

Reversed onus for migration decision

On 14 November 1991, the Migration Regulations were amended to empower the Minister to declare an organisation or group of persons to be a 'declared body for the purposes of this legislation'. The effect of such a declaration is that each member of a declared body, who is seeking a visa or entry permit, is required to satisfy the Minister, acting personally, that he or she 'is not likely to become involved: (i) in the planning of any criminal or illegal activity to be carried out inside or outside Australia; or (ii) in the carrying out, inside or outside Australia, of any criminal or illegal activity.'

Although the principles of procedural fairness would probably require the Minister to provide affected persons with the substance of any claims made against them, it may still be very difficult to satisfy the Minister. The amendments have a sunset provision that terminates them on and after 6 March 1992.

Bankruptcy Amendment Act 1991

The *Bankruptcy Amendment Act 1991* contains an interesting development from the point of view of administrative law. Sections 139ZF (assessments of income and contribution), 149 (objections) and 149ZM (early discharge) provide for review by the Administrative Appeals Tribunal of decisions of:

- the trustee (or Official Receiver in the case of section 149Q), or
- the Inspector-General on the review of a decision under (a), or
- the Inspector-General refusing a request to review a decision.

There are two aspects of interest in this Bill: firstly, that an applicant appears to have the choice whether or not to seek review by the Inspector-General before applying to the AAT for review, that is the AAT has the jurisdiction to review a primary decision before any internal review at all has taken place; secondly, that the review sought in the above provisions may be of a decision of the trustee of a bankrupt, who is not a Commonwealth Officer, but a private person. It remains to be seen whether this kind of development is to become more common in the future. [GF]

Australian Securities Commission

In its 1990/91 Annual Report, the Australian Securities Commission stated at page 27:

'As a Commonwealth Government authority, the ASC is subject to a range of administrative law provisions, including Freedom of Information (FOI) legislation and administrative and judicial review. The ASC is unique in that every decision under the Corporations Law, including litigation decisions, could potentially go to the Administrative Appeals Tribunal (AAT). The ASC believes that this goes too far.'

'In fact the *Australian Securities Commission Act 1989* provides for review by the Administrative Appeals Tribunal of decisions under sections 72-75 of the Act, which restrain the exercise of certain rights: that is orders in relation to securities of a body corporate (s72), orders in relation to securities generally (s73), orders in relation to futures contracts (s74) and orders which vary or revoke orders in force under the division (s75). Finally the AAT has the power to review a decision to refuse to vary or revoke an order in force under Division 8 of Part 3 of the ASC Act.'

Section 1317 of the *Corporations Law* provides for review by the AAT of a decision by the Minister, the ASC or the Companies Auditors and Liquidators Disciplinary Board. A number of decisions are excluded from AAT review:

- a decision in respect of which an appeal to, or review by, a court or another tribunal is expressly provided by the Act;
- a decision declared by the Act to be conclusive evidence of an act, matter or thing;
- a decision by the Minister to make or refuse to make a declaration under section 112(3) (that an unincorporated association may carry on a profession or calling of a specified kind);
- a decision by the ASC under section 342 or 350 (cessation of business) or Division 8 of Part 5.6 (dissolution of companies); or
- a decision by the ASC to refuse to exercise a power under section 342 or 350 or Division 8 of part 5.6.