

16B/92

## ADMINISTRATIVE APPEALS TRIBUNAL OF VICTORIA

**TARSON PTY LTD v TRAVEL AGENTS LICENSING AUTHORITY**

Judge Smith P

8 October 1991

**CRIMES COMPENSATION – APPLICATION FOR EXTENSION OF TIME – CRITERIA TO BE CONSIDERED: CRIMINAL INJURIES COMPENSATION ACT 1983, S20(3).**

Judge Smith sitting as President of the Administrative Appeals Tribunal of Victoria dealt with the principles which should apply as to whether an extension of time should be granted. At p4 of the reasons for decision, His Honour said:

**"The guiding principles**

It was not suggested by either of the parties who appeared before me that the principles which should guide me in the exercise of my discretion as to whether or not to grant the extension of time sought are other than those identified by His Honour Mr Justice Wilcox of the Federal Court in *Hunter Valley Developments Pty Ltd and Others v Minister for Home Affairs and Environment* (1984) 58 ALR 305. It will be useful, I think, if I set those principles out. They appear on pp310 and 311 of the report;

'(a) Although the section does not, in terms, place any onus of proof upon an applicant for extension, an application has to be made. Special circumstances need not be shown, but the court will not grant the application unless positively satisfied that it is proper so to do. The "prescribed period" of 28 days is not to be ignored (*Ralkon v Aboriginal Development Commission* [1982] FCA 153; (1982) 69 FLR 328; (1982) 43 ALR 535 at 550; (1982) 5 ALD 42). Indeed it is the *prima facie* rule that proceedings commenced outside that period will not be entertained (*Lucic v Nolan* (1982) 45 ALR 411 at 416). It is a pre-condition to the exercise of discretion in his favour that the applicant for extension show an "acceptable explanation of the delay" and that it is "fair" and equitable in the circumstances" to extend time (*Duff v Freijah* [1982] FCA 159; (1982) 43 ALR 479 at 485; (1982) 62 FLR 280; (1982) 5 ALD 16; *Chapman v Reilly*, Neaves J, 9 December 1983, not reported, at p7).

(b) Action taken by the applicant, other than by making an application for review under the Act, is relevant to the considerations of the question whether an acceptable explanation for the delay has been furnished. A distinction is to be made between the case of a person who, by non-curial means, has continued to make the decision-maker aware that he contests the finality of the decision (who has not "rested on his rights": per Fisher J in *Doyle v Chief of General Staff* [1982] FCA 124; (1982) 42 ALR 283 at 287; (1982) 71 FLR 56; (1982) 4 ALD 636) and a case where the decision-maker was allowed to believe that the matter was finally concluded. Compare *Doyle*, *Chapman*, *Ralkon*, and *Douglas v Allen* (Morling J, 3 April 1984, not reported, at p18 of the transcript) with *Lucic* at pp414-5 and *Hickey v Australian Telecommunications Commission* (1983) 48 ALR 517 at 519. The reasons for this distinction are not only the "need for finality in disputes" (see *Lucic* at p410) but also the "fading from memory" problem referred to in *Wedesweiller v Cole* [1983] FCA 94; (1983) 71 FLR 256; (1983) 47 ALR 528; (1983) 5 ALN N137.

(c) Any prejudice to the respondent, including any prejudice in defending the proceedings occasioned by the delay, is a material factor militating against the grant of an extension; see *Doyle* at p287; *Duff* at pp484-5, *Hickey* at pp525-7 and *Wedesweiller* at pp533-4.

(d) However, the mere absence of prejudice is not enough to justify the grant of an extension; *Douglas* at p18; *Lucic* at p416; *Hickey* at p523. In this context, public considerations often intrude (*Lucic*, *Hickey*). A delay which may result, if the application is successful, in the unsettling of other people (*Ralkon* p550; *Becerra v Fowell* (unreported, Morling J, 18 February 1983) at pp12-13 of the transcript) or of established practices (*Douglas* p19) is likely to prove fatal to the application.

(e) The merits of the substantial application are properly to be taken into account in considering whether an extension of time should be granted; *Lucic* p417; *Chapman* p6.

(f) Considerations of fairness as between the applicants and other persons otherwise in a like position are relevant to the manner of exercise of the court's discretion; *Wedesweiller* at pp534-5." ...