

for new levels of fees in respect of applications, an increase in the hourly rate of charges for searching and retrieving documents, and a new charge (of \$20 per hour) in respect of time spent deciding whether to grant, refuse or defer access to a document. As mentioned above, persons seeking personal income maintenance documents are exempted from the fees and charges. In addition, it is proposed that decisions concerning fees be exempted from AAT review, and that the present public interest grounds to be taken into account in considering whether a charge should be remitted be removed. The legislation also proposes strengthening the grounds on which a request for access may be refused on the basis of workload. Section 45(2) is to be amended to ensure that material provided in confidence to agencies by non-government sources will be protected from disclosure even where it has been incorporated in internal working documents. There are other minor changes.

Costs before the AAT

The suggestion that the AAT would be given a power to award costs against unsuccessful parties before the Tribunal was aired in the press following the Budget. Any proposal to give the AAT a general costs power will require an amendment to the AAT Act and at the time of going to press with this issue of Admin Review no such legislation had been introduced.

At present, the AAT has only limited powers in relation to the costs of persons appearing before it. It has power to order the payment of fees and allowances of persons summoned to appear as witnesses before the Tribunal. It also has power in relation to legal costs in two jurisdictions - Commonwealth employees compensation and FOI. In both jurisdictions costs can only be awarded against the Commonwealth, and the FOI 'power' is recommendatory only.

The Council has recently transmitted advice to the Attorney-General on the matter.

Social Security Appeals Tribunals: Potential for problems?

Social Security Appeals Tribunals have no legislative foundation. They were set up by ministerial directive and their jurisdiction was also granted by ministerial directive. Their powers are limited to recommending that primary decisions be affirmed, varied or annulled. Initially, their jurisdiction was confined to hearing non-medical appeals but an appreciable extension of their jurisdiction occurred in 1980 when, by direction of the Minister, their jurisdiction was extended to include medical appeals involving invalid pensions, sickness benefits and handicapped children's allowances.

Section 15A of the Social Security Act provides that application may be made to the AAT for review of a decision of the Secretary which has been reviewed by a Social Security Appeals Tribunal. Consequently any variation in the jurisdiction of the SSATs has a parallel effect on the jurisdiction of the AAT.

In its Report No. 21, The Structure and Form of Social Security Appeals (transmitted to the Attorney-General in April 1984), the Council said that the absence of a legal power in Social Security Appeals Tribunals to determine appeals was a serious deficiency which exposed them to the danger of becoming little more than another level of the process of 'passing up' decisions through the department. Lack of confidence in the role and independence of the SSATs, the Council predicted, was likely to lead to some dissatisfaction with the Tribunals.

The recommendations of the Council in the Report included recommendations that:

- . a single Social Security Appeals Tribunal should be established under the Social Security Act as a first tier external review tribunal, with determinative not recommendatory powers;
- . section 15A of the Act should be repealed and jurisdiction should be conferred on the AAT to review a decision of the Social Security Appeals Tribunal at the behest of either the claimant or the Secretary to the Department of Social Security.

A change affecting SSATs occurred recently when an administrative direction was issued within the Department of Social Security that a large number of decisions on SSAT recommendations were in future to be taken by State officers rather than in the Department's central office. Categories of decisions included in the list were invalid pension medical appeals, appeals concerning de facto relationships and certain overpayment recovery decisions.

Two comments may be made on this development. On the one hand, it may be said that the decentralisation to the local level of decision making on SSAT recommendations is appropriate and is likely to lead to more efficient processing of appeals. On the other hand, the development indicates how the present non-statutory system permits officers of the Department to exercise considerable control over the appeals system to the detriment of the appearance of independence in the SSATs. This in turn has the potential for inducing a greater level of dissatisfaction with the SSAT appeal process and a consequent tendency for a larger number of appeals to flow through to the AAT than would be the case if the SSATs were seen as providing independent review.

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

Administrative Review Council

RECENT ADVICE

Two major reports were transmitted to the Attorney-General during August-September. They were:

. Report No. 26, Review of the Administrative Decisions (Judicial Review) Act - Stage One. (Transmitted 13 August 1986.)

. Report No. 27, Access to Administrative Review - Stage One - Notification of Decisions and Rights of Review. (Transmitted 11 September 1986.)

Both reports are currently being printed prior to tabling in the Parliament.

Report No. 25, Review of Migration Decisions, (AGPS, Canberra, 1986) was tabled by the Attorney-General in the House of Representatives on 21 August 1986. Copies may be obtained from AGPS but are understood to be in short supply. The Council's Secretariat can provide a copy of the Summary and List of Recommendations on request.

During August-September the Council also sent letters of advice to the Attorney-General on several matters including the proposed Data Protection Agency, draft privacy legislation, the report of the Senate Standing Committee on Constitutional and Legal Affairs on conscientious objection to conscripted military service, proposed Antarctic Seals Conservation Regulations and the A.C.T. Electricity Ordinance.

CURRENT WORK PROGRAM

Access to administrative review. Following completion of the preliminary work on Stage Two of this project the Council decided at its September meeting that a report on the second stage should cover review of hardship cases, the provision of legal and financial assistance and the Department of Social Security review officer system. Arrangements are currently being finalised with the Attorney-General's Department and the Department of Social Security for the collection of statistical and other data relevant to the study.

Student assistance. At its September meeting the Council approved the commencement of a separate project to examine the overall review mechanisms of the student assistance jurisdiction.