
F O C U S

The Council is presently working on a review of various aspects of the regulation of broadcasting under the Broadcasting Act 1942. The project examines the following matters:

- . review of substantive decisions of the Australian Broadcasting Tribunal (ABT) by the Administrative Appeals Tribunal (AAT);
- . review of ministerial decisions under the Broadcasting Act 1942;
- . review of the operation of the Australian Broadcasting Tribunal (Inquiries) Regulations; and
- . review of procedural decisions of the ABT.

The Council's current work stems from two previous reports on the broadcasting area. The first report, Australian Broadcasting Tribunal Procedures (Report No. 12), proposed a uniform inquiry procedure for the ABT. It was tabled in the House of Representatives on 9 April 1981. Subsequently, the Australian Broadcasting Tribunal (Inquiries) Regulations were made (15 May 1986). These largely implement the recommendations in Report No. 12.

The Council's second report on broadcasting, Review of Decisions under the Broadcasting and Television Act 1942 (Report No. 16), dealt with the review of decisions of the ABT and the Minister. It was submitted to the Attorney-General on 11 June 1982. The Government did not accept most of the Council's recommendations and the Attorney-General wrote to the Council requesting it to make a further report on the matter. The Council undertook to reconsider a number of aspects of Report No. 16 in its examination of the operation of the ABT inquiry regulations. The Government envisaged that the Council would not commence this work until the new inquiries procedures had been in operation for some time.

Due to the size of the project and the desirability of providing a quick response to the Government, the Council decided to prepare two discussion papers. The first paper will examine the review of substantive decisions of the ABT and ministerial decisions made under the Broadcasting Act. This paper should be completed and ready for circulation by the middle of the year. The Council has engaged the Communications Law Centre of the University of New South Wales to prepare the second discussion paper, which will deal with the 1986 inquiry procedures of the ABT and the review of the ABT's procedural decisions. Preparation of this discussion paper is still at an early stage, but it should be available for comment in the second half of this year.

The first discussion paper will examine the features of the broadcasting area which complicate application of the normal presumption that there should be a right to review on the merits of any decision which could adversely affect the interests of a person. One such feature is the complexity of the broadcasting legislation which means that a seemingly straightforward decision affecting a licensee may also involve considerations directly related to a government's general broadcasting policy. For example, the allocation of a particular frequency to a licensee may be determined not only by the existing demand on the frequency spectrum but also by the anticipated demand as broadcasting is developed in accordance with government policy. Review of the substantive powers of the ABT also raises other concerns which are specific to broadcasting regulation.

Some of the matters to be borne in mind are that:

- . decisions of the ABT have a major impact on individuals;
- . decisions of the ABT involve important social and commercial issues; there is a public interest in these types of decisions being open to the form of scrutiny a review system can provide;
- . as the ABT follows a public inquiry procedure in reaching its decisions, at which parties are given an opportunity to present their views, the question is raised whether a subsequent AAT inquiry is necessary or whether it would be repetitious;
- . the ABT is a body that has gained considerable experience in the regulation of broadcasting;
- . review of ABT decisions has provided an opportunity for delay in some cases in the past: additional costs and delays may be incurred where stakes are high, delay is valuable to some parties and costs no object; and
- . availability of review could be seen by some people as undermining the role of the ABT and detracting from its status; others may see review of its decisions as helping maintain public confidence in the independence of the ABT.

The complexity of the broadcasting area is further illustrated by the different types of ministerial decisions. For example, the minister may, among other things, approve technical equipment and operators for stations; determine the operating power and frequency of stations; initiate an inquiry into the grant of a new licence; and plan the development of broadcasting and television in Australia. Consideration of these decisions forms another part of the project.

Two other inquiries have examined the ABT and commercial broadcasting recently. The House of Representatives Transport, Communications and Infrastructure Committee conducted an inquiry into the role and function of the ABT. In its Report the Committee rejected calls for the existing appeals process to be abolished. It considered that in the broadest sense appeals to

the AAT are a check against the possible misuse of power and should be retained for that reason. However, having regard to the Council's on-going work in this area, the Committee decided not to make any specific recommendations in relation to appeals.

The Department of Transport and Communications is also conducting a review of some aspects of broadcasting. As part of that review the Department proposes to issue a discussion paper for consultation purposes. Some of the issues raised are likely to be relevant to the Council's further consideration of broadcasting matters.

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ADMIN REVIEW INDEX

The last edition of Admin Review contained an index by subject matter for all volumes up to and including Volume 19. The second half of the index, the case index, is at the end of this edition.

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

Administrative Review Council

REPORTS

Report No. 32, The Administrative Decisions (Judicial Review) Act: the Ambit of the Act, was forwarded to the Attorney-General in March 1989. The report recommends that the reforms of the Administrative Decisions (Judicial Review) Act be extended to certain non-statutory decisions made by officers of the Commonwealth and to statutory decisions of the Governor-General. It also recommends repeal of many of the paragraphs of Schedule 1. The recommended changes do not extend the areas of judicial review presently available but merely allow the simpler provisions of the AD(JR) Act to apply to areas currently reviewable under the more complex procedures of general law. The report also proposes that certain limitations on review be written into the Act.

LETTERS OF ADVICE

Since the January 1989 issue of Admin Review the Council has provided the Attorney-General with letters of advice on the following issues: