

scarcely be a legitimate point of criticism that more attention is now given to the authority of the law, to the need to give the citizen an opportunity to put his side of the case and to the statement of reasons for a decision. If these innovations have a price in time and additional cost then, within proper limits, it is a price well worth paying, so long as we obtain a greater measure of administrative justice. Despite the criticism of inconsistency to which I have already referred, the new system has contributed to a greater measure of administrative justice in its insistence on compliance with the rules of natural justice, its careful scrutiny of the reasons for decision, its emphasis on the justice of the case and its success in making the principles and procedures of review more uniform. These are the enduring benefits of independent review. No other system has been suggested that could provide them in the same measure.

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R E G U L A R   R E P O R T S  
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Administrative Review Council  
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NEW ADDRESS AND TELEPHONE NUMBER

The Administrative Review Council has changed its telephone number and postal address. Please note the new telephone number and postal address shown on the front cover.

REPORTS

Report No. 32, The Administrative Decisions (Judicial Review) Act: the ambit of the Act, was tabled in Parliament on 8 June 1989. Copies are available from AGPS outlets for \$11-95.

LETTERS OF ADVICE

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

- . Proposed Commonwealth-State Agreement: Supported Accommodation Assistance Program
- . Migration Legislation Amendment Bill 1989;
- . review of decisions under the Therapeutic Goods Bill.

CURRENT WORK PROGRAM - DEVELOPMENTS

Access to administrative review. Work on the next stage of the access project, on the role of information and advisory services, has been temporarily put aside to allow the Council to examine further the issue of legal aid in administrative review. The Council previously considered some aspects of this

issue in its Report No. 30, Access to Administrative Review: Provision of Legal and Financial Assistance in Administrative Law Matters, but is examining the matter further with a view to making a submission to the National Legal Aid Advisory Committee (NLAAC). The NLAAC is seeking submissions as part of its review of the principles which should apply to funding, providing and supplying legal aid services.

Community Services and Health. Work is progressing on a discussion paper on review issues in the area of joint Federal/State funding programs. A draft report on review of decisions involving assessment of products is in preparation. The Council has forwarded letters of advice on both these matters to the Attorney-General.

Broadcasting. The Council has received an outline of the discussion paper being prepared by the Communications Law Centre, University of New South Wales, for the Council. The discussion paper will deal with the 1986 inquiry procedures of the Australian Broadcasting Tribunal and the review of the procedural decisions of the Australian Broadcasting Tribunal. The paper is expected to be available for comment later this year.

Tenure for Commonwealth Tribunals. On 6 July 1989 the Council provided a submission to the Joint Select Committee on Tenure of Quasi-Judicial Appointees to Commonwealth Tribunals. The Council's President, Dr Cheryl Saunders, with Professor Dennis Pearce and Mr Stephen Charles QC, appeared before the Committee to discuss the submission on 31 July 1989.

Informal rule-making. At its March 1989 meeting the Council agreed to organise a seminar to discuss the use of subordinate rules. Arrangements are currently being made to hold the seminar at Parliament House on 31 August 1989. It will focus on the form, process and procedural safeguards for rule-making by government. Of particular interest will be the contribution by Mr Jeffrey Lubbers, Director of Research, Administrative Conference of the United States, who will speak on rule-making in the United States.

Review of the AD(JR) Act. Work is well advanced on preparation of a discussion paper dealing with the issues involved in the furnishing of statements of reasons under section 13 of the AD(JR) Act.

Multicultural Australia. On 26 July 1989 the Prime Minister launched the Government's National Agenda for a Multicultural Australia. He said that the Agenda defines the policy of multiculturalism and articulates the long-term goals and objectives. It also sets in train a series of structural and institutional changes. The Agenda includes a package of initiatives involving immediate commitments of some \$50 million over 3 years, and more than \$70 million in total. One of these is a Council project reviewing Commonwealth decision-making and grievance procedures. The Council will work with government agencies to identify, pilot and trial new ways of administrative decision-making. In cooperation with review agencies, it will also assess the suitability of procedures for the handling of grievances concerning government decision-making in a multicultural society.

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Administrative Appeals Tribunal

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NEW JURISDICTION

Since the last issue of Admin Review new jurisdiction has been conferred on the AAT under the following legislation:

- . Air Navigation (Charges) Act 1952 as amended by the Transport and Communication Legislation Amendment Act 1989;
- . Copyright Act 1968 as amended by the Copyright Amendment Act 1989;
- . Customs Act 1901 as amended by the Customs and Excise Legislation (No.2) Amendment Act 1989;
- . Horticulture Export Charge