APPENDIX 7: DECISIONS OF INTEREST

Aged Care

The Uniting Church in Australia Property Trust (Q) and Secretary, Department of Health and Ageing

[2010] AATA 536; 20 July 2010

Deputy President PE Hack SC

Whether the Applicant's approval as a provider of aged care services should have been revoked under the Aged Care Act 1997

The Uniting Church in Australia Property Trust (Q) is a body corporate that, under the name of 'Blue Care', operates 54 residential aged care facilities in Queensland and Northern New South Wales, including the Mareeba Garden Settlement Hostel in Mareeba, North Queensland.

On 16 December 2008 two assessors employed by the Aged Care Standards and Accreditation Agency Ltd undertook an unannounced visit to Mareeba Garden. The Agency concluded that Mareeba Garden did not meet accreditation standards contained in Principles made under the *Aged Care Act 1997*, namely that residents receive adequate nourishment and hydration. The state manager of the Agency reported the assessor's findings that there was a serious risk to the residents to the Secretary of the Department of Health and Ageing, and recommended that sanctions be imposed. On that same day, a delegate of the Secretary, without notice to Blue Care, revoked Mareeba Garden's approval as a provider of aged care services and restricted its approval as a provider of aged care services to care recipients to take effect in six months. In the decision to impose sanctions, the Secretary considered whether Blue Care's non-compliance with the legislative requirements would threaten the health, welfare or interests of the care recipients.

The Tribunal undertook a detailed analysis of the records available on the date of the assessors' visit and the evidence of the medical practitioners treating the residents. The Tribunal concluded that, while there were shortcomings in the information systems of Mareeba Garden, they were not as serious as the recommendation to the Secretary suggested and did not threaten the health, welfare and interests of residents. The decision imposing the sanctions was set aside.

The Tribunal acknowledged the role of the Secretary in the proper protection of residents but expressed concerns relating to the costs of the proceedings. It noted the gravity of imposing sanctions and observed that the care provider should have been given an opportunity to respond to the Agency's concerns.

Aviation

Avtex Air Services Pty Ltd and Civil Aviation Safety Authority

[2011] AATA 61; 4 February 2011

Senior Member E Fice

Whether there was a serious and imminent risk to air safety – Whether the Applicants' Air Operators Certificate should be cancelled

Avtex Air Services Pty Ltd (Avtex) and its associated company, Skymaster Air Services Pty Ltd (Skymaster) held air operators' certificates (AOCs) authorising them to conduct charter and aerial work operations. The Civil Aviation Safety Authority (CASA) was concerned about the safety of Avtex's operations. On 28 May 2010, CASA issued a show cause notice to Avtex, indicating that it proposed to vary, suspend or cancel its AOC.

Before CASA took action on its show cause notice, an Air Piper Mojave Aircraft operated by Skymaster crashed near Bankstown Airport when attempting an emergency landing. The pilot and a flight nurse were killed.

CASA conducted a special audit of Skymaster in June 2010 and concluded that continued operations by Skymaster and Avtex would result in a serious and imminent risk to air safety. CASA applied to the Federal Court seeking a mandatory injunction to prevent Avtex and Skymaster from continuing their flight operations. CASA issued a further show cause notice and, on receiving a response, decided to cancel the AOC of Avtex and Skymaster.

Avtex lodged a review and stay application with the Tribunal. Skymaster also lodged a review application with the Tribunal but resisted CASA's application to have the two matters heard concurrently. The Tribunal noted the evidence from both companies would overlap and it was unlikely that inconsistent findings would be made, but decided it did not have power to order a concurrent hearing without the permission of the parties. Avtex's application was expedited to a hearing.

The Tribunal determined that there were serious safety problems with Avtex operations and that the company had not sufficiently rectified the problems identified by CASA in its show cause notices. The Tribunal decided that the evidence disclosed the existence of a serious and imminent risk to air safety and breaches of Avtex's AOC. The Tribunal further found that Avtex's organisation and management structures were defective, which meant that its business activities were not undertaken with a reasonable degree of care and diligence. The Tribunal affirmed the decision under review.

