

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ADMINISTRATIVE APPEALS TRIBUNAL

Question No. 61

Senator Bartlett asked the following question at the hearing on 14 February 2006:

If you are able, please provide a copy of the Members Bulletin.

The answer to the honourable senator's question is as follows:

Please find attached copies of the AAT Bulletin published on 16 January and 23 January 2006. The Bulletin is published each Monday and contains a range of information for members and staff of the Tribunal including summaries of court and tribunal decisions of interest, information on legislative changes and changes to the Tribunal's jurisdiction, the catchwords of recent Tribunal decisions and information relating to appeals from Tribunal decisions.

AAT Bulletin

Issue 03/06

23 January 2006

The AAT Bulletin is a weekly publication, providing a summary of recent AAT and court decisions of particular interest to the Tribunal, changes to the Tribunal's jurisdiction and other important developments. In addition to this, the Bulletin aims to facilitate internal communication across the AAT, by encouraging readers to submit contributions which they feel would be of interest to others in the Tribunal (please forward them to the "Bulletin" e-mail group).

It is recommended that the Bulletin is read on-line as this has the advantage of allowing the reader to be directly linked to the full text of cases and other internet sites mentioned in the Bulletin.

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AAT decisions (summary)

The following summaries of AAT decisions are those selected by members as being of interest either because of their factual or legal issues, or both. The members' associate or the Member Support Team are responsible for preparing the summaries. Summaries are to be prepared within two weeks of a decision being delivered. If you have a case summary, which you wish to be included in the Bulletin, please e-mail it to the "Bulletin" e-mail address.

The full text of recent AAT decisions is on the [AAT internet site](#). Similarly, the [Austlii website](#) provides a searchable database of all AAT decisions. Alternatively, the links below can be clicked for direct access to the decision. A list of all AAT decisions delivered in the last week appears towards the end of this Bulletin.

Sogo Duty Free Pty Ltd v Commissioner of Taxation VT2003/211-213; VT2004/47; Trade World Enterprises Pty Ltd v Commissioner of Taxation VT2004/48 [2005] AATA 1298 Dr Gordon Hughes, 23 December 2005

This was an interlocutory application for a stay in proceedings which was issued by the applicants, Sogo Duty Free Pty Ltd ("Sogo") and Trade World Enterprises Pty Ltd ("TWE") on 28 November 2005.

Background

The applicants are owners and operators of duty free retail businesses.

In the first matter, Sogo was seeking review of a decision by the Commissioner of Taxation to disallow an objection against a Notice of Amended Assessment. The Notice relates to the assessable income generated by the sale of stock by Sogo, principally on the basis that Sogo understated sales income by falsely recording domestic sales and sale to ships' crew from 1 July 1999 to 30 June 2001.

In the second matter, TWE was also seeking review of a decision by the Commissioner of Taxation to disallow an objection to a Notice of Amended Assessment. The Notice relates to TWE's claim for a refund of input tax credits for GST paid to Australian suppliers of goods which had been sold to travellers departing Australia temporarily or permanently from 1 July 2000 to 30 June 2001.

Hoang Hai Chiem was a director of both Applicants. On 12 May 2005, Chiem was charged under s29D of the *Crimes Act 1914* with failing to pay the Commonwealth customs duty payable pursuant to s 15 of the *Customs Tariff Act 1995* in respect of goods which had been imported into Australia; and, further that he defrauded the Commonwealth by failing to pay excise duty payable pursuant to s 5 of the *Excise Tariff Act 1921* in respect of goods which had been produced or manufactured in Australia.

There were effectively two grounds upon which the stay of proceedings was sought by the Applicants:

- (i) that by hearing the matter, the Tribunal might be in contempt of the pending criminal proceedings.
- (ii) that the Tribunal should in any event grant a stay pursuant to s 33(1)(a) of the *Administrative Appeals Tribunal Act* (the AAT Act) on the grounds that a substantial injustice would be caused to the Applicants if the Tribunal proceedings were heard prior to the criminal proceedings.

Tribunal Decision

The Tribunal noted that for the purposes of the application, the issues relevant to the question of contempt overlapped with the issues relevant to s33(1)(a) of the AAT Act and that it was therefore appropriate to consider both issues in tandem.

The Tribunal found that a stay of proceedings was warranted on a number of grounds.

While the Tribunal noted that it was by no means clear, based on the existing authorities, that to proceed with the application prior to the criminal proceedings would necessarily place the Tribunal in contempt of criminal proceedings, it found that learned pronouncements on the subject to date were such that there was a realistic prospect of such a finding.

The Tribunal was concerned that Chiem's "right of silence" could be compromised. It noted that there was a real possibility that a substantial amount of elaboration on the statements Chiem had already provided to the authorities would be required from him upon cross-examination in proceedings before the Tribunal. It found that the use which could be made in subsequent criminal proceedings of information so disclosed at the Tribunal potentially created a risk of injustice in the criminal proceedings which was more than "merely notional".

The Tribunal was satisfied that the prospect of Chiem being required to give evidence and being subject to cross examination in relation to the same transactions which would be the subject of the committal proceedings was sufficient to create a plausible apprehension of injustice and therefore contempt of the committal proceedings. For the same reasons, the Tribunal considered it appropriate to exercise its discretion under s 33(1)(a) of the AAT Act to grant a stay of proceedings.

The Tribunal concluded that the outcome of the committal proceedings, whatever that might be, could provide a basis for the Tribunal to re-evaluate its current view that a stay of proceedings is warranted. Accordingly it held that proceedings should be stayed until the conclusion of the committal proceedings whereupon the Tribunal would consider the further disposition of the matter.

Repatriation Medical Authority Notices

At its meeting of 6 December, 2005 the RMA:

- Determined Statements of Principles for:
 - Peripheral neuropathy (41 & 42 of 2005)
 - Sudden unexpected death (43 & 44 of 2005)
 - Malignant neoplasm of the pancreas (45 & 46 of 2005)
 - Epileptic seizure (47 & 48 of 2005)
 - Epilepsy (49 & 50 of 2005)
 - Dermatomyositis (51 & 52 of 2005)
 - Guillain-Barre syndrome (53 & 54 of 2005)
 - Steatohepatitis (55 & 56 of 2005)
 - Narcolepsy (57 & 58 of 2005)

[N.B. - This concludes the previously advertised investigations into peripheral neuropathy, sudden unexplained death, malignant neoplasm of the pancreas, epileptic seizure, epilepsy, dermatomyositis, steatohepatitis and narcolepsy]

- Decided to advertise an investigation as follows:
 - Malignant neoplasm of the bladder

The Investigation Notice for this investigation is expected to appear in the Government Notices Gazette of 28 December 2005.

