

- . inserting a presumption in the AD(JR) Act that relief should not be granted with respect to an interlocutory decision unless a final decision, once taken, could not be reversed at all, or could only be reversed with substantial detriment to the applicant; and
- . exclusion of particular classes of decision from AD(JR) Act review.

The Council is most interested in obtaining views on whether reform is needed and, if so, on the merits of the various options proposed in the paper together with any other suggestions for reform. Copies of the Discussion Paper, entitled 'Some Aspects of the Operation of the Administrative Decisions (Judicial Review) Act 1977', have been circulated to a wide range of government agencies and other organisations which may be concerned with the issues raised, and may be obtained from the Secretariat (Mr Brian Newman (062) 434670). Submissions are requested by 21 February 1986.

R E G U L A R R E P O R T S

Administrative Review Council

CURRENT WORK PROGRAM

Access. A revised draft of the report on Stage One of the Access project, Notification of Review Rights, is currently being prepared for submission to the Access Committee.

During December 1985 a process of rapid consultation was conducted to determine the issues which might be considered in Stage Two of the project. Discussions were held with a range of personnel and organisations involved in the social security and student assistance areas and the Isolated Patients Travel and Accommodation Assistance Scheme. Some appeal hearings in these jurisdictions were also observed. As a result, several important issues were

identified for possible further examination, and a paper on this subject is to be considered by the Access Committee of Council in early February 1986.

Migration. Report No. 25, Review of Migration Decisions, was transmitted to the Attorney-General on 24 December 1985.

AD(JR) Act. A draft Discussion Paper on amending the AD(JR) Act to prevent use of the Act for purposes it was not designed to serve was considered by a Committee of the Council in mid-January and approved for circulation to interested parties. (See Focus, above.) Work on an overall review of the operation of the AD(JR) Act is continuing.

Australia Card. Advice on the administrative law aspects of the proposed introduction of the Australia Card was submitted to the Attorney-General in early January.

FOI. The Council's Secretariat is preparing a submission on the FOI legislation for a review being conducted by the Senate Standing Committee on Constitutional and Legal Affairs. (See also Admin Law Watch.)

Damages in Administrative Law and Customs and Excise (Anti-Dumping). The preparation of draft Discussion Papers by consultants to the Council is continuing.

ANNUAL REPORT

The Council's Ninth Annual Report was tabled in the Senate on 5 December 1985. In this Report, the Council notes the Government's concern to control public expenditure and its measures designed to reduce administrative law costs, particularly in the area of FOI. The Council also notes as relevant to this concern the need for the operations and future development of the Commonwealth administrative review system to be based on considerations of simplicity, efficiency and economy in the use of resources. But the Council nevertheless considers that it is equally important to recognise and avoid actions which are intended to lead to savings but which are unlikely to do so when all their consequences are taken into account.

The Report details the Council's work over the past financial year. The work falls into two broad categories:

- . advice to the Government concerning issues and problems emerging from the current system of Commonwealth administrative review e.g. the Council's report on the overlapping functions of the Ombudsman and the Administrative Appeals Tribunal, and its recommendation that magistrates' decisions in committal proceedings be reviewable by State courts and not by the Federal Court under the Administrative Decisions (Judicial Review) Act; and
- . further rationalisation and development of the system of administrative review e.g. in its report on review of customs decisions the Council recommended that many more such decisions should be subject to review by the Administrative Appeals Tribunal.

Administrative Appeals Tribunal

NEW JURISDICTION

The following recent legislation confers jurisdiction on the AAT:

- . Great Barrier Reef Marine Park Regulations
- . Bounty (Agricultural Tractors and Equipment) Act 1985
- . Bounty (Metal Working Machines and Robots) Act 1985
- . Passports Regulations

KEY DECISIONS

Student assistance

The AAT has held that it has jurisdiction to review a recalculation of entitlement and the consequential recovery of an overpayment of TEAS. In Re Church and Secretary to the Department of Education (29 October 1985), the AAT held that the decision to recover the overpayment was an administrative decision made by authorised persons in the general administration of the Student Assistance Act, and was reviewable under that Act. To the extent of any inconsistency between the Student Assistance Act and the AAT Act, section 22 of the former Act, being a later enactment, overrode section 25(1) of the AAT Act.