CASE NOTE

RE PALMER AND MINISTER FOR THE CAPITAL TERRITORY[1]

Administrative Appeals Tribunal Act — Ss. 28; 37 — Rates Ordinance (A.C.T.) — Administrative decision — Decisionmaker required to give reasons — Reasons must be intelligible, relevant and adequate — Disclosure of reasons insufficient.

Mr & Mrs H.D. Palmer live at 101 Strickland Crescent, Deakin A.C.T.: they are joint owners of Block 1 Section 56 Division Deakin. Late in 1977 they received a letter from the Minister for the Capital Territory notifying them that the unimproved value[2] of their land as at 30.6.77 was determined to be $17,000 for the purpose of rating under s. 13 of the Rates Ordinance 1967 (A.C.T.). Section 29(1) of the Rates Ordinance provides that an owner dissatisfied with a determination may make application for a variation to that determination on the basis of reasons set out in the application. On 7.10.1977 Mr Palmer wrote to the Department seeking a variation in the determination to a figure of $6,000, supporting this contention on four grounds:

1. The Minister's original valuation was contrary to s. 5 of the Rates Ordinance.
2. The determination was excessive in all the circumstances.
3. The determination was in excess of the capital fund that might be expected to have been offered on 30.6.77 for the lease.
4. The determination was inconsistent.

However, after receiving advice from the Chief Valuer of the Australian Taxation Office, the Minister, under s. 29(2) of the Rates Ordinance, confirmed the determination and so notified the Palmers.

Undaunted, the owners applied under s. 30A of the Rates Ordinance, to the Administrative Appeals Tribunal to review the decision of the Minister confirming the redetermination of the unimproved value of the land at $17,000 and gave notice pursuant to s. 28(1) of the Administrative Appeals Tribunal Act 1975 (Cth) to the Minister requesting him to provide "a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision". To this request the Department replied on 6.2.78 attaching a letter from the Chief Valuer, the Australian Taxation Office to the Department of the Capital Territory (dated 5.1.78) in which it was stated that all Mr Palmer's objections in his letter of 7.10.77 to the determination had been considered, yet it was recommended that the determination be confirmed for there was no basis for the assertion that the determin-

[1] [1979] 1 A.L.D. 183. Administrative Appeals Tribunal; Fisher J. (Deputy President), A. N. Hall (Senior Member), C. A. Woodley (Member).

[2] The capital sum which might be expected to have been offered for the lease of the parcel of land on certain assumptions: Rates Ordinance 1967, s. 5.

ation was contrary to s. 5 of the Rates Ordinance and the valuation was supported by the following analysed sales:

1. Block 22 Section 53 Division Deakin.
   Date of sale October 1975. Smaller, slightly superior location, deduced unimproved value $15,750.
2. Block 19 Section 56 Division Deakin.
   Date of sale February 1976. Smaller, superior location, deduced unimproved value $17,500.
3. Block 27 Section 63 Division Deakin.
   Date of sale September 1975. Slightly smaller, comparable location, deduced unimproved value $26,000.

Moreover, pursuant to the s. 37 Administrative Appeals Tribunal Act obligation on the Minister to lodge with the Administrative Appeals Tribunal copies of a statement setting out the findings on material questions of fact and the reasons for the decision, a delegate of the Minister lodged the letters of the 6.2.78 (to the Palmers) and of the 5.1.78 (from the Chief Valuer) and made a statement that the original determination had been confirmed on the basis of advice from the Chief Valuer Australian Taxation Office (in the letter of 5.1.78).

On the 9.5.78 Mr Palmer requested the Administrative Appeals Tribunal to order, under s. 38, that the reasons and findings were inadequate.

The Tribunal began its reasoning by making it clear that it was the decision of the Minister to confirm the determination and dismiss the Palmers' application that was under review. It was then pointed out that s. 37(1)(a) recognised the way in which the decision making process operates in practice, with the Minister frequently acting on recommendations and reports of subordinate officers or relevant experts generating the conclusion that a s. 37 statement must include any findings on questions of fact by the expert/subordinate and reference to other material on which findings are based and also reasons actuating the mind of the expert/subordinate. For if the Minister could simply say that he relied on the recommendation of an appropriately qualified expert:

> . . . The benefit to the citizen in the obtaining of reasons, which in our view are fundamental to the whole scheme of the administrative review embodied in the Act would be set at nought.[3]

On a parallel vein the Tribunal noted the 1977 Amendment[4] to s. 28 of the Administrative Appeals Tribunal Act 1975 (Cth) requiring the reference to the evidence or other material on which findings on material questions of fact are based, observing that this placed a much more stringent obligation on the decision maker.