Further information about the above, including the Statements of Principles, are available from the RMA website: <http://www.rma.gov.au/>

AAT recent decisions (list)

The following decisions were recently delivered by the AAT. The Library compiles this list. If the decision is to be summarised it will be noted. Click on the links for direct access to the full text of the decision. Recent decisions can also be viewed on the AAT website <http://www.aat.gov.au/AATdecisions/ThisWeek.htm>.

Citizenship

Nguyen and Minister for Immigration and Multicultural and Indigenous Affairs [2006] AATA 17; 12/1/2006; Senior Member J Kelly

Application for grant of Australian Citizenship – is Applicant a person of good character – criminal convictions - prison sentences - no drug offences since 1999 – no prison sentences since 1999 – failed to fully disclose criminal offences on application forms – Applicant not a person of good character – decision affirmed.

Compensation

Campbell and Comcare [2006] AATA 20; 13/1/2006; Senior Member R Hunt, Dr I Alexander, Member

Falls to and from work - Effect of falls - Condition not arising out of or in the course of employment – No compensable injury – No permanent impairment - decisions before the Tribunal are affirmed.

Chambers and Military Rehabilitation and Compensation Commission [2006] AATA 12; 10/1/2006; Deputy President SD Hotop

Commonwealth employees - applicant enlisted in Australian Regular Army in 1994 - applicant suffered knee injury in course of military service in 1999 - applicant discharged from Army on medical grounds in December 2001 - applicant not totally incapacitated for work - applicant received incapacity payments from December 2001 - respondent reduced applicant's incapacity payments in period June 2002 - June 2005 on basis that applicant able to earn in suitable employment in that period - meaning of suitable employment - respondent did not make offer of rehabilitation program or employment to applicant - applicant did not seek Commonwealth employment - applicant pursued full-time tertiary study - determination of amount applicant able to earn in suitable employment - relevant matters to be considered - availability of suitable employment to applicant - applicant not able to earn in suitable employment - respondent continues to be liable to pay compensation by way of incapacity payments to applicant - The Tribunal sets aside the reviewable decision of the respondent dated 29 July 2004 and, in substitution therefor, decides that the respondent is liable, pursuant to s 20 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) ("the SRC Act"), to pay compensation to the applicant for the period from 12 June 2002 to 13 June 2005 ("the relevant period"), and that the amount of such compensation is to be calculated, pursuant to s 20(3) of the SRC Act, on the basis that, for the whole of the relevant period, the amount per week that the applicant was "able to earn in suitable employment", within the meaning of s 19 of the SRC Act, is nil. The Tribunal orders, pursuant to s 67(8) of the SRC Act, that the costs of these proceedings incurred by the applicant be paid by the respondent.

Hale and Military Rehabilitation and Compensation Commission [2006] AATA 16; 12/1/2006; Ms MJ Carstairs, Member

Post traumatic stress disorder – service in CMF and Army Reserve – whether stressors from this service – other explanations of psychiatric disturbance - decision affirmed.

Corporations

Andrews and Australian Securities and Investments Commission [2006] AATA 25; 16/1/2006; Senior Member BJ McCabe

Official management – directors – disqualification from managing a corporation – restructuring of companies in the freight and transport business – related companies – applicant an officer of 2 or more corporations that were wound up with liquidators reports being lodged with ASIC about the company being unable to pay its debts – consideration of applicants conduct in relation to the management, business and property of relevant corporations – public interest not served by disqualifying the applicant from being involved in the management of a company. The decision under review is set aside. The applicant should not be disqualified from being involved in the management of a company pursuant to s 206F of the Act.

Westeq Ltd and Australian Securities and Investments Commission [2006] AATA 34; 17/1/2006; Associate Professor GA Barton, Member

Responsible entity - registered forestry managed investment schemes - Australian financial services licence - professional indemnity and fraud insurance - relief- relevant considerations- factors external to a particular licensee- relevant investors otherwise protected- practical effect- consideration of matters peculiar to a particular licensee and associated investors or growers postponed to any hearing to suspend or cancel the licence pursuant to section 915C of the Act - decision affirmed.

Immigration and Citizenship

Cenaj and Minister for Immigration and Multicultural and Indigenous Affairs [2005] AATA 1317; 22/12/2005; Mr S Webb, Member

Subclass 309 Spouse (Provisional) Visa - refusal - character test - past and present general conduct - use of false name when seeking protection in Belgium - issue of criminal association for purposes of travelling to Australia - meaning of "association" - use of false or bogus documents to enter Australia - evidence of countervailing factors - recent good conduct and rehabilitation – decision under review is set aside. The Tribunal remits the matter to the Respondent with a direction that Valentin Cenaj passes the requirements of the character test and his application for a Subclass 309 Spouse (Provisional) visa should not be refused pursuant to subsection 501(6) of the *Migration Act 1958*.

Cockrell and Minister for Immigration and Multicultural and Indigenous Affairs [2006] AATA 21; 12/1/2006; Deputy President DG Jarvis

Spouse (Subclass 801) visa – discretion not to cancel visa where applicant fails character test – substantial criminal record – Ministerial Direction No. 21 – primary and other considerations – offences involving fraudulent conduct – certain convictions set aside on appeal on technical grounds – applicant provided misleading information as to his relationship with a friend's child – risk of recidivism – relevance and weight of correspondence where author of correspondence not called – information not provided to Minister at least two business days before hearing – best interests of infant child – decision under review affirmed.

Lim and Ors and Minister for Immigration and Multicultural and Indigenous Affairs [2006] AATA 28; 16/1/2006; Ms L Savage Davis, Member

Business skills visa subclass 127 – cancellation of visa – Applicant's failure to obtain a substantial ownership interest in a business in an eligible business in Australia – active participation in day to day management at senior level of business – whether genuine effort made – discretion not to cancel - decisions under review affirmed.

