benefited from the guarantee was the lender. The Tribunal decided that, under the terms of the section, as long as the service is rendered to any party and moneys are paid in relation to the rendering of that service by any party, the amount so paid is assessable.

The applicant also argued that section 26(e) could not extend to payments not normally regarded as income. This argument was rejected by the Tribunal which that considered amounts that might normally be regarded as capital for accounting purposes could be regarded as income for taxation purposes. The Tribunal noted that this view was affirmed in varying degrees in Smith v Federal Commissioner of Taxation 87 ATC 4883.

On the third basis of assessment the Tribunal noted that it was not consistent with the dictionary meaning of the words to conclude that money paid to the applicant for his service (ie the giving of a guarantee) was also paid to him for 'procuring the loan'.

Freedom of Information

Personal affairs: vocational matters

In Jones and Attorney-General's Department (13 March 1989) the applicant, following an unsuccessful application for employment, obtained access to certain documents pursuant to a request under the Freedom of Information Act 1982. He then applied to have two documents amended under section 48 of the Act, on the basis that they contained information that was 'incomplete, incorrect, out of date or misleading' . The documents were amended. The applicant was dissatisfied with the method of amendment adopted (namely by way of a schedule) and subsequently applied to have the documents themselves amended.

The Tribunal first queried whether the documents fell within the terms of section 48 and in particular whether the documents related to the applicant's 'personal affairs'. It found that those documents which discussed the applicant's work performance, capacity or suitability for appointment could be characterised as dealing with his 'vocational competence', but there was nothing in the documents of a private or familial nature. In particular, there was nothing concerning the applicant's state of health, the nature or condition of any marital or other relationship, his domestic responsibilities, or his financial obligations; nor was any reference made to matters which might be regarded as an extension of these things.

The Tribunal concluded that it had no jurisdiction to proceed with the hearing on the grounds that the documents did not relate to the applicant's 'personal affairs' and therefore did not fall within the terms of section 48.

The Courts

Immigration: application for resident status

Pashmforoosh and Pashmforoosh v Minister for Immigration and Ethnic Affairs (9 November 1988) was an application by an Iranian couple for review of the refusal of resident status. The applicants arrived in Australia with their two children as visitors in 1984, on temporary entry permits obtained with the assistance of a relative in the Protocol Office of the Iranian Department of Foreign Affairs. They applied for resident status two months after their arrival. Twelve months later the Minister rejected the applications on the basis that they had not demonstrated strong humanitarian grounds.

The applicants requested access to their file, and applied for review by the Immigration Review Panel. In September 1986 the Review Panel recommended by a 2:1 majority that the appeal be upheld, but the Minister accepted the minority view that the departmental decision be maintained. The applicants applied for judicial review. The main grounds were alleged denial of natural justice, the failure to take relevant considerations into account, and that the Minister based his decision on the existence of facts which did not exist.

On the natural justice argument Justice Einfeld, citing the High Court in Kioa v West (1985) 159 CLR 550, Justice Fox in Sinnathamby v Minister for Immigration and Ethnic Affairs (1986) 66 ALR 502 at 506 and Justice Foster in Youssef v Minister for Immigration and Ethnic Affairs, unreported (16 November 1987) concluded that the withholding of adverse information in cables from the Australian Embassy in Iran, without permitting the applicants to explain or address the matters involved, were major derogations of the procedural fairness to which they were entitled. Justice Einfeld also expressed agreement with Justice Wilcox's formulation of the question of unreasonableness in Prasad v Minister for Immigration and Ethnic Affairs (1985) 6 FCR 155 at 169-70, and concluded that the Minister's decision here was unreasonable because he failed to inquire into the circumstances fully when material and evidence were readily available. Finally, he said that on the evidence before him, which would have been before the Minister if natural justice had been given and due inquiry made, the alleged facts on which the Minister based his decision appeared to be untrue. He referred the matter back to the Minister for further consideration in accordance with law.

Immigration: eligibility for change of status

In Akers v the Minister for Immigration, Local Government and Ethnic Affairs (22 December 1988) Justice Lee discussed the application of section 38 of the Migration Act with regard to arrest and detention, and enlarged on the consideration of section 6A(1)(e) where the applicant does not hold a valid temporary entry permit. He also discussed sections 5(1)(h) and 5(3)(b) of the Administrative Decisions (Judicial Review) Act.