

findings of fact are in issue. In *Detsonjarus v Minister for Immigration, Local Government and Ethnic Affairs* (1990) 21 ALD 139, in which the High Court's decision was closely examined, the Federal Court suggested that, where there was simply no basis for the particular inference to be drawn, an error of law will be shown. *Federal Commissioner of Taxation v McCabe* (1990) 21 ALD 740 reaches a similar conclusion.

Conclusion

ABT v Bond is clearly a leading decision concerning both the scope of the ADJR Act and the reach of certain of the grounds of review under the Act. Some may see the decision as a conscious restraining by the High Court of the trend of authority in the Federal Court. During a period of reduced judicial review activity brought on by the recession, it may take some time before the full effects of the decision can be gauged. It remains to be seen whether it represents a turning point in judicial review, shifting the balance more in favour of government administration.

REGULAR REPORTS

Administrative Review Council

Reports, submissions and letters of advice

Recently, the Council has spent much of its time dealing with a variety of government proposals that have implications for administrative review, including refugee processing, customs and excise matters, the establishment of the Australian Broadcasting Authority and the registration of migration agents.

Since the last edition of *Admin Review*, the Council has provided:

- the Attorney-General with the Council's Fifteenth Annual Report for the year 1990-91;
- a letter of advice to the Attorney-General on decisions under the *Child Care Act 1972*; and
- a letter of advice to the Attorney-General modifying one of the Council's recommendations in Report No 32, *Ambit of the AD(JR) Act*, in light of the recommendations in the forthcoming report on rule making.

Current work program - developments

Community services & health

This project has been delayed indefinitely due to a lack of resources.

Intellectual property

Dr Margaret Allars of the University of Sydney is preparing a consultant's paper on the review of patents decisions.

Rule making

The Rule Making Report has been approved by Council. It is currently in the printing stage and will be sent to the Attorney-General shortly. The Report will be available to the public once it has been tabled in Parliament.

Specialist tribunals

Work is continuing on a draft report on tribunal procedures. It is anticipated that there will be consultations on the draft report in the middle of the year, following which the Council will forward its final report to the Government.

Planning has also commenced for the 1992 conference of Commonwealth tribunals, which the Council hopes to hold during October. The Council has invited a senior member of the peak French administrative court, the Conseil d'Etat, to be the key speaker.

Government business enterprises

The Council is currently preparing a draft report to be published in May. It will set out the Council's tentative conclusions on the extent to which the Commonwealth administrative law package should apply to a range of government business enterprises. The Council will then undertake consultations before preparing a final report for the Government.

Environmental decisions

The *Report of the Review of the Administrative Appeals Tribunal* recommended that the Council examine the question of merits review of environmental decisions. The Council is cur-

rently investigating the scope of this project and is considering the engagement of a consultant.

Administrative Appeals Tribunal

New jurisdiction

Since the last edition of *AdminReview* jurisdiction has been conferred on the AAT, or existing AAT jurisdiction has been amended, by the following legislation:

- *Administrative Appeals Regulations Amendment*
- *Australian Citizenship Amendment Act 1991*
- *Bankruptcy Amendment Act 1991*
- *Civil Aviation Regulations Amendment*
- *Fisheries Legislation (Consequential Amendments) Act 1991*
- *Fisheries Management Act 1991*
- *Health and Community Services Legislation Amendment Act 1991*
- *Health Insurance Amendment Act 1991*
- *Health Insurance Amendment (No 2) Act 1991*
- *Health Insurance (Pathology) Amendment (No 2) Act 1991*
- *Hearing Services Act 1991*
- *Insurance Acquisition and Takeovers Act 1991*
- *Prime Minister and Cabinet Legislation Amendment Act 1991*
- *Social Security Act 1991*
- *Social Security Legislation Amendment (No 3) Act 1991*
- *Social Security (Rewrite) Transition Act 1991*
- *Taxation Law Amendment Act (No 3) 1991*

Natural justice in a specialist tribunal

In *Re Davey and Repatriation Commission* (20 September 1991), the Tribunal, constituted by Senior Member Allen and Members Hooper and Campbell, commented on the application of natural justice to Veterans' Review Board hearings.

Mr Davey gave the VRB some letters which supported his case. The VRB did not accept those letters and made adverse comments about them in its decision.

In the course of its decision on the main issues in the review application, the Tribunal reminded the VRB that natural justice applied in its hearings. Mr Davey should have been given an opportunity to answer the doubts that the

VRB had had about the letters. This aspect of the decision of the Tribunal provides a useful example of the application of the principle expressed in *Somaghi v Minister for Immigration, Local Government and Ethnic Affairs* (1991) 102 ALR 339. [PG]

Jurisdiction: 'decision under an enactment'
Re Advocacy for the Aged Association Incorporated and Department of Social Security (24 October 1991) concerned the scope of the Tribunal's jurisdiction when what was challenged was a group of decisions amounting to a departmental practice.

The Association applied to the Tribunal to review the arrangements by which the Department of Social Security paid pension monies directly to several Queensland nursing homes on account of pensioners who were living in those homes. The *Social Security Act 1991* enables pension payments to be made to a person other than the pensioner. This is often the situation when aged people live in nursing homes. The Association was concerned that the pension monies were not being completely devoted to supporting the people who lived in those nursing homes.

The Tribunal found that it did not have jurisdiction to consider the Association's application for two reasons:

- The Association's application did not relate to a particular decision, rather it related to a group of decisions amounting to a departmental practice.
- The Social Security Act, which determines the scope of the Tribunal's jurisdiction, provides that an application for review can be brought to the Tribunal only after it has been considered by the Social Security Appeals Tribunal. There had been no such consideration in this case. [PG]

Unbalanced referrals to medical specialists

Re Klinkert and Australian Postal Corporation (29 October 1991) raised a question about the handling of medical evidence.

Ms Klinkert received compensation payments from 1985. In 1990, after determining that she was no longer incapacitated for work, Australia Post cancelled those payments on the basis of certain medical reports.

However, the Tribunal, constituted by Deputy President Forrest, considered that Australia Post's