Priori and Minister for Immigration and Multicultural and Indigenous Affairs [2005] AATA 1288; 22/12/2005; Mr S Webb, Member

Subclass 300 (Prospective Marriage (Temporary)) Visa - refusal - character test - past and present general conduct - use of false name when seeking protection in Belgium - issue of criminal association for purposes of travelling to Australia - meaning of "association" - use of false or bogus documents to enter Australia - application for Protection Visas refused – evidence of countervailing factors - recent good conduct and rehabilitation – decision under review is set aside. The Tribunal remits the matter to the Respondent with a direction that Franko Cenaj passes the character test and his application for a Subclass 300 (Prospective Marriage (Temporary)) visa should not be refused pursuant to subsection 501(6) of the *Migration Act 1958*.

Then and Minister for Immigration and Multicultural and Indigenous Affairs [2006] AATA 18; 13/1/2006; Mr MA Griffin, Member

Business skills visa - cancellation of father's primary visa - cancellation will not cause extreme hardship for secondary visa holder - decision under review affirmed.

Migration Agents

Xue and Migration Agents' Registration Authority [2006] AATA 13; 11/1/2006; Senior Member J Kelly

Complaints made against applicant in 2000 and 2001 – complaints of breaches of Code of Conduct – breaches found regarding Code of Conduct – breaches for failing to have receipts and invoices, not confirming instructions in writing and not providing a written statement of services – no other breaches found – Decision under review is set aside and substituted for that decision is the decision that Mr Xue be cautioned pursuant to 303(c) of the *Migration Act 1958*. The caution will be lifted at the end of 12 months if Mr Xue completes the following as part of his continuing professional development requirement within that period. He must complete approved activities within the meaning of the *Migration Agent Regulations 1998* relating to the Code of Conduct that have a value of at least 4 points.

Practice and Procedure

Wildlife Protection Association of Australia Inc. and Minister for the Environment and Heritage and Ors [2006] AATA 29; 16/1/2006; Deputy President PE Hack

Application for stay – secure effectiveness of hearing and determination of application for review – interests of persons who may be affected by the review – wildlife trade management plan - The application for a stay of the implementation of the decision under review is refused.

Social Security

Baccon and Secretary, Department of Family and Community Services [2006] AATA 19; 13/1/2006; Rear Admiral AR Horton, Member

Eligibility for age pension – age qualification – Australian citizen - Australian resident criteria - requirement for qualifying Australian residency – periods of residence in Australia as recorded by Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) – adequacy of supporting documentation before the Tribunal — decision set aside– applicant eligible for age pension - decision under review is set aside and in substitution thereof the Tribunal decides that the Applicant is eligible for the age pension, the date of effect being 4 February 2005.

Burgess and Secretary, Department of Family and Community Services [2006] AATA 27; 16/1/2006; Deputy President PE Hack

Disability support pension – rent assistance – lump sum payment in advance not authorised - Tribunal affirms the decision under review.

Chen and Secretary, Department of Education, Science and Training [2006] AATA 5; 6/1/2006; Ms R Perton, Member

Mature age student – applicant to provide academic transcripts for study in years 2000 and 2004 and evidence of earnings – Austudy cancelled for failure to comply with s 68 – defective s 68 notice – SSAT set aside cancellation – decision under review affirmed.

Joss; Secretary, Department of Education, Science and Training [2006] AATA 24; 13/1/2006; Senior Member R Hunt

Secretary claiming overpayment - Newstart allowance – allowance continuing throughout part time occupation on boat – received reimbursement for expenses connected with boat – meaning of “unemployed” – effect of financial settlement reached with boat owner – insufficient evidence of settlement compensating for employment occurring during period of receipt of allowance - decision under review affirmed.

Muraca and Secretary, Department of Employment and Workplace Relations [2006] AATA 26; 16/1/2006; Miss EA Shanahan, member

Disability pension – insufficient medical data – new start allowance – marriage like relationship – separated but living under the same roof – exercise of the discretion under section 24 (1) (c) - (1) The Tribunal affirms the decision that Mrs Muraca is not entitled to a Disability Support Pension as her medical conditions have not been fully investigated, stabilized or diagnosed; (2) The Tribunal finds that Mrs Muraca is not in a marriage-like relationship and is thus entitled to a Newstart Allowance at a single rate; (3) The matter is remitted to the respondent to assess Newstart Allowance payments.

Walters and Secretary, Department of Family and Community Services [2006] AATA 8; 9/1/2006; Ms R Perton, Member

Sole parent pension - member of a couple – marriage-like relationship – debt to Commonwealth – write off of debt – waiver of debt – special circumstances – decision under review affirmed.

Taxation

Lau and Commissioner of Taxation [2006] AATA 23; 13/1/2006; Mr IR Way, Member

Penalties for failure to lodge tax returns for 2003 and 2004 on time – consideration of whether the failure to lodge penalties of \$550 and \$440 were correctly calculated – consideration of whether all or part of the correct failure to lodge penalties be remitted – assessment of Applicant’s and Respondent’s evidence – the decision under review is affirmed.

The Taxpayer and Commissioner of Taxation [2006] AATA 14; 11/1/2006; Senior Member R Hunt

Capital gains tax – sale of shares – indemnity clause re overseas taxes – reimbursement of tax paid in overseas countries – effect on consideration paid - Commissioner treated indemnity payment as made under warranty - taxed as refund of purchase price – settlement deed and release - taxpayer claimed retrospective reduction in income tax assessments - amended assessments of income tax resulted in increased tax – objection to assessments - burden of proving amended assessments excessive – objection upheld - The Tribunal varies the objection decision of the Commissioner so as to find that the consideration the taxpayer received or was entitled to receive in respect of the disposal of the shares was:
(a) The amounts provided by clause 6.8(b) of the sale agreement;

(b) plus or minus any adjustment amount on finalisation of the completion accounts as defined in the sale agreement;
(c) less any the taxpayer was required to pay pursuant to clause 8.9 of the sale agreement and/or 10.4 of the supplemental agreement.

Veterans' Affairs

Butler and Repatriation Commission [2005] AATA 1302; 23/12/2005; Senior Member J Kelly, Dr I Alexander, Member

War widow pension – operational World War II Service – kind of death was carcinoma of the prostate – an hypothesis comprising two sub-hypotheses - war service caused smoking habit which caused peptic ulcer which was treated by a high fat diet which caused carcinoma of the prostate – whether “diagnosis” of peptic ulcer necessary on balance of probabilities - “reasonable hypothesis” – facts not disproved beyond a reasonable doubt – death war caused – decision under review is set aside and substituted therefor is the decision that the death of Mr Butler was war caused.

