
F O C U S

Review of Customs Decisions

A major report by the Administrative Review Council on review of customs decisions was tabled in the Parliament by the Attorney-General on 12 November. The report (Report No. 23 - Review of Customs and Excise Decisions: Stage Two), contains many recommendations for reform of the AAT's existing limited jurisdiction to review customs decisions and also proposes that that jurisdiction be significantly expanded to include many classes of customs decisions which are not at present subject to external review on the merits. The report is likely to be of particular interest to the business community but some aspects of it also have implications for those interested in other areas of Commonwealth administration.

Among the major recommendations contained in the report are that:

a notice of dispute procedure should replace the current payment under protest procedure which operates as a precondition to review by the AAT of tariff classification decisions;

the AAT's jurisdiction to review customs decisions should be extended to include

- decisions relating to applications for permission to import or export prohibited goods
- most decisions relating to securities under the Customs Act and Regulations
- decisions relating to the drawback of import duty

- many decisions relating to the movement and disposal of goods.

In proposing that decisions relating to the import or export of prohibited goods be subject to review, the Council recognised that some such decisions might contain such a sensitive political element that they are unsuitable for external review by a politically non-accountable body such as the AAT. But since it was not possible to identify such decisions in advance, the Council recommended that the decisions should, as a class, be amenable to AAT review subject, however, to a power in the Minister to table in the Parliament a certificate stating that on specified grounds the Minister is of the opinion that responsibility for a particular decision should remain with the Government. The effect of such a certificate would be to exclude the particular decision from review.

The proposed power with regard to Ministerial certificates represents an attempt by the Council to reconcile the sometimes conflicting principles of administrative review and Ministerial responsibility. The proposal is likely to have implications for future developments in administrative review affecting other areas of Commonwealth administration which involve classes of decisions which raise politically sensitive issues periodically.

REGULAR REPORTS

Administrative Review Council

CURRENT WORK PROGRAM

Access. The Access Committee of the Council met in October to consider an early draft of the report on Stage One of the Access project: Notification of Review Rights.