courts had exhibited caution about the ejusdem generis rule.

On the statutory presumption in subsection 22(1) of the *Acts Interpretation Act 1901*, the President said:

> ...the statutory presumption favouring the broad meaning of the word "person" will apply in all cases unless the contrary intention appears. Paragraphs (a), (b) and (c) provide discrete situations in which a fee may not be payable. The statutory presumption should, in my view, be applied to each one of these provisions unless a contrary intention appears within it. Putting it another way, the appearance of a contrary intention in relation to one or more of these provisions should not displace the statutory presumption in relation to any of the others.

The President also noted that the factual basis of the Registrar's findings was incorrect as both the New South Wales Legal Aid Commission Act 1979 and the Commonwealth Legal Aid Guidelines expressly contemplate the possibility of legal aid being granted to incorporated bodies. It followed that paragraph 4(4)(a) was not restricted to natural persons.

The President then considered whether paragraph 4(4)(c) displayed a contrary intention to the proposition that "person" includes a body corporate. The President noted that the version of the regulations apparently consulted by the Registrar was incomplete, in that the words "day to day living expenses" did not appear in that version. The President disagreed with the Registrar's view that the words "income, liabilities and assets" and "financial hardship" were necessarily restricted to individuals and said that the real question was whether the phrase "day to day living expenses", which was so restricted, exhibits a contrary intention to the rule that "person" includes a corporation. The President decided that it did not.

> The mere fact that one of a number of possible considerations under the regulation can be relevant only to a particular group does not, in my opinion, necessarily restrict the operation of the regulation to that group... What the regulation requires, in my view, is that such of the specified considerations as are relevant to the particular applicant should be taken into account in determining financial hardship. Accordingly, I do not consider that the terms of reg 4(4)(c) go so far as to exhibit a contrary intention to the normal rule.

The President set aside the decision under review and substituted a decision that the filing fees be waived.

This case makes it clear that entities other than natural persons are eligible to have filing fees waived on the ground of financial hardship.

Lees and Comcare (No. A98/3; AAT No.12852)

Senior Member Burton

Jurisdiction of AAT – application for review of a decision by Comcare to reject a claim for entitlement – application added 2 new claims, one of which had been previously rejected by Comcare and the other which had not been considered by Comcare – whether it is appropriate for the Tribunal to consider an entitlement for a lump sum payment before Comcare has had a chance to consider it

The applicant had been receiving compensation for 3 years pursuant to the *Safety, Rehabilitation and Compensation Act 1988*. Her claim for taxi fares to attend treatment providers was refused by Comcare and she sought review of that decision by the AAT. In

her application, the applicant added two new claims for payment from Comcare: one, a claim for treatment at a Sydney Hospital, had previously been rejected by Comcare and the other, a claim for a lump sum payment for permanent impairment, was a claim about which Comcare had made no decision.

The respondent argued that the Tribunal did not have jurisdiction to hear the two new claims as they did not arise out of the reviewable decision relating to the applicant's claim for taxi fares. In respect of the claim for treatment, the respondent argued that the applicant needed to lodge a separate application for review before the Tribunal had jurisdiction and, in respect of the claim for a lump sum payment, the respondent argued that the Tribunal had no jurisdiction because the matter was not the subject of any reviewable decision. If the Tribunal were to hear and determine the applicant's claim for a lump sum payment it would become a primary decision maker.

The applicant claimed that, once seized of jurisdiction in the matter, the Tribunal was empowered to decide what other heads of compensation she is entitled to under the Act.

The Tribunal considered an earlier decision (*Crozier and Comcare* (1995) 37 ALD 550) in which Deputy President McDonald had pointed out that

> ... as will be expected with beneficial legislation of this sort, once the claim is made it is the duty of the determining authority to assess it in light of the evidence available and if compensation is to be granted, to reach a decision as to the most appropriate head of compensation which would be applicable. The Tribunal must carry out the same exercise on the material before it and the Tribunal is not bound to consider only the heads of compensation nominated by the original decision maker or review officer...