Chesterman and Repatriation Commission [2005] AATA 1316; 30/12/2005; Deputy President D Muller

Death from prostate cancer as a result of a diet high in animal fat – war caused – The Tribunal sets aside the decision under review and in substitution determines that the death of Harold Geeves Chesterman was war-caused, within the meaning of that term in the *Veterans' Entitlements Act 1986*.

Cox and Repatriation Commission [2006] AATA 15; 12/1/2006; Senior Member BJ McCabe, Dr GJ Maynard, Member

Veterans' Entitlements – causation of medical conditions in issue - lumbar spondylosis, alcohol dependence, depression, PTSD and right shoulder injury – applicant experienced several events during operational service – events not “severe stressors” as defined within the relevant statements of principles – applicant unable to establish a connection between his PTSD, alcohol dependence, depression and lumbar spondylosis and the circumstances of his service – injury to right shoulder did occur during service and is thus war-caused - The decision with respect to the lumbar spondylosis, alcohol dependence, depression and PTSD is affirmed. The decision with respect to the osteoarthritis of the right shoulder is set aside and in substitution the Tribunal decides the applicant's shoulder condition is war-caused.

James and Repatriation Commission [2006] AATA 22; 13/1/2006; Senior Member R Hunt, Dr I Alexander, Member

Veterans' entitlements – Service pension – Eligible defence service - Claim for ischaemic heart disease and hypertension –No connection with defence service – Decision under review affirmed.

Kennett and Repatriation Commission [2005] AATA 1307; 23/12/2005; Senior Member RW Dunne, Dr ET Eriksen, Member

Disability pension – rate of pension payable – entitlement to special rate – applicant's war-caused injuries alone did not, during the assessment period, prevent him from continuing to undertake remunerative work – decision under review affirmed

Morris and Repatriation Commission [2006] AATA 30; 17/1/2006; Mr SC Fisher, Member

Benefits and entitlements – disability pension – defence service with the Royal Australian Air Force – post traumatic stress disorder (PTSD) – application of Statement of Principles – condition defence-caused – The Tribunal sets aside the decision under review and substitutes the decision that the Applicant's post traumatic stress disorder is defence-caused within the

meaning of the *Veterans' Entitlements Act 1986* with effect from 9 June 2002. The Tribunal remits the matter to the Respondent for the assessment of the rate of pension payable.

Turner and Repatriation Commission [2005] AATA 1313; 8/12/2005; Senior Member J Kelly, Dr I Alexander, Member

Operational service in Royal Australian Air Force ("RAAF") – claim for Post Traumatic Stress Disorder – Applicant asked to identify a fellow pilot's body after his plane had crashed in 1968 – Applicant when identifying the body only found sandbags – Applicant left the RAAF and then returned to the service – Applicant continues to fly Lear jets for employment – Applicant has no problems with employment – Applicant has happy family relationships – Issue of diagnosis – Applicant not suffering from Post Traumatic Stress Disorder – decision under review is affirmed.

Court appeals (list)

The Policy and Research unit is responsible for maintaining the Appeals list. The following is a list of changes to the Appeals List that have occurred since the last edition of the Bulletin. To view the entire Appeals List, please refer to the Intranet (under the **Policy and Research/Bulletin and Appeals List icons**).

ADJR Applications lodged

- Military Rehabilitation & Compensation Commission v Roberts ACD 1/2006 (**A2004/234**)

Migration Act Applications lodged

- Minister for Immigration and Multicultural and Indigenous Affairs v SAY SAD9/2006 (S2004/306)

Appeals decided

- Wiegand v Comcare Australia **S2002/458 (S215/2005)** (Extension of time application)

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16 January 2006

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Federal Court decisions (summary)

The Policy and Research Section prepares summaries of court decisions which are of interest to the Tribunal (which are usually, but not always, Federal Court remittals).

The [Austlii website](#) provides a searchable database of all Federal Court decisions. Alternatively, you can click on the links below for direct access.

If you are aware of any other recent Federal Court decisions, or for that matter any other court decisions that you think should be summarised, please e-mail "Bulletin" or contact a member of the Policy and Research Section. A list of all Federal Court decisions delivered in the last week appears towards the end of this Bulletin.

Comcare v Canute

[2005] FCAFC 262 French, Gyles and Stone JJ, 16 December 2005

This was an appeal by Comcare against a decision of Hill J ([2005] FCA 299; 1 April 2005) who set aside a decision of the Tribunal ([2004] AATA 627) to deny Mr Canute compensation under the *Safety, Rehabilitation and Compensation Act 1988* ("SRC Act"). The Full Court of the Federal Court, by majority, allowed the appeal and set aside the decision of the primary judge reinstating the Tribunal's decision.

Background

Mr Canute worked for the Department of Defence as a gardener and maintenance man. In September 1988 he suffered severe back pain while lifting a bag of office rubbish. As a result he suffered a chronic condition involving a degree of permanent impairment of his physical function.

On 9 February 2000 Comcare awarded him compensation totalling \$29,608.07 under the SRC Act on account of that permanent impairment. Mr Canute resumed work at the Department of Defence doing light duties from October 2000 but took a voluntary redundancy in October 2001.

From about August 2001 Mr Canute began to suffer symptoms of what he thought was depression. He was ultimately diagnosed with an adjustment disorder. In July 2002 he claimed further compensation on account of this condition. His claim was refused under s 25(4) of the SRC Act which sets a threshold requirement of a 10 per cent increase in impairment before further compensation will be paid following a final determination of compensation. His claim was refused on the basis that the disorder from which he suffered was an impairment flowing from his original injury and that it represented less than a 10 per cent increase over the impairment for which he had already been compensated.

Mr Canute sought reconsideration of this decision. On 4 April 2003 an Independent Review Officer in Comcare affirmed the delegate's determination on the basis that he too was not satisfied that Mr Canute had suffered an increase in whole person permanent impairment of 10 per cent or more. Following this rejection, Mr Canute made an application to the Tribunal for review of the Comcare decision.

Relevant Legislation

Section 14 of the SRC Act provides that Comcare is liable to pay compensation in respect of an injury suffered by an employee if the injury, among other things, results in impairment. Subsection 24(1) of the Act provides that, where an injury to an employee results in a permanent impairment, a liability to pay compensation to the employee arises.

Subsection 24(4) of the SRC Act limits further compensation after a final assessment of permanent impairment to cases where there has been a subsequent increase in the degree of permanent impairment of 10% or more.