Citizenship

Neumueller and Minister for Immigration and Citizenship

[2010] AATA 908; 16 November 2010

Senior Member J Redfern

Whether there is any statutory discretion available to the Tribunal to overcome the failure of an Applicant, who holds a permanent visa, to meet the general residence requirements under the Australian Citizenship Act 2007 and if so, how that discretion is to be exercised

Ms Neumueller, a German citizen holding a permanent (spouse) visa, applied for Australian citizenship under section 21 of the *Australian Citizenship Act 2007* (Cth) in December 2009. Her application was refused by the Department of Immigration and Citizenship.

Ms Neumueller did not meet the residence requirement as she fell short of the required period by 45 days. Ms Neumueller argued, however, that there were three possible statutory discretions of relevance to her case upon which it was open to the Minister or the Tribunal, standing in the Minister's shoes, to treat her absence from Australia as a period of residence and grant citizenship by conferral including that significant hardship or disadvantage would otherwise result, a person was present in Australia either as an unlawful non-citizen or a non-permanent resident because of an administrative error or, the applicant holds a permanent visa because he or she was in an interdependent relationship with an Australian citizen.

Ms Neumueller claimed that it was harsh and unfair for her application to be refused because her father had died and she had returned to Germany during 2008 and 2009 to resolve her father's affairs, assist her mother and deal with a property dispute. She continued, however, to work for a German language newspaper based in Australia, maintained her Australian residence, bank accounts and relationships.

Furthermore, the Department provided misleading information as the refusal letter stated that she would not be eligible for citizenship until August 2012. Had she re-applied before 1 July 2010, it is likely that she would have met the general residence requirements. Finally, Ms Neumueller claimed that she was in an interdependent relationship with her former partner.

The Tribunal found that Ms Neumueller's circumstances did not fall within the scope of the statutory discretions. As there was no general discretion based on considerations of fairness, the decision under review was affirmed.

Environment

No Ship Action Group Inc and Minister for Sustainability, Environment, Water, Population and Communities and State of New South Wales

[2010] AATA 702; 15 September 2010

Justice GK Downes, President; Mr P Wulf, Member; Mr M Hyman, Member

Whether a permit should be granted for scuttling the HMAS Adelaide to provide an artificial reef

The frigate HMAS Adelaide was decommissioned in 2008 and given

to the State of New South Wales. The State was granted a permit under section 19 of the *Environment Protection (Sea Dumping) Act 1981* for the scuttling and placement of the ship as an artificial reef. The No Ship Action Group sought review of the decision to grant the permit, based on various concerns about potentially harmful effects of the wiring and lead and copper in paint. The Action Group also submitted it would be preferable to recycle the ship than to scuttle it.

The Navy and the State worked to prepare the ship for scuttling before and after the permit was granted. They removed military and other equipment, and investigated and removed some potentially harmful material. In making the decision to grant the permit, several environmental studies and independent assessments were considered. The permit was granted for 50 years with a number of conditions attached relating to long-term monitoring and management.

Australia's international obligations relating to marine pollution are determined with reference to the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. The Tribunal considered whether the proposal to scuttle the ship was contrary to the aims of the Protocol and gave weight to the desirability of avoiding pollution. The Tribunal noted that the essential elements to be taken into account under the Protocol were environmentally based, but that economic and other non-environmental factors could also be considered.

In deciding whether the presence of lead in the paint of the ship would be harmful, the Tribunal considered evidence from several experts in ecological, environmental and human health. Overall, the Tribunal decided that the available information led to a conclusion that there was no risk of harm to human or environmental health, but, consistent with relevant Canadian Standards and US Guidelines, the Tribunal found that any flaking paint should be removed before scuttling.

The Tribunal also decided that the copper-based anti-fouling coating did not lead to a significant risk of harm to the environment due to its age and state of depletion.

The Protocol requires consideration of a hierarchy of waste management options when determining an application to dump waste or other matter. These options include reuse, recycling and disposal. In considering the alternatives, the Tribunal took the ship in her present state, not as she was before the changes to prepare her for scuttling were undertaken.

The Tribunal decided that the creation of the artificial reef served purposes other than merely disposing of the ship, and was at least, in part, a reuse of the ship. It was therefore the better option when compared to the excessive cost of recycling. The Tribunal considered that this determination was within the aims of the Protocol.

The Tribunal varied the decision under review and decided that the permit should be granted with the conditions already attached as well as further conditions relating to the removal of remaining wiring, coverings and paint, and further sampling and monitoring of lead on the ship and at the site of the scuttling.

Export and import control

Red Bull (Australia) Pty Ltd and Secretary, Department of Agriculture, Fisheries and Forestry

[2011] AATA 157; 10 March 2011

Deputy President RP Handley

Whether goods unloaded and loaded in New Zealand port in the course of transit were 'imported' – Whether the goods may 'lawfully be sold in New Zealand' for the purpose of section 10 of the Trans-Tasman Mutual Recognition Act 1997

Red Bull (Australia) Pty Limited imports Red Bull energy drinks manufactured in the United States of America. A consignment of the energy drinks, shipped from the USA, was unloaded and loaded onto another vessel in New Zealand and shipped to Australia, arriving in Sydney in December 2009. The consignment did not clear New Zealand customs and was never intended for the New Zealand market.

On 16 February 2010, the Australian Quarantine and Inspection Service (AQIS) notified Red Bull that the product had been identified as 'failing food', as defined in the *Imported Food Control Act 1992* (Cth), requiring that the goods be destroyed or re-exported under AQIS supervision or relabelled before reinspection by AQIS, for failing to meet the standards set out in the Australia New Zealand Food Standards Code.

Red Bull asserted that the product did not have to comply with the Code because it was subject to the TransTasman Mutual Recognition Act, under which goods imported into New Zealand that may lawfully be sold there, may be sold in Australia without needing to comply with further requirements. AQIS notified Red Bull in May 2010 that the goods were not subject to the Trans-Tasman Mutual Recognition Act.

Red Bull sought review of a similar decision relating to a second consignment and the applications were dealt with together before the Tribunal.

The Tribunal noted that whether the goods were imported into New Zealand was a question of interpretation of the ordinary meaning of the words of the statute, and the context in which the words were used.

The object of the Trans-Tasman Mutual Recognition Act is to reduce regulatory barriers such as compliance costs for business. Goods that met the regulatory requirements to enable them to be sold in New Zealand could also be sold in Australia without having to comply with further regulatory requirements. In this case however, the goods were not tested for compliance with New Zealand regulatory requirements.

Goods are not defined as 'imported' if the ship on which they are carried puts into a port en route to their ultimate destination. The Tribunal found that the goods were not imported into New Zealand and therefore the Trans-Tasman Mutual Recognition Act did not apply. The Tribunal affirmed the decisions under review.

Freedom of information

Haneef and Australian Federal Police
Haneef and Commonwealth Director of Public Prosecutions

[2010] AATA 514; 9 July 2010

Senior Member B McCabe

Whether extracts of documents held by the Australian Federal Police and the Commonwealth Director of Public Prosecutions were exempt under the Freedom of Information Act 1982

Dr Haneef was arrested and detained in Australia in July 2007 on suspicion of having a connection to a terrorist attack in the United Kingdom a few days earlier. He remained in custody for 11 days before his visa was cancelled and he was required to leave the country. Dr Haneef was subsequently cleared of any wrong-doing and the decision to cancel his visa was set aside by the Federal Court. Dr Haneef sought access to a range of documents, including those relating to the criminal investigation and the decision to cancel his visa.

The Australian Federal Police (AFP) and the Commonwealth Director of Public Prosecutions (CDPP) claimed that extracts of some documents and the whole of other documents were either irrelevant, or exempt from production on grounds including that the documents were provided in confidence by a foreign government or agency, disclosure might damage the Commonwealth's international relations or security documents or the documents contained personal information.

The principal ground, however, was that the documents were subject to legal professional privilege. The criminal investigation into Dr Haneef ended before prosecutors would ordinarily be required to disclose their brief of evidence to the accused. The AFP and the CDPP argued that a large number of documents generated during the course of the investigation, including witness statements, were privileged and therefore exempt.

The Tribunal was required to consider, however, whether the privilege had been waived in relation to a number of the documents. Many of the documents had been made available to an inquiry into the case of Dr Haneef, conducted by Dr Clarke, and the media had learned of the contents of some of the documents from other sources. It decided that the conduct of the person entitled to the privilege was relevant in determining whether a waiver had occurred, and even if the information had become available externally, it did not necessarily mean privilege had been waived. The Tribunal took a broad view of privilege and found that most documents were therefore exempt.

The Tribunal set aside the decision to exempt a number of documents from production, but the decision on the balance of the exemptions was affirmed.

Social security

Law and Secretary, Department of Education, Employment and Workplace Relations

[2010] AATA 844; 29 October 2010

Senior Member J Toohey

Whether the Applicant was entitled to parenting payment following the recognition of same-sex relationships in social security law

Mr Law was the primary carer of his son. In February 2000 he was granted parenting payment at the rate for a single person. In 2001, Mr Law commenced a same-sex relationship which had no bearing on the rate of his parenting payment because at that time same-sex relationships were not recognised for the purposes of social security law.

On 1 July 2006, Parliament enacted the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005* which reduced the age up to which parenting payment could be received for a child. From 1 July 2006, payment stopped when a child turned six if the parent was a member of a couple, and when the child turned eight if the parent was not.

On 1 July 2009, Parliament enacted the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Reform) Act 2008.* The legislation amended the definition of 'member of a couple' in the *Social Security Act 1991* so that it applied to same-sex couples. The effect was that Mr Law became a member of a couple and was no longer entitled to parenting payment at the single rate.

A transitional provision in the Welfare to Work Act meant that a person who was receiving parenting payment and was a member of a couple when the legislation commenced could continue to receive parenting payment until the child reached 16 years of age, as long as he or she continued to be a member of a couple. Mr Law had the benefit of this transitional provision until the Same-Sex Relationships Act came into effect, at which point he was recognised as being a member of a couple and his parenting payment was cancelled.

Mr Law submitted that, if his relationship had been recognised when the Welfare to Work Act came into effect, he would have been a member of a couple; he would have had the benefit of the transitional provision and still be entitled to parenting payment. The Tribunal found that there was no provision by which a person who was in a same-sex relationship before 1 July 2006 could receive retrospective recognition as a member of a couple.

The Tribunal also decided that the discretion which enables the Secretary to determine, if there is a special reason in the particular case, that a person is not to be treated as a member of a couple, was not applicable to Mr Law.

The Tribunal recognised that Mr Law was probably one of many people who were adversely affected financially by the recognition of same-sex relationships. Those consequences were specifically recognised by Parliament, which considered the benefits of recognition outweighed the disadvantages. The Tribunal affirmed the decision under review.

Priestley and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs

[2011] AATA 185; 22 March 2011

Deputy President DG Jarvis

What was the effect on the Applicants' age pension of lump sum earnings received for casual employment as electoral officials on the day of the South Australian election

The Applicants, Mr and Mrs Priestley, both age pensioners, were employed as polling officials on a casual basis by the Electoral Commission at the South Australian election held on 20 March 2010. They each received payment of $382.85, including a meal allowance of $14.85.

On 20 September 2009, changes were made to the method by which the rate of certain social security pension payments, including the age pension, was calculated. These changes were made by the *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009* (Amending Act), which provided a one-off increase in the rate of pensions and an indexation increase. One of the methods of calculation was the amount by which employment income affected the rate of pension payable: income over a statutory 'free' area reduced the pension rate by 50 cents in the dollar, rather than by 40 cents in the dollar as had previously been the case.

To protect the position of existing pensioners, the Amending Act included transitional provisions. Pensions were to be calculated by using both the new method and a transitional method. If the new rate of pension was higher than the transitional rate in an instalment period, then the new rate would apply.

Mr and Mrs Priestley's age pension payment rates for the fortnightly instalment period 13 to 26 March 2010 were calculated using both the new and the transitional rate method.

Because of the way Centrelink attributed their earnings from the Electoral Commission, the new method gave a slightly higher rate of pension for that instalment period, and therefore the new rate method was used to assess Mr and Mrs Priestley's pension, even though that rate was less than the rate that applied before then.

Mr and Mrs Priestley contended that the attribution of their income for this one-off casual employment to one fortnightly instalment period was inappropriate and unfair. In the alternative, they contended that their earnings should be attributed to two pension instalment periods to take into account the preparatory work which they completed for the Electoral Commission during the preceding fortnight. They received the manual and home workbook on 1 March 2010.

The Tribunal considered the relevant legislation and authorities, and concluded that the period to which their income should be attributed was not less than 20 days. The Tribunal further considered that there were cogent reasons not to apply the Guide to Social Security Law. Mr and Mrs Priestley were therefore entitled to continue to receive the higher transitional rate of pension that was applicable to them. The Tribunal set aside the decision under review and remitted the matter to the Secretary for reconsideration.

