
A D M I N I S T R A T I V E L A W W A T C H

Administrative review system criticised

A recent Bulletin article by Richard Farmer (10 June 1986 - see 'Recent Publications') argued, principally on the basis of 5 decisions of the AAT, that 'strange decisions by Courts and government tribunals are adding hundreds of millions of dollars to Australia's welfare bill', and that 'the total cost to the federal budget of extra welfare payments following decisions of the AAT is conservatively estimated at more than \$1 billion a year'. In Admin Review's opinion the argument of the article was based on several misconceptions.

First, extrapolations cannot be made from an AAT decision made on the facts in a particular case to indicate likely additional amounts of government expenditure. One decision on the facts on the existence or otherwise of a de facto relationship, for example, does not determine the outcome of any other application concerning the same legislation.

Secondly, the AAT must decide what is the correct or preferable decision in a particular case on the basis of the facts as found by the AAT, the relevant legislation and taking into account any relevant government policies. It is not its role to try to reduce the costs to government involved in determining equitably citizens' entitlements under legislation. Thirdly, the AAT is required, as part of its duty to review cases on the merits, to interpret the legislation. In many cases, including several of those relied on in the Bulletin article, the meaning and/or application of the legislation is difficult to determine. (Two of the cases concerned are discussed above: see Hastings and Bewley, pp. 130-1 and 133-4). Problems of interpretation may commonly indicate that the legislation requires amendment. Fourthly, where government is dissatisfied with the AAT's interpretation of legislation, it is open to it to appeal to the Federal Court on a point of law. This has happened in several of the cases mentioned in the article. (In practice, it may be noted, AAT decisions have been upheld in a substantial majority of appeals to the Federal Court.) Alternatively, it may be necessary for the government to sponsor amending legislation, as occurred in relation to the legislation concerning the issue of benefit classification certificates: see above p.134.

Admin Review takes the view that the benefits to the public, to the government and to the administration of having a

system of external appeals, open to public scrutiny and capable of determining on their merits appeals against the large number of administrative decisions which are made, far outweigh the difficulties that one or two decisions (not in any event necessarily wrong) may cause to the government. The large number of cases appealed to the AAT which are conceded by departments and authorities before the AAT makes a decision is an indication of the salutary effect of an external system of review. Moreover, Admin Review believes that the system of external review by the AAT has led in many areas of administration to an improvement in primary decision making and a greater attention to the legislation under which decision makers act.

Discussion paper on anti-dumping

The secretariat of the Council, together with a committee of the Council and a consultant, has recently prepared a discussion paper on Stage 3 of the project on review of customs and excise decisions concerning anti-dumping and countervailing duties. That paper has been widely circulated and the Council invites submissions on:

the appropriateness of the suggestions made in the paper that particular classes of decisions not currently subject to review on the merits should be so reviewable; and

whether the AAT is the appropriate forum for the review.

Copies of the discussion paper may be obtained from the Director of Research (see front page) and the Council would be pleased to receive submissions from any interested person or organisation.

New Zealand developments

Among recent developments in New Zealand in relation to public law have been the abolition of the Law Reform Committees and the establishment of a permanent Law Commission in their place. The President of the Law