The expression "injury" is defined in s. 4(1) of the SRC Act to mean:

- (a) *disease suffered by an employee; or*
- (b) *an injury (other than a disease) suffered by an employee, being a physical or mental injury arising out of, or in the course of, the employee's employment; or*
- (c) *an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee's employment), being an aggravation that arose out of, or in the course of, that employment*

...

"Disease" is defined in s. 4(1) to include an ailment or the aggravation of an ailment contributed to by the employee's employment. "Impairment" is defined as meaning:

the loss, the loss of the use, or the damage or malfunction, of any part of the body or of any bodily system or function or part of such system or function.

Tribunal Decision

The Tribunal found that the correct diagnosis of the Applicant's psychiatric condition was that of a chronic adjustment disorder with anxious and depressed moods arising from his work-related back condition. It found that there was a level of 10% whole person impairment relating to the disorder calculated under Table 5.1 of the Guide to the Assessment of the Degree of Permanent Impairment ("the Guide").

The Tribunal reviewed a number of authorities relating to the assessment of permanent impairment including *Comcare v Mihajlovic* (2000) 97 FCR 304, *Comcare v Roser* (2003) 127 FCR 155 and *Re Laven and Comcare* (2003) 76 ALD 253. It held that it was obliged to calculate the Applicant's current whole person impairment in accordance with Table 14.1. Combining the original 12% impairment for his back condition with the 10% for the adjustment disorder provided a combined whole person impairment of 21%. As this did not represent a 10% or more increase over the 12% previously found, the Tribunal concluded that no further lump sum compensation was payable to the Applicant.

The Applicant appealed the decision to the Federal Court.

Federal Court Decision

Hill J found that the Tribunal had not considered the question of whether the chronic adjustment disorder was itself an injury and to be considered as such under the Act. It failed to do so because it regarded it as relevant that the adjustment disorder was a "psychological sequelae" that came about as a result of the physical injury which arose from the incident causing Mr Canute to suffer his back injury. His Honour accepted that it might be possible to argue that a back condition and a mental illness together constituted one injury. However he went on to state that it did not seem appropriate to treat two separate injuries, each having different levels of impairment, as one injury for the purposes of the Act.

Hill J set the Tribunal decision aside on the basis that it had erred in law in failing to consider whether the adjustment disorder, although flowing from the 1998 injury, represented a distinct compensable injury rather than a mere increase in the level of impairment caused by the initial injury.

Comcare appealed to the Full Court.

Full Federal Court Decision

French and Stone JJ who constituted the majority noted that the question that arises in the context of the present case is whether a second injury caused by an initial injury arising out of employment could also be characterised as an element of the impairment arising from the initial injury. While some consequential injuries will be impairments, the Court stated that the critical question in such a case and in the case at hand is whether they should be treated for such purposes as only an impairment and not as an injury giving rise to a discrete liability. If the consequential injury is an impairment occurring after a final determination, the Combined Values Tables in the Guide must be applied to ascertain whether the increased impairment was 10 per cent or more.

The Full Court held that the Tribunal had erred in law because it assumed that an injury which is consequential upon a compensable injury is to be treated as an increase in the level of impairment attributable to that initial injury. That was an assumption it was not entitled to make. It should have considered whether the second injury was in truth also an “impairment” within the definition of that term in the SRC Act.

In this case however, a proper application of the law by the Tribunal would have led to the result it reached. The adjustment disorder fell within the definition of impairment even though it was also an injury. It was an impairment caused by the initial injury and therefore an increase in the impairment attributable to that injury. On a proper construction of the SRC Act the constraints on additional compensation imposed by s 25(4) applied to it. The Tribunal decision should not have been set aside. The appeal should be allowed and the order of the learned primary judge set aside so that the Tribunal decision is reinstated.

Gyles J in the minority supported the reasoning of Hill J. He considered that s 25(4) applies only in relation to an increase in the same kind of impairment that triggered the compensation.

The Court made no order on the costs of the appeal or on the appeal in the original jurisdiction.

The Policy and Research Section understands that an application for special leave to appeal will be lodged with the High Court in this matter.

Jurisdiction changes

This part of the Bulletin examines changes and potential changes to the Tribunal's jurisdiction list. The changes listed here affect, or may affect, the Jurisdiction List, Special Constitution List and Time Limits List. All of these lists are located on the Intranet (under the **Policy and Research/Lists icons**).

Acts

Anti-Terrorism Act (No. 2) 2005

This Act has amended the *Criminal Code* under the *Criminal Code Act 1995* to confer jurisdiction on the Tribunal to review decisions relating to preventative detention orders made under the *Criminal Code*. Pursuant to s 105.51(5) of the *Criminal Code*, a person may apply for review of any of the following decisions of an issuing authority:

- to make an initial preventative detention order under s 105.8(1);
- to extend, or further extend, under s 105.10(3) the period for which an initial preventative detention order is in force;
- to make a continued preventative detention order under s 105.12(1);
- to extend, or further extend, under s 105.14(4) the period for which a continued preventative detention order is in force.

In relation to initial preventative detention orders, the issuing authority will be a senior member of the Australian Federal Police. In relation to continued preventative detention orders, the issuing authority may be any of the following persons who has been appointed by the Attorney-General with the person's consent:

- a person who is a judge of a federal court or a State or Territory Supreme Court;
- a person who is a Federal Magistrate; or
- a person who has served as a judge in one or more superior courts for a period of 5 years; or
- a person who holds an appointment to the Administrative Appeals Tribunal as President or Deputy President.

Applications for review cannot be made while a preventative detention order is in force: s 105.51(5). Applications must be dealt with in the Security Appeals Division of the Tribunal: s 105.51(6). Provisions of the *Administrative Appeals Tribunal Act 1975* may be modified by regulations made under the *Criminal Code Act 1995* in relation to the review of these matters: s 105.51(7) of the *Criminal Code*.

The amendments commenced on 15 December 2005.

National Occupational Health and Safety Commission (Repeal, Consequential and Transitional Provisions) Act 2005

This Act repealed the *National Occupational Health and Safety Commission Act 1985* on 1 January 2006. The Tribunal had jurisdiction to review decisions made under s 63 of that Act to allow or disallow an objection from a person to the publication and dissemination of information that would, or could reasonably be expected to:

- enable the identification of a particular person;
- disclose a trade secret; or
- adversely affect a person in respect of the lawful business, commercial or financial affairs of the person.

