
F O C U S

Review system important in hard times

(The following is an edited version of the address given by Dr Cheryl Saunders, Chairman of the Council, at the launch of the Council's information brochure on the administrative review system. The launch of the brochure was made by the Attorney-General at Parliament House on 5 November 1987. Copies of the brochure are available from the Council's Secretariat.)

There are three main components of the administrative review system - the Administrative Appeals Tribunal, the Ombudsman and the Act conferring review jurisdiction on the Federal Court. Almost any government decision can be reviewed by one or other of these bodies.

The current review system was a major reform which was put in place in the latter half of the 1970's. It replaced a system which was legally very technical, costly to use, inefficient and patchy in its operation. Administrative law reforms took place in many other common law countries at the same time, for similar reasons. The Australian reform was unique, however, because it was created by the Parliament rather than by the courts. Apart from its symbolic significance, this has had a number of important practical consequences:

- The new system is comprehensive and integrated. It is part of the Council's job to ensure that this is maintained.
- The system is not solely, or even mainly, court-based. The involvement of non-lawyers in review, particularly through the AAT, is a very important feature of it.
- It was possible to tailor the system to Australian needs. It is one of the few aspects of the Australian system of government about which this can be said. Most major features of Australian government have been borrowed - often uncritically - from elsewhere. Responsible government and federalism are obvious examples. By contrast the review system was designed in Australia and for Australia and now provides a model for other countries to consider and adopt if they wish.

There is a tendency to grumble about the costs and effects of administrative review in times of economic hardship. The debate on costs is a complex one, which requires due allowance to be made for the costs of alternatives to the present system as well as for its beneficial effects on primary decision making. It is not a debate which I want to pursue at this stage, although I assure you that the Council is very conscious of it. The point I do want to make is that, ironically enough, an effective review system is more important than ever in hard times. That is when departmental resources are stretched and decision making rushed. It is when government policies are tightened to exclude the undeserving, at inevitable risk to some of the deserving. And it is when the effects of an adverse government decision are likely to be felt most severely by individuals. The review system provides an essential safety net at times like these, for which both the government and the Parliament deserve credit. One purpose of our brochure is to ensure that those who most need the safety net know that it is there and are in a position to use it.

External review complements the political process. One function of the Parliament is to scrutinise and enforce the responsibility of the executive government. Parliament performs that role most effectively on a macro level. It does not provide a general facility for redress of individual grievances and it would be unrealistic to expect it to do so. The external review bodies were created for that purpose. The review system and the Parliament are therefore parts of the same process, working towards the same end. It is important that they do so in harmony. It has been a pretty good relationship so far:

- The terms of reference of several Senate committees require them to consider whether bills or regulations provide adequate external review.
- Statements of government policy are more readily and consistently made available, as a result of the review system. This benefits the Parliament as well as the review system itself.
- It is gradually being recognised that it may be appropriate for external review to roll back where it can be shown that government decisions have genuinely been exposed to parliamentary scrutiny.

We would like the help of members of the Parliament in developing these links further, in the interests of creating a properly rounded system of Australian government which is efficient, responsive and fair.

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

Administrative Review Council

LETTERS OF ADVICE

The Council has sent several letters of advice to the Attorney-General recently. Amongst them have been the following:

- . a letter of advice concerning the Extradition Bill 1987 and, in particular, the proposed exclusion of decisions made under the Bill from review under the AD(JR) Act;
- . a letter of advice concerning the proposed fee for reconsideration of certain decisions under the Migration Act;
- . a letter of advice concerning review issues under the Child Support Bill 1987.

REPORTS

The Council's Report No. 29, Constitution of the Administrative Appeals Tribunal, was tabled in the House of Representatives on Wednesday 9 December 1987. Copies are available for purchase from the Australian Government Publishing Service.

The Council's 1986-87 Annual Report was tabled in the Parliament on 20 October 1987. It too is available for purchase from AGPS.

BROCHURE ON ADMINISTRATIVE REVIEW

On 5 November 1987 the Council hosted a launch by the Attorney-General of the Council's brochure on the Commonwealth administrative review system. The brochure provides a handy guide to the administrative review system. It explains what each of the review bodies does, how they are different and how they can be approached. A copy of the speech made by the Chairman of the Council, Dr Cheryl Saunders, at the launch of the brochure appears in an edited form in the 'Focus' section of this edition of Admin Review.

CURRENT WORK PROGRAM - DEVELOPMENTS

Access to administrative review. The Council's committee is giving further consideration to the proposed Department of Social Security review officer survey. In the meantime, the committee is considering a preliminary draft report on the legal and financial assistance aspects of the access to administrative review project.

Review of the AD(JR) Act, Stage 2. Substantial progress has been made on this project. The Council's committee has recently considered sections of a draft report.