Following these introductory remarks to the sections requiring explanation or justification of decisions the Tribunal considered the essence of the question before it:

> The obligations imposed by s. 28 and s. 37 are a crucial feature of

[3] [1979] 1 A.L.D. 183, 192.
[4] No. 58 of 1977.

the current right of the citizen to obtain from an impartial Tribunal a review of an administrative decision, and where appropriate the substitution by that Tribunal of another decision. The purpose of the supply of reasons was well stated by Megaw J. in *re Poyser & Mills Arbitration* [1964] 2 Q.B. 467 at p. 477. His Lordship had this to say in respect of the corresponding section of the *Tribunals and Inquiries Act* 1958 which requires, it is to be noted, only a statement of the reasons for the decision:

> The whole purpose of s. 12 of the *Tribunal and Inquiries Act* 1958 was to enable persons whose property, or whose interests, were being affected by some administrative decision or some statutory arbitration to know, if the decision was against them, what the reasons for it were. Up to then, peoples' property and other interests might be gravely affected by a decision of some official. The decision might be perfectly right but the person against whom it was made was left with the real grievance that he was not told why the decision had been made. The purpose of s. 12 was to remedy that.... Parliament provided that reason shall be given and in my view that must be read as meaning that proper, adequate reasons must be given.

Likewise in *Iveagh* v. *Minister of Housing* v. *Local Government* [1964] 1 Q.B. 403 at p. 410 Lord Denning says of the same section:

> The whole purpose of the enactment is to enable the parties and the courts to see what matters he (the Minister) has taken into consideration and what view he has reached on the points of fact and law which arise. If he does not deal with the points that arise, he fails in his duty and the court can order him to make good the omission.

By requiring the decision maker to give not only the reasons for his decision but additionally a statement of "the findings on material questions of fact referring to the evidence or other material on which those findings were based", Parliament certainly intended that the citizen should be fully informed. These further requirements will be satisfied by a statement setting out the findings of fact, together with a reference to "the evidence or other material" on which the findings, were based. It is important to note that neither s. 28 nor s. 37 requires that the relevant "evidence or other material" be "set out" in the statement, only that it be referred to. Moreover, the citizen's entitlement to be fully informed was not merely an incident arising in the course of and for the purpose of a review by this Tribunal. It is a right which arises consequent upon a decision being made which is capable of being so reviewed, and the reasons, when properly given, ensure that the citizen is sufficiently informed to determine whether he wishes to take the matter further, and if so whether to make representations to the Minister, proceed in the appropriate court of law or to seek a review by this Tribunal. It follows that to achieve this end the reasons must, in the words of Megaw J. in *re Poyser & Mills Arbitration*, supra, at p. 478, "be reasons which will not only be intelligible but which deals with the substantial points that have been raised".[5]

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[5] [1979] 1 A.L.D. 183, 192-193. The Tribunal went on to cite *Elliott* v. *London Borough of Southwark* [1976] 2 All E.R. 781.

Moreover in support of this analysis the Tribunal referred to its obligation under s. 39 of the Act to "ensure that every party to a proceeding before the Tribunal is given a reasonable opportunity to present his case" suggesting that for a party to present an effective case he will require to be adequately informed of the matters which prompted the decision.

In reply to the contention that the s. 37 statement was inadequate and unsatisfactory in analysis against the requirements of the Act, counsel for the Minister put two submissions. First, that the statement was comprehensible to a person acquainted with the principles of valuation and secondly, that the Palmers were not deprived of information but that it would be given at a later stage when a proof of evidence and a detailed evaluation were prepared. The Tribunal rejected both arguments as misconceived in the space of a sentence.

The Tribunal then proceeded to apply the statutory criteria to the s. 37 statement of 8.3.78 and the recommendation of 5.1.78. The analysis proved most damaging. Clearly the documents lodged contained the opinion and recommendation of the Chief Valuer of the Australian Taxation Office and the information concerning sales which were either the basis for the initial valuation or produced to support the Chief Valuer's recommendations. However there was no information as to the material to which the Chief Valuer gave consideration when revising the initial determination, as to the valuation process adopted and the facts relied on in arriving at the valuation. Although reference is made to analysed sales in arriving at the figure of $17,000, no information is given as to the method of deducing the unimproved value from the sale price and what comparative weight is given to factors of market values, improvements and comparability to the subject land. Indeed the generated figures varied from $15,750 to $26,000 and no information was supplied on the procedures adopted, adjustments made and reasons therefore in arriving at the figure of $17,000. Moreover, reference was made to only one of the Palmers' reasons advanced in support of their substituted figure; no reference at all being made to the other three nor to the grounds for discounting them.

In the result the Tribunal concluded that the documents lodged pursuant to s. 37 did not adequately disclose the reasons for decision and the findings on material questions of fact (referring to the evidence or other material upon which the findings of fact were based).