Two of the transitional provisions set out in Part 2 of Schedule 1 to the *National Occupational Health and Safety Commission (Repeal, Consequential and Transitional Provisions) Act 2005* are of potential relevance to the Tribunal. The relevant items of Schedule 1 provide that:

- if, immediately before 1 January 2006, proceedings to which the Commission was a party were pending in any court or tribunal, the Commonwealth is, on and after that day substituted for the Commission as a party to the proceedings and has the same rights in the proceedings as the Commission had: item 5;
- despite the repeal of s 63 of the NOHSC Act, that section continues in force, on and after 1 January 2006, for the purpose of enabling persons to seek review of decisions referred to in subsection 63(4) of that Act that were made before that day as if that section had not been repealed and each reference in that section to a decision of the Commission were a reference to a like decision made by the Commonwealth: item 10(2).

Tax Laws Amendment (2005 Measures No. 4) Act 2005

This Act amends s 62(2A) of the *Taxation Administration Act 1953* which sets out decisions under the *A New Tax System (Wine Equalisation Tax) Act 1999* that are reviewable in accordance with Part IVC of the *Taxation Administration Act 1953*.

Schedule 4 to the *Tax Laws Amendment (2005 Measures No. 4) Act 2005* will amend the *A New Tax System (Wine Equalisation Tax) Act 1999* to extend the wine equalisation tax rebate to New Zealand wine producers whose wine is exported to the Australian market. A person may apply to the Commissioner for approval as a New Zealand wine participant. A person may lodge an objection under Part IVC of the *Taxation Administration Act 1953* in relation to any of the following decisions:

- to decide the date of effect of approval of a person as a New Zealand participant under s 19-7;
- to refuse to approve a person as a New Zealand participant under s 19-7;
- to revoke a person's approval as a New Zealand participant under s 19-8; and
- to decide the date of effect of revocation of a person's approval as a New Zealand participant under s 19-8.

A person may apply to the Tribunal for review of a decision by the Commissioner to allow, wholly or in part, or to disallow an objection.

The amendments will commence on a day to be fixed by Proclamation or 19 December 2006, whichever occurs earlier.

Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005

This Act amends the *Income Tax Assessment Act 1936* and the *Taxation Administration Act 1953* to make a range of changes relating to the self-assessment regime and to implement a new framework for provision of advice by the Australian Taxation Office. It makes minor amendments to the Tribunal's jurisdiction in relation to certain taxation decisions.

Amendments relating to the self-assessment regime

Schedule 1 to the Act makes changes to the *Income Tax Assessment Act 1936* to revise the periods during which the Commissioner may review and amend assessments for the 2004-05 income year and later years. For most individuals and certain small business taxpayers, the review and amendment period will be standardised at 2 years after the Commissioner gives the taxpayer a notice of assessment. The standard period for other taxpayers will be 4 years. The period for review and amendment of assessments involving arrangements with a dominant tax avoidance purpose will be 4 years. There is no limit on the amendment period for cases involving fraud or evasion. The periods within which a person must lodge an objection under Part IVC of the *Taxation Administration Act 1953* have been altered to correspond with the new amendment periods.

Schedule 1 also contains a number of provisions dealing with the situation where a return specifies that the taxpayer has no taxable income for the year or that no tax is payable in that year. The *Income Tax Assessment Act 1936* has been amended to provide that:

- the Commissioner may make an assessment to this effect; and
- the amendment period will be 2 or 4 years depending on the circumstances of the taxpayer.

The unlimited review period which is currently available will no longer apply. New s. 171A of the *Income Tax Assessment Act 1936* has been introduced to specify review periods for nil liability returns for the 2003-04 income year and earlier years.

Schedule 1 to the Act amends s. 175A of the *Income Tax Assessment Act 1936* which provides that a taxpayer who is dissatisfied with an assessment may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*. New s. 175A(2) provides that a taxpayer cannot object against an assessment ascertaining that the taxpayer has no taxable income or that no tax is payable unless the taxpayer is seeking an increase in the taxpayer's liability.

Amendments relating to the provision of advice by the ATO

Schedule 2 to the Act repeals the existing provisions of the *Taxation Administration Act 1953* relating to public rulings, private rulings and oral rulings and introduces a series of new provisions to deal with rulings by the ATO. Division 357 of Schedule 1 to the *Taxation Administration Act 1953* sets out common rules relating to all forms of rulings. Division 358 deals with public rulings. Division 359 deals with private rulings and Division 360 deals with oral rulings.

Merits review rights continue to exist in relation to private rulings. New ss 395-50(3) and 359-60 of Schedule 1 provide that a person may object against:

- a private ruling that applies to a person; or
- a failure to make a ruling after the Commissioner has been given a notice to make the ruling.

Where the Commissioner has failed to make a ruling, the person must lodge a draft private ruling with the objection. The Commissioner must make a ruling in the same terms as the draft ruling or make a different ruling. If the Commissioner has not issued a ruling within 60 days of the objection being lodged, the Commissioner is taken to have disallowed the objection.

These amendments apply to things done on or after 1 January 2006.

Regulations

Australian Wine and Brandy Corporation Amendment Regulations 2005 (No 2)

The Regulations amended the *Australian Wine and Brandy Corporation Regulations 1981* by substituting regulation 6A. Under reg 6A(2) the Australian Wine and Brandy Corporation may approve or refuse to approve the export of a grape product that does not comply with the Food Standards Code. This decision is subject to review by Tribunal.

This amendment commenced on 11 November 2005.

Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005

These Regulations set out how people can be accredited under the accreditation scheme for Building and Construction Industry Improvement. The accrediting authority is the Federal Safety Commissioner. The following decisions of the Federal Safety Commissioner are reviewable decisions: a refusal to accredit a person under sub regulation 12(1); a decision to impose a condition of accreditation under sub regulation 15(1) or paragraph 17(1)(a); a decision to suspend an accredited person's accreditation under paragraph 17(1)(b); a decision to revoke an accredited person's accreditation under paragraph 17(1)(c) or subregulation 17(2).

These Regulations commenced on 16 December 2005.

Instruments

Australian Meat and Live-stock (Beef Export to the USA – Quota Year 2006) Order 2005

This Order, which commenced on 5 November 2005, applies to beef that is fresh, chilled or frozen and is classified under a range of classifications of the Harmonized Tariff Schedule of the United States of America. It sets out the conditions under which beef can be exported to the USA at a tariff rate of zero under the terms of the Australia-US Free Trade Agreement (AUSFTA).

