be expanded to provide a comprehensive examination of the constitution of the AAT. A draft report on this matter is presently being prepared.

Taxation Relief Boards. Prior to the transfer to the AAT of the jurisdiction of the Taxation Boards of Review, officers of those Boards performed the twofold function of examining taxpayers who applied to Taxation Relief Boards for release on hardship grounds from tax liabilities and of reporting the results of the examinations to the Relief Boards. Following the transfer of taxation jurisdiction to the AAT, the examination and reporting function is now performed by the

Registrar or a Deputy Registrar of the AAT. The Council is currently preparing a letter of advice to the Attorney-General which examines the adequacy of those arrangements and the operations of the Relief Boards.

AD(JR) Act. Little work has been done in the past 3 months on stage 2 of the AD(JR) Act project.

Intellectual property. The Council has adopted a project which examines decisions under the intellectual property legislation and considers whether or not there should be review on the merits of those decisions. The decisions concerned are decisions of the Registrar of Trade Marks under the trade marks legislation, decisions of the Commissioner of Patents under the patents legislation and decisions of the Registrar of Designs under the designs legislation. Some of the decisions are presently subject to appeal to the AAT, some are subject to appeal to State and Territory Supreme Courts (although a Bill presently before the Parliament proposes some changes here) and some are not subject to appeal. The question of appeals in this area is a complex one. The Council has engaged a consultant, Ms Pamela Morey-Nase of the Melbourne law firm Phillips Fox, to assist it in the project. The first stage of the project is the preparation of a draft report on review of decisions under the trade marks legislation.

Administrative Appeals Tribunal

NEW JURISDICTION

Since the last issue of Admin Review new jurisdiction has been conferred on the AAT under the Health Insurance Act 1973, National Health Act 1953 and Therapeutic Goods Act 1966.

KEY DECISIONS

Recoupment of unpaid company tax

Decision No. 3076 (5 December 1986) concerned objections to assessments of unpaid company tax under the Taxation (Unpaid Company Tax) Assessment Act 1982. The assessments in question had been raised against 2 proprietary companies (ACO and BCO) as vendor shareholders in a target company (ZCO) which had been stripped of its assets. The questions in issue were whether the applicants were shareholders in ZCO at the relevant time and whether there had been a genuine sale of the shares in ZCO. The AAT held that the applicants were shareholders at the relevant time and that they did sell the share capital in ZCO. The Tribunal said that it did not matter that the applicants were not registered as the shareholders of the issued capital in ZCO. The facts showed that there had in fact been a sale by them of shares in ZCO and this was sufficient for the purposes of section 5(1) of the Act.