Pursuant to s. 38 the Tribunal ordered the Minister to lodge an additional statement containing further and better particulars of:

(a) The rejection of the substituted value put forward by the owners.
(b) The rejection of the reasons stated in the owner's application.
(c) The conclusion that the amount of the unimproved value specified in the notice of the redetermination is not too high.
(d) The recommendation of the Chief Valuer of 5.1.78 in respect of:
    (i) evaluation of the subject land,
    (ii) full details of the analysed sales,
    (iii) manner of arriving at deduced improved value for each sale,

(iv) manner of arriving at the unimproved value of the subject land.[6]

The Case in Context

It is well settled that at common law a decision-maker is under no duty to give reasons for a decision nor to state material findings of fact[7] although there is a line of Australian cases establishing the need for the Federal Commissioner of Taxation to provide basic facts and the grounds of his opinion to an objecting taxpayer.[8] With the traditional reluctance of government departments and administrators to divulge information and reasons for decision the citizen was put in an invidious position in so far as challenging a decision made against him;[9] for not only was he ignorant of the grounds and reasons of the decision, but also until *Padfield* v. *Minister of Agriculture*[10] the Courts were reluctant to infer, in the absence of stated reasons, any improper or assailable motive/reason on the part of the decision-maker. With *Padfield* the position of an affected citizen improved for he could now challenge a decision where:

> all the prima facie reasons seem to point in favour of [the decision-maker] taking a certain course to carry out the intentions of Parliament in respect of a power which it has given him in that regard, and he gives no reason whatever for taking a contrary course, [as] the Court may infer that he has no good reason and that he is not using the power given by Parliament to carry out its intention.[11]

Although the United Kingdom enacted a protracted form of an obligation to give reasons in the 1958 Tribunal and Inquiries Act (s. 12) its ambit was restricted and there was no following legislative initiative in Australia until the 1975 Administrative Appeals Tribunal Act (Cth). The familiar arguments supporting the obligation to disclose reasons and findings, namely—reasoned opinions will be better thought out, reasons allow a party to determine whether he has good grounds for appeal, an affected party is apprised of why a decision was made thus encouraging public confidence in the administrative process, provision of guidelines for the body itself and those advising the public on future conduct,

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[6] At the time of writing the case had been reheard before the Tribunal in the light of the more detailed fact findings and reasons but the decision has not yet been handed down.

[7] *R.* v. *Gaming Board for Great Britain; ex parte Benaim and Khaida* [1970] 2 Q.B. 417, *Schmidt* v. *Secretary of State for Home Affairs* [1969] 2 Ch. 149.

[8] *Giris Pty Ltd* v. *F.C.T.* (1969) 119 C.L.R. 365, *F.C.T.* v. *Brian Hatch Timber Co. (Sales) Pty Ltd* (1972) 128 C.L.R. 28, *Kolotex Hosiery (Aust.) Pty Ltd* v. *Commissioner of Taxation* (1975) 49 A.L.J.R. 35, *Trivett* v. *Nivison* [1976] 1 N.S.W.L.R. 312, *cf. Taylor* v. *Public Service Board* [1975] 2 N.S.W.L.R. 278; and see also the Land Board in N.S.W. cases: e.g. *The Grove (Cootamundra) Pty Ltd* v. *Landgrove Pty Ltd* [1970] 2 N.S.W.R. 333.

[9] See e.g. *Local Government Board* v. *Arlidge* [1915] A.C. 120.

[10] [1968] A.C. 997.

[11] [1968] A.C. 997, 1053-1054 *per* Lord Pearce; see also *Congreve* v. *Home Office* [1976] 2 W.L.R. 291.

reasons make bodies more amenable to supervisory jurisdiction ensuring compliance with the rules of natural justice and that the parameters of power are not exceeded—clearly have dominated the defences of inroads into Tribunals' time and resulting increased litigation leaving the Australian position with the demands of ss. 28 and 37 of the Administrative Appeals Tribunal Act 1975 (Cth), along with the potentially more important s. 13 of the Administrative Decisions (Judicial Review) Act 1977 (Cth) imposing obligations substantially similar to those under s. 28 of the Administrative Appeals Tribunal Act 1975 (Cth) on those making decisions of an administrative character under Commonwealth or Territorial legislation.

Given the generous interpretation placed on s. 37 of the Administrative Appeals Tribunal Act 1975 (Cth) in *Palmer* requiring a most comprehensive detailing of reasons, findings and references to other material evidence along with the multiple avenues of attack upon reasons once given[12] justice to an aggrieved party will in the future more often be done and importantly be shown to the citizen to have been done.

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[12] For example:
(1) Reasons inadequate: *Re Poyser & Mills Arbitration* [1964] 2 Q.B. 467.
(2) Reasons wrong/irrelevant considerations: *Cole* v. *Chirnside* (1880) 6 V.L.R. (L.) 68, *Padfield* v. *Minister of Agriculture* [1968] A.C. 997.
(3) Failure to state reasons: *Brayhead (Ascot) Ltd* v. *Berkshire County Council* [1964] 2 Q.B. 303.
(4) Facts stated in reasons false.
(5) Reasons given were not the real reasons—fraud: *Givandan & Co. Ltd* v. *Minister of Housing and Local Government* [1967] 1 W.L.R. 250.
(6) Errors on face of the record attracting certiorari: *R.* v. *Minister of Housing and Local Government; ex parte Chichester R.D.C.* [1960] 1 W.L.R. 587.

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