An exporter must hold an AUSFTA approval issued under s 6 or subs 10(5) or 12(2) of the Order for the export of a consignment of quota beef. If an export is not or cannot be completed or an export from the uncommitted quota pool cannot be completed, the Secretary of the Department of Agriculture, Fisheries and Forestry may amend the approval. Section 15 provides that an exporter may apply to the Tribunal for review of a decision of the Secretary relating to amendment of an approval issued under subs 11(2) or 13(2) of this Order.

This Order ceases to have effect at the end of 31 December 2006.

Australian Passports Determination 2005

This Determination, made under s 57 of the *Australian Passports Act 2005* and s 8 of the *Australian Passports (Application Fees) Act 2005*, specifies a range of matters in relation to those Acts. For example, the Determination deals with matters such as concurrent, diplomatic and official passports, the validity of passports, travel-related documents and fees.

Section 10.2 provides that application may be made to the Tribunal for review of a decision of the Minister or a delegate of the Minister in relation to: the waiver of a fee under s 8.2; the refund of a fee under s 8.3 and the name on a travel document under subs 9.1(8), (9) or (10).

This Determination commenced on 1 July 2005.

Marine Orders Part 41

This Part of the Marine Orders gives effect to the following Parts of Chapter VII of the International Convention for the Safety of Life at Sea 1974 (SOLAS):

- Part A, which deals with the carriage of dangerous goods in packaged form or in solid form in bulk, and in particular gives effect to the International Maritime Dangerous Goods Code (the IMDG Code); and
- Part D, which deals with special requirements for the carriage of packaged irradiated nuclear fuel, plutonium and high-level radioactive wastes on board ships, and in particular gives effect to the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships (the INF Code).

It also prescribes matters for the purposes of the following provisions of the *Navigation Act 1912*:

- section 253A, which provides that the regulations may prescribe matters in regard to the carriage of dangerous goods in ships;
- section 255, which provides that the regulations may prescribe matters relating to the giving of notice of the intention to ship dangerous goods in ships; and
- section 257, which provides that the regulations may make provision for or in relation to the stowing or carriage in ships of cargo.

New provisions have been introduced that permit a surveyor to inspect incoming dangerous goods on a ship, to inspect cargo transport units (CTU) packed with dangerous goods and to prohibit the loading of a CTU onto a ship which does not comply with Part 41.

Order 6.1.1 provides for internal review by the General Manger of a decision made by the Manager, Ship Inspections, under this Part. Under order 6.1.3, the General Manager may affirm the original decision or make any decision that could be made by the Manager, Ship Inspections, in accordance with this Part. Order 6.2.1 provides that application may be made to the Tribunal for review of a decision by the General Manger under order 6.1.3.

This Part of Marine Orders came into operation on 1 January 2006.

AAT recent decisions (list)

The following decisions were recently delivered by the AAT. The Library compiles this list. If the decision is to be summarised it will be noted. Click on the links for direct access to the full text of the decision. Recent decisions can also be viewed on the AAT website <http://www.aat.gov.au/AATdecisions/ThisWeek.htm>.

Immigration and Citizenship

Malcov and Minister for Immigration and Multicultural and Indigenous Affairs [2005] AATA 1290; 22/12/2005; Deputy President GD Walker

Business skills visa – cancellation of business skills visa and secondary visa – whether primary visa holder has a substantial ownership interest in an eligible business, whether he has “utilised his skills” in that business, and whether he continues to have a substantial interest in that business – examination of the primary visa holder’s business activities in Australia including time spent in Australia – examination of whether there will be hardship if the visa is cancelled – found that the applicant’s involvement in the Russian Coachman does satisfy the requirements of s 134(2) - the decision under review is set aside and the matter remitted to the respondent for reconsideration on the basis that the applicant has satisfied the requirements of s 134(2) of the Migration Act 1958.

Practice and Procedure

Reid and Secretary, Department of Family and Community Services [2005] AATA 1312; 23/12/2005; Ms AF Cunningham, Member

Application for extension of time – seven years after decision under review - applicant’s life since characterised by significant events – applicant always aware of and understood her rights of appeal – applicant undertook university degree during the period – no satisfactory explanation for delay for entire period – Tribunal determined not reasonable in all of the circumstances to extend time – application for extension of time is refused.

Sogo Duty Free Pty Ltd and Anor and Commissioner of Taxation [2005] AATA 1298; 23/12/2005; Dr G Hughes, Member

Interlocutory application for stay of the proceedings – concurrent criminal proceedings – prospect of Tribunal being held in contempt of criminal proceedings – exercise of Tribunal’s discretion under section 33(1)(a) of the *Administrative Appeals Tribunal Act 1975* - The Tribunal grants a stay of proceedings until the conclusion of committal proceedings involving Hoang Hai Chiem, whereupon the Tribunal will consider the further disposition of this matter.

Social Security

Copson and Secretary, Department of Employment and Workplace Relations [2005] AATA 1315; 12/12/2005; Ms MJ Carstairs, Member

Disability support pension – impairment tables – less than 20 points – no longer eligible for pension – decision under review affirmed.

Demkowski and Secretary, Department of Employment and Workplace Relations [2005] AATA 1308; 23/12/2005; Ms N Isenberg, Member

Lump sum workers’ compensation payment not able to be dissected – preclusion period – whether special circumstances exist to justify the exercise of the discretion to disregard all or part of the compensation payment being made – unfairness of the strict application of the

'50% rule' – no special circumstances – decision set aside. In substitution the Tribunal decides that a compensation preclusion period from 7 April 2005 to 2 November 2005 should be imposed.

Hollis and Secretary, Department of Employment and Workplace Relations [2006] AATA 4; 4/1/2006; Rear Admiral AR Horton, Member

Recovery of worker's compensation payments – applicant suffered work place injury - short term worker's compensation payments – granting of sickness allowance – lump sum compensation payment in arrears – recoverable amount in respect of compensation affected social security payments recovered from insurance company – calculation of recoverable amount confirmed – medical condition - special circumstances deemed not to exist – decision under review, that Centrelink recover an amount of \$5,444.86 from compensation payment covering the period 18 April 2003 to 31 October 2003, is affirmed

Homewood and Secretary, Department of Family and Community Services [2006] AATA 6; 6/1/2006; Ms L Savage Davis, Member

Disability support pension – lump sum payment of compensation – preclusion period – discretion to treat whole or part of compensation payment as not having been made – whether special circumstances exist - decision under review be set aside. In substitution the Tribunal decides that so much of the compensation payment received by the applicant be treated as not having been made such that the preclusion period ends on 1 July 2006 instead of 18 October 2002.