Taxation

O'Brien and Commissioner of Taxation

[2011] AATA 164; 14 March 2011

Senior Member SE Frost

Whether reasonable precautions were taken to prevent destruction of records – Whether administrative penalties imposed on the Applicant for a failure to take reasonable care to comply with a taxation law should be remitted.

Mr O'Brien was a partner in a partnership that conducted business in the road transport industry and used large amounts of diesel fuel. Mr O'Brien made claims for grants and tax credits based on the partnership's diesel fuel use.

The Commissioner of Taxation determined that the grants and credits given should be repaid and that penalties were payable because Mr O'Brien did not produce any documents to substantiate his claims. Mr O'Brien objected to the assessments and provided documentary

evidence that partly substantiated his claims. The Commissioner allowed the claims to the extent they had been substantiated but a significant amount claimed was still owing to the Commissioner.

The principal issue before the Tribunal was whether the Commissioner's assessments were excessive. Resolution of this issue hinged on whether Mr O'Brien complied with post-claim record-keeping requirements.

The claims were made under two schemes that applied at different times. The earlier scheme was governed by the *Energy Grants (Credits) Scheme Act 2003* and the *Products Grants and Benefits Administration Act 2000* and required Mr O'Brien to keep records to substantiate a claim for five years following a claim. The later scheme, governed by the *Fuel Tax Act 2006,* required Mr O'Brien to keep records that explained any transactions giving rise to a credit for five years from the transaction.

Mr O'Brien gave evidence that he had records to substantiate the claims but that many of them had been destroyed as the records were stored in a shed and were eaten by mice.

He recovered some of this documentation through various fuel suppliers and provided further documentation to the Tribunal following the lodgement of his application, but a substantial number of documents remained missing. The Tribunal decided that the documents provided substantiated part of the claims and justified a partial reduction in the amount assessed.

The Tribunal considered an exception to the record-keeping requirements under the earlier scheme which provided that if the Commissioner is satisfied a person took reasonable precautions to prevent the destruction of original documentary evidence, entitlement to a grant is not affected by a failure to retain that evidence. The Tribunal determined that this provision did not assist Mr O'Brien because by storing documents in a place where they might be destroyed by rodents, he did not take reasonable precaution to prevent their loss or destruction.

Accordingly, the Tribunal found that the Commissioner's assessments were excessive only to the extent that Mr O'Brien had provided documents substantiating his claims. The Tribunal found that the penalty imposed should not be remitted.

Luxottica Retail Australia Pty Ltd and Commissioner of Taxation

[2010] AATA 22; 15 January 2010

Deputy President J Block; Senior Member S E Frost

Whether the supply of an item (spectacles) which contains a GST-free element (prescription lenses) and a taxable element (frames) constitutes one or two supplies for GST purposes – What is the applicable GST where a promotional discount is offered on the taxable element but not on the GST-free element

Luxottica Retail Australia Pty Ltd (Luxottica) and its associates are retailers of spectacles. At various times the companies ran promotions which offered frames at a discount when purchased with lenses. No discount was offered on the price of the lenses supplied with the discounted frames. The price paid by the customer for their spectacles was the aggregate of the prices of the discounted frames and the undiscounted lenses.

The central issue before the Tribunal was how the discount should be treated for GST purposes, given that the supply of the frame attracted GST whereas the supply of the lenses was GST-free.

Luxottica contended that GST should be calculated on the discounted frame price. The Commissioner contended that, for GST purposes, the discount should be apportioned between the frame and lenses.

Section 9-75 of the *A New Tax System (Goods and Services Tax) Act 1999* has a formula for calculating the value of a taxable supply and section 9-80 has a formula for calculating the value of a taxable supply that is partly GST-free.

Adopting a common sense approach, the Tribunal found that there was one supply comprising two components, the frame and pair of lenses. Although this conclusion meant that section 9-80 applied in this case, the Tribunal considered that the same result would

be achieved if there were two supplies and the formula in section 9-75 was applied to the supply of the frames.