The Tribunal took the view that if *Crozier* was correct, the Tribunal is empowered to hear and decide all of the applicant's claims for treatment expenses and other entitlements as revealed by her statement of issues, facts and contentions. The respondent argued that *Crozier* was not good law because it relied heavily on a Federal Court decision on the *Compensation (Commonwealth Government Employees) Act 1971*, which was the predecessor of the *Safety, Rehabilitation and Compensation Act 1988*.

The respondent argued that, unlike the 1971 Act, the 1988 Act did not place a duty on the decision maker, when a claim for compensation was made, to determine all matters and questions arising under the Act. Further, the 1988 Act provided for compulsory internal review and that only when a determination has been internally reviewed does the AAT have jurisdiction and only in relation to that reviewed decision.

The Tribunal disagreed that *Crozier* was wrong, taking the view that whether or not the original decision maker had a duty under the 1988 Act to reach a decision on the most appropriate head of compensation available, he or she certainly had the power to do so. Once a reviewable decision was made then the Tribunal was empowered by section 43(1) of the AAT Act to exercise all the powers and discretions conferred on the person who made that decision.

The Tribunal characterised the issue as being the applicant's entitlements to compensation flowing from the decision that she has a compensible injury. The decisions on which she sought review were about her compensation

entitlements. The Tribunal decided that it was within its jurisdiction to consider all of those entitlements, including that for a lump sum payment.

On the argument that, in relation to the claim for treatment, a separate application should have been made to the Tribunal, the Tribunal noted that it is unlikely that the legislature intended to require a person to lodge a separate application for review in respect of each and every rejected claim for treatment expenses.

On the question whether, in relation to the claim for a lump sum payment, it is appropriate for the Tribunal to consider entitlements before Comcare has had the opportunity of considering the claim, the Tribunal observed

> Having decided that the tribunal has jurisdiction to hear the applicant's claims, it should be borne in mind that the question of the tribunal's jurisdiction is one thing, and its discretion to make directions in relation to its procedures is another. While the tribunal may have power to entertain additional claims to the claim considered by the original decision maker, it may not be desirable for it to include them in the proceedings on foot. It may be neither fair nor procedurally efficient for the tribunal to consider a new claim before Comcare has had the opportunity of considering it.
>
> In relation to claims for lump sum amounts for permanent impairment in particular, it is often appropriate for the respondent to have the opportunity of assessing the level of an applicant's impairment for the purposes of assessing an entitlement, if any, to a lump sum. It is undesirable for matters to be raised for the first time before a tribunal without the respondent having the opportunity to consider them. This is, though, no more than a practical matter which can be dealt with by the tribunal making appropriate directions as to how the matter is to proceed, pursuant to s 30 of the *Administrative Appeals Tribunal Act 1975*.

Comcare is seeking judicial review of the Tribunals' decision in the Federal Court and the matter is set down for hearing in August 1998.

Schramm and the Repatriation Commission (Nos. S92/54 and S92/66; AAT No.12847)

Deputy President Burns

Application for reinstatement of two applications for review dismissed with consent by the tribunal – applicant claimed to be not of sound mind when he signed the notice of dismissal – Tribunal's jurisdiction to reinstate matter under subsection 42A(10) of the Administrative Appeals Tribunal Act 1975 – whether applications dismissed in "error" within the meaning of subsection 42A(10)

In 1992, the applicant had sought review of decisions made by the respondent rejecting his claim that his heart disease was war related and that his disability pension should be increased and rejecting a related claim for a loss of earnings allowance. In 1993, by way of signed notice (which was erroneously dated), the applicant had purportedly consented to the dismissal of both applications without the Tribunal proceeding to a review. The Tribunal then issued a direction that both applications be dismissed and, in early 1996, the Tribunal's files were destroyed.

In June 1996, the applicant lodged a new claim in relation to his heart disease which was accepted as defence-caused by the respondent. The applicant sought to have his dismissed applications reinstated as it would then be open to the Tribunal to find that his eligibility for the special rate disability