

Exceptions to the Prima Facie Rule

The Council's Guidelines also identify exceptions to the Council's prima facie rule which are decisions that may not be appropriate for merits review. These decisions can be summarised as:

- (a) preliminary or procedural decisions
- (b) decisions of a law enforcement nature
- (c) quasi-legislative decisions
- (d) decisions where there is no appropriate remedy on review
- (e) decisions involving extensive inquiry processes
- (f) polycentric decisions
- (g) decisions that involve the exercise of a discretionary power to determine a penal sanction
- (h) policy decisions having high political content.

Applying these categories, the Council identified a number of decisions which are currently reviewable by the AAT but which the Council felt were not appropriate for merits review. Council also identified a number of decisions which did not fall within the Guidelines but which it nevertheless felt should not be reviewable by the AAT. These decisions were ones with a significant public interest element and:

- there is a need to take rapid action to restore or maintain investor confidence in the market; or
- the decision is essentially a Government financial policy decision rather than a decision about the merits of a particular application.

Decisions that fell within this category will typically :

- involve an evaluation of complex and competing facts and policies (going beyond fact finding);
- have a significant impact on markets;

- involve consultation with expert bodies or market participants;
- affect national and international investment confidence;
- involve a high level of political accountability.

The Council's view was that very few decisions under the Corporations Law will fall within this description and it is unlikely that decisions under other legislation would come within this description.

Decisions which can be characterised in this way would include a decision of the Minister to approve a body corporate as a stock exchange. Such a decision is clearly a matter of significant public interest. The decision would be based upon in-depth advice from the Minister's department, from the Australian Stock Exchange and from other interested parties. The decision would impact significantly upon the financial markets and would impact upon national and international investor confidence. For these reasons, Council was of the view that such a decision should not be subject to merits review.

Current work program – developments

The Contracting Out of Government Services

In early March the Administrative Review Council released its Issues Paper on the administrative law implications of contracting out of Commonwealth Government services. A summary of the Issues Paper is one of the focus articles in *Admin Review* 48.

The Council sought comments and submissions on the Paper and has been conducting consultations around Australia.

The Council will shortly be releasing a Discussion Paper on Access to Information in the context of the contracting out of Government services. A copy will be sent automatically to people and organisations who received a copy of the earlier Issues Paper. The Council's fi-

nal report on Contracting Out is expected early next year.

If you would like to receive a copy of the Discussion Paper when published or the Issues Paper, please contact the Council Secretariat on tel (02) 6247 5100.

Further information on this project can be obtained from the Council's Director of Research, Philippa Lynch on tel (02) 6247 5100.

Internal Review

Taking up the interest expressed in this subject during its inquiry into merits review tribunals, the Council has commenced a project to assist Commonwealth agencies by developing a best practice guide for internal review.

Internal review is a review on the merits of a Commonwealth government agency's primary decision that is undertaken by another officer within the same agency (usually a more senior officer). Internal review can take a number of forms and agencies may have more than one system of internal review – for example, an agency may administer a number of statutory schemes (eg Tariff Concessions and Freedom of Information schemes) as well as having systems for review of various non-statutory decisions. The Council's project is not concerned directly with how agencies handle complaints generally but is restricted to review of decisions. The Council's project will not cover internal review of an agency's own personnel matters.

The first stage of the project will be a pilot study that would look at a range of internal review systems in five agencies. The Department of Social Security and Centrelink (in relation to the Social Security Act matters), the Department of Veterans' Affairs, the Department of Health and Family Services and the Australian Customs Service have all kindly agreed to participate in the pilot study. The agencies concerned undertake a broad range of functions and programs and have in place a variety of statutory and non-statutory internal review mechanisms ranging from the more common

FOI arrangements to decisions on rights and entitlements.

To help clarify the methodology to be used for the pilot study, the Council invited a number of persons and organisations to tender for development of a methodology paper. Professor Spencer Zifcak from La Trobe University was the successful tenderer and has produced a paper which is now under consideration by the Council.

It is expected that the pilot study would also be undertaken by an external consultant, possibly working together with the Secretariat of the Council. The Secretariat will also be supporting the project through research and the production of papers to assist the Council and consultants in furthering the project.

The contact officer for this project is the Council's Deputy Director of Research, Sue Bromley on tel (02) 62475100.

Administrative Appeals Tribunal

New jurisdictions

The following legislation, which has been passed since the last edition of *Admin Review*, conferred jurisdiction on the AAT, or altered existing AAT jurisdiction:

Aged Care Act 1997

Aged Care Income Testing Act 1997

Agricultural and Veterinary Chemicals Code Regulations (Amendment)

Airports (Building Control) Regulations (Amendment)

Airports (Control of On-Airport Activities) Regulations

Airports Regulations (Amendment)

Australian Wool Research and Promotion Organisation (Postal Ballots) Regulations

Communications Legislation Amendment Act (No.1) 1997