In applying section 9-80, the Tribunal expressed the opinion that the formula was 'almost impenetrably circular', as it referred to the 'value of the actual supply' on both sides of the equation. The Tribunal rejected the Commissioner's submission that the undiscounted price of the frame (that is, the price of the frame when a promotion was not being run) had any role to play in the calculation, and found instead that the calculation should be made using the discounted price. This approach was supported by the Tribunal's findings that there was commercial justification for discounting the frames but not the lenses, and that there was nothing contrived or artificial about the pricing methodology adopted in the promotional arrangements. The Tribunal also noted that the way in which s 9-80 operated tended to suggest that the formula may not need to be resorted to in cases where the prices of the components had been separately established (unless there was a suggestion of tax avoidance or sham).

The objection decisions under review were set aside.

(An appeal against this decision was dismissed by a Full Court of the Federal Court on 23 February 2011: *Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* (2011) 191 FCR 561.)

Veterans' affairs

Cornish and Repatriation Commission

[2011] AATA 65; 8 February 2011

Senior Member J Handley

Whether the Applicant was entitled to pension at the Special Rate – whether accepted condition of macroglobulinaemia alone was responsible for incapacity to work and loss of earnings

Mr Cornish was engaged in operational service in the Australian Army between 1943 and 1946. Part of his service occurred in Hiroshima where he was exposed to ionising radiation. On discharge from the Army, he resumed employment in the finance sector and retired at the age of 60 because of his hearing loss which was accepted as a war-caused condition. Mr Cornish established various remunerative farming partnerships until 1995, at which time he began to suffer from profound fatigue. His ability to operate machinery or undertake physical work was severely limited. In 1998, he was diagnosed with macroglobulinaemia. Mr Cornish gradually reduced his farming operations and by March 2003, had sold all his stock. He then ceased earning income. He made a claim for macroglobulinaemia, which was accepted as war-caused. Mr Cornish received a pension at 80 percent of the General Rate but sought a pension at the Special Rate.

Before the Tribunal Mr Cornish submitted that he ceased work because of his macroglobulinaemia, and thereafter suffered a loss of earnings which he would not have otherwise suffered. The Repatriation Commission submitted that Mr Cornish ceased farming because of personal choice, his age and his non-accepted medical conditions.

The Tribunal considered the requirements of the *Veterans' Entitlements Act 1986*, including whether the war-caused injury or disease was the only factor preventing Mr Cornish from undertaking his last paid work, thereby leading to a loss of earnings. The Tribunal was satisfied that Mr Cornish's last paid work was in 2003 when he sold his stock and that he then ceased to undertake remunerative work by reason of the accepted macroglobulinaemia alone. The Tribunal was also satisfied that, despite his age of 77 years in 2003, Mr Cornish had not intended to cease cattle breeding, nor was it satisfied that his age would have impaired his ability to continue cattle breeding.

The Tribunal set aside the reviewable decision and decided that Mr Cornish was entitled to pension at the Special Rate.

Workers' compensation

Radulovic and Comcare

[2010] AATA 777; 12 October 2010

Professor RM Creyke, Senior Member

Whether the Applicant should be denied compensation because her psychological injury was as a result of reasonable administrative action taken in a reasonable manner

Ms Radulovic sought workers' compensation for adjustment reaction with mixed emotional features. The Tribunal accepted the parties' concessions that Ms Radulovic suffered an injury for the purposes of the *Safety, Rehabilitation and Compensation Act 1988*, and that the injury was significantly contributed to by Ms Radulovic's employment.

Comcare argued that Ms Radulovic was not entitled to compensation for the injury because it was the result of reasonable administrative action undertaken in a reasonable manner.

The Tribunal held that, while the legislative definition of administrative action is not exhaustive, the definition was not intended to be at large. Rather, for the purposes of the Act, reasonable administrative action is limited to actions that involved any assessment of performance or corrective action of an employee by a manager, as well as the failure to obtain a promotion, reclassification, transfer or benefit, and anything reasonable done in connection with any of those activities. Administrative action also included inaction in relation to those activities.

The Tribunal considered the circumstances that led to Ms Radulovic's injury. Some actions, such as disparaging comments by management, were not considered to fall within administrative action. Conversely, actions in relation to Ms Radulovic's application for a promotion, her working hours and management of her performance were considered to be administrative action. The Tribunal found that some of these actions were unreasonable, or were not taken in a reasonable manner. However, the Tribunal considered the cumulative effect of the administrative actions and found that, overall, the actions were reasonable and conducted in a reasonable manner.

The decision under review was affirmed.