

Great Barrier Reef Marine Park Regulations (Amendment) 1997
 Health Insurance Commission Regulations (Amendment) 1998
Health Legislation Amendment Act 1998
Health Legislation Amendment Act (No 2) 1998
 Industrial Chemicals (Notification and Assessment) Regulations (Amendment) 1997
Migration Legislation Amendment (Migration Agents) Act 1997
 Patent Regulations (Amendment) 1998
 Primary Industries Levies and Charges Collection (National Residue Survey – Aquatic Animal Export) Regulations 1998
Social Security and Veterans' Affairs Legislation Amendment (Pension Bonus Scheme) Act 1998
Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997
Superannuation Industry (Supervision) Amendment Act 1997
Superannuation Industry (Supervision) Regulations (Amendment) 1998
Taxation Laws Amendment Act (No 1) 1998
Taxation Laws Amendment Act (No 3) 1998
Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998
 Telecommunications Universal Service Obligation (Eligible Revenue) Regulations 1998
 Therapeutic Goods Regulations (Amendment) 1997
 Therapeutic Goods Regulations (Amendment) 1997
Veterans' Affairs Legislation Amendment (Budget and Other Compensation Measures) Act 1997
 Veterans' Entitlements Regulations (Amendment) 1997
 Wool International Regulations (Amendment) 1997.

The following Acts, which provided for merits review by the Tribunal have been repealed:

Meat and Livestock Industry Act 1995
Childcare Rebate Act 1993.

The Family Law Regulations (Amendment) (SR 151 of 1997), notified in the Gazette on 30 June 1997 and which commenced on 1 July 1997,

extended the Tribunal's jurisdiction under the Family Law Regulations to review a decision of a Registrar of the Family Court to refuse to waive payment of a fee for counselling or mediation. The amending regulations were disallowed in the Senate on 24 November 1997.

AAT DECISIONS OF PARTICULAR INTEREST

Friends of Hinchinbrook Society Incorporated and High Court of Australia (No. N 97/1498; AAT No.12948)

Justice Mathews (President)
Statutory interpretation – corporation seeking waiver of filing fees – regulations providing for circumstances of exemption from/waiver of filing fees – whether ejusdem generis rule applies to restrict application of the regulations to natural persons – whether “person” refers only to natural persons because of contrary intention within the meaning of subsection 22(1) Acts Interpretation Act 1901

The applicant, a corporation, applied for special leave to appeal to the High Court from a judgment of the Full Court of the Federal Court. The application was not accompanied by a filing fee. The applicant's subsequent request for waiver of the filing fee on the ground of financial hardship was refused by the Registrar.

The applicant sought review of the Registrar's decision by the Tribunal. Both parties agreed that the matter could be dealt with on the papers so no formal hearing was conducted.

The power to waive fees is contained in regulation 4 of the High Court of

Australia (Fees) Regulations,
subregulation 4(4) of which provides

A fee mentioned in subregulation (1) is not payable if:

(a) the person liable to pay the fee is granted legal aid, under a legal aid scheme or service established under Commonwealth, State or Territory law or approved by the Attorney-General, for the proceeding to which the fee relates; or

(b) the person liable to pay the fee is

(i) the holder of one of the following cards issued by the Department of Social Security...

(ii) the holder of any other card issued by the Department of Social Security or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions; or

(iii) an inmate of a prison or is otherwise lawfully detained in a public institution; or

(iv) a child under the age of 18 years; or

(v) in receipt of AUSTUDY...; or

(vi) in receipt of benefits under... the ABSTUDY Scheme; or

(c) the Registrar, having regard to the income, day to day living expenses, liabilities and assets of the person liable to pay the fee, waives payment of the fee because, in his or her opinion, it would cause financial hardship to the person.

The Tribunal noted that there was evidence before the Registrar that the applicant's assets and income were very low and that there was ample basis for a finding that payment of the filing fee would cause financial hardship. However, the Registrar had not considered the matter, deciding instead that, by virtue of the *eiusdem generis*

rule¹, the word 'person' in regulation 4(4)(c) means a natural person and excludes a corporation. The Registrar quoted subsection 22(1) of the *Acts Interpretation Act 1901*:

"In any Act, unless the contrary intention appears:

(a) expressions used to denote persons generally (such as 'person' ...), include a body politic or corporate as well as individual; ...

The Registrar concluded that a contrary intention did exist. His findings said

...The circumstances prescribed by paragraphs 4(4)(a) and 4(4)(b) in which filing fees are not payable are of their very nature applicable only to an individual or a "natural person". The circumstances prescribed by these paragraphs do not contemplate the waiver of fees payable by a body corporate. Given that paragraph 4(4)(c) is part of subregulation 4(4) which provides the only circumstances in which a filing fee will not be payable, the word "person" in paragraph 4(4)(c) is to be construed *eiusdem generis* with the meaning accorded that word in paragraphs 4(4)(a) and 4(4)(b). "Person" in paragraph 4(4)(c) is therefore to be construed as meaning only an individual or natural person and does not include a body corporate.

A narrow interpretation of paragraph 4(4)(c) is further justified by the language of the paragraph which refers to "income, liabilities and assets" and "financial hardship". These expressions are indicative of the financial affairs of an individual rather than a body corporate...

The President of the Tribunal, Justice Mathews, noted that over recent years

¹ Which holds that where general words follow particular words the general words will often be construed as being limited to the same type as the particular words.

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