
F O C U S

Bill to amend AD(JR) Act

The Administrative Decisions (Judicial Review) Amendment Bill 1986 was introduced in the House of Representatives on 22 October 1986. The second reading debate on the Bill did not, however, take place before the House of Representatives rose at the end of the budget sittings. Consideration of the Bill by the Parliament is likely during the 1987 autumn sittings.

The Bill picks up the recommendations made by the Council in its Report No. 26, Review of the Administrative Decisions (Judicial Review) Act 1977 - Stage One (AGPS, 1986). However, in some respects, the Bill goes further than the Council recommended in dealing with concerns about use of the Act that were addressed in the Council's report.

It is convenient to deal first with clause 3 of the Bill. Clause 3 inserts a new section 10A in the AD(JR) Act. The new section empowers the Federal Court to stay proceedings or refuse to grant an application where the court considers it inappropriate to grant the application or to continue the proceedings. The section gives statutory recognition to the court's present wide discretion to refuse relief. This discretion has been emphasised by the court in cases such as Lamb v Moss (1983) 49 ALR 533. New sub-section 10A(2) is intended to ensure that the exercise by the court of its powers under the section takes place at the earliest appropriate stage in the course of proceedings. The provisions of new section 10A give effect to recommendations 1(1) and (5) of the Council's report. In the report the Council said that the exercise of the court's discretion as early as possible in the proceedings should assist in avoiding unnecessary delay, inconvenience and expense for the parties.

One of the amendments proposed by clause 2 of the Bill is the addition of a new paragraph (c) at the end of sub-section 10(2) which deals specifically with the availability of review by a tribunal, authority or person (not being a court) as an alternative to review under the AD(JR) Act. It goes further than the Council's recommendation 1(3) by requiring the Federal Court to refuse to grant the application unless the applicant satisfies it that the interests of justice require that it should not refuse to grant the application. (The Council's recommendation followed the existing section 10(2)(b) by giving the court a discretion to refuse

relief where an alternative remedy was available.) The new paragraph reverses the effect of Kelly v Coats (1981) 35 ALR 93 in which the Federal Court said that the onus under section 10(2)(b) of the Act is on those seeking to persuade the court that it should not exercise the jurisdiction conferred under the Act to hear the application.

The change to the AD(JR) Act made by this amendment is an important one. It is to be hoped that the court takes a liberal view of the expression 'the interests of justice' in cases where the alternative right of review is unsatisfactory (see Australian Telecommunications Commission v Colpitts (1986) 67 ALR 301, 310) or where it is hedged around with practical barriers.

A particular concern about use of the AD(JR) Act which was addressed in the Council's report was concern about its use during the course of administrative proceedings before a tribunal in circumstances where the particular decision could be challenged at the conclusion of those administrative proceedings. Concerns of this kind were raised with the Council in particular in relation to the inquiry of the Australian Broadcasting Tribunal concerning the granting of a third commercial television licence for Perth. These concerns are addressed by proposed new paragraph 10(2)(d) set out in clause 2 of the Bill. However, the paragraph goes further than the Council recommended by requiring the court to refuse to grant the application unless the applicant satisfies the court that the interests of justice require that it should not refuse to grant the application. In its report the Council considered that it should be left to the court's discretion to refuse to grant an application in these circumstances (recommendation 1(4)(a)).

There are other related amendments proposed by the Bill. For a discussion about alleged abuse of the AD(JR) Act which forms the background to the Bill, readers are referred to the Council's report.

REGULAR REPORTS

Administrative Review Council

ANNUAL REPORT

The Council's Tenth Annual Report, 1985-86, was tabled in the Parliament on 26 November 1986. An innovation in the 1985-86 annual report is the inclusion of the text of letters of advice provided by the Council to the Government during the year.