Jakopovic and Secretary, Department of Employment and Workplace Relations [2006] AATA 7; 6/1/2006; Ms L Savage Davis, Member

Disability support pension - over payment - ordinary income – meaning of “work out the amount of the person's ordinary income on a yearly basis” - over recovered payments. The Tribunal sets aside the decision of 8 September 2004 not to repay the applicant the sum of \$4,087 and in substitution decides that this sum is to be repaid to the applicant; and sets aside the decision of 16 September 2004 to raise and recover an overpayment of \$22,745.38 Disability Support Pension (DSP) paid for the period 17 October 1996 to 30 June 2000 and in substitution decides that there is an overpayment and recoverable debt of DSP for the period 1 October 1997 to 30 June 2000.

Karanikolas and Secretary, Department of Family and Community Services [2005] AATA 1314; 22/12/2005; Mr C Ermert, Member

Disability support pension – calculated on the basis of combined income including wife's earnings – change in wife's earnings – failure to notify Centrelink – whether overpayment amounts to a debt to Commonwealth – whether debt can be waived or written off – decision affirmed

Rigg and Secretary, Department of Family and Community Services [2006] AATA 9; 9/1/2006; Deputy President SD Hotop

Carer payment - rent assistance - applicant paid rent - applicant granted carer payment - rate of carer payment did not include amount of rent assistance - applicant subsequently applied for internal review of decision not including amount of rent assistance in rate of carer payment - decision made to include amount of rent assistance in carer payment - arrears of carer payment, being amount of unpaid rent assistance for part of period applicant in receipt of carer payment, payable to applicant - decision under review set aside. In substitution the Tribunal decides that arrears of carer payment – comprising the total amount of unpaid rent assistance that was payable as a component of the total amount of the applicant's carer payment as from 20 March 2003 (and not from an earlier date) – are payable to the applicant under Part 2.5 of the Social Security Act 1991 (Cth).

VBH and Anor; Secretary, Department of Family and Community Services [2006] AATA 1; 4/1/2006; Senior Member J Handley

Respondents were married – they separated, divorced and resumed cohabitation – currently aged 75 and 65 respectively – subsequent to resuming cohabitation they have lived in jointly owned properties, have borrowed jointly, renovated properties and shared responsibilities jointly for loan repayments – they also shared different parts of their homes, ate at different times, did not socialise and did not share a bedroom – they were each known locally as divorced – whether their relationship is marriage-like – whether overpaid and whether debt should be waived or written off – The decision of the Social Security Appeals Tribunal in so far as it found the respondents were in a marriage-like relationship is affirmed. The decision in so far as it found that the respondents were not in debt to the Commonwealth is set aside and in substitution it is decided the respondents did receive a benefit to which they were not entitled and they have incurred a debt to the Commonwealth.

Taxation

Gruber and Commissioner of Taxation [2005] AATA 1305; 23/12/2005; Deputy President J Block

Film scheme - deduction in respect of monies invested in a film – whether deduction was incurred in the year in which the deductions were claimed – onus on Applicant – consideration of Transaction Documents –effect of Part IVA of the Income Tax Assessment Act 1936 – decision affirmed.

Transport

Hoopes and Department of Transport and Regional Services [2006] AATA 11; 10/1/2006; Mr RG Kenny, Member

Motor vehicle importation – non-standard vehicle without identification plate – vehicle owned but not used for a continuous period of 12 months - general discretion to approve importation not exercised in the applicant's favour – consideration of the relevant factors for the exercise of that discretion – decision under review affirmed.

Veterans' Affairs

Portakiewicz and Repatriation Commission [2005] AATA 1292; 22/12/2005; Deputy President DG Jarvis

Veteran's entitlements – post-traumatic stress disorder – alcohol dependence – hypertension – tribunal decided that conditions not war-caused – appeal to Federal Court allowed – matter remitted to tribunal for determination in accordance with law – consideration of whether veteran is suffering from post-traumatic stress disorder – hypothesis that claimed conditions are war-caused – applicant experienced a “severe stressor” prior to clinical onset of claimed conditions – Statements of Principles – decision under review varied.

1. The tribunal varies the decision under review insofar as it relates to the applicant's conditions of PTSD and hypertension, and decides that those conditions are war-caused.
2. The tribunal affirms the decision under review insofar as it relates to the applicant's condition of alcohol dependence.
3. The tribunal remits the matter to the respondent with a direction that the respondent assess the applicant's entitlements in accordance with the attached reasons for decision.
4. The tribunal reserves liberty to the parties to apply, on or before 18 January 2006, in relation to the date of effect from which pension payable as a result of this decision

should take effect, and in the absence of any such application, the date of effect will be 1 June 2000.

Rudd and Repatriation Commission [2005] AATA 1306; 23/12/2005; Dr ME Thorpe, Member

Veterans' entitlements – operational service during World War 2 - disability pension – post traumatic stress disorder – no diagnosis - decision affirmed.

Court appeals (list)

The Policy and Research unit is responsible for maintaining the Appeals list. The following is a list of changes to the Appeals List that have occurred since the last edition of the Bulletin. To view the entire Appeals List, please refer to the Intranet (under the **Policy and Research/Bulletin and Appeals List icons**).

Appeals lodged

- Bond Patterson Pty Ltd v Tax Agents' Board of NSW **N2004/1286** (NSD2632/2005)
- Brackenreg v Comcare **D03/34** (NT037/2005)
- Byrne v Repatriation Commission **Q05/53** (QUD575/2005)
- Capricornia Credit Union Limited v Australian Securities and Investments Commission **Q05/465 & 196** (QUD580/2005)
- Modini v Tax Agents Board of Queensland **Q05/586** (QUD586/2005)
- Price Street Professional Centre P/L v Commissioner of Taxation **QT02/262** (QUD574/2005)
- Secretary, Department of Family & Community Services v Kelly **V2005/451** (VID2/2006)

ADJR Applications lodged

- Pfizer v Minister for Health & Ageing & Ors NSD2617/2005

Appeals decided

- Comcare v Foster **Q2003/731 (QUD249/2004)** (Appeal allowed, decision of Tribunal set aside, 12/1/06)
- Commissioner of Taxation v Ergon Energy Corporation Ltd **Q2003/318-320&429 (Q195/2003)** (Decisions made by Tribunal set aside, 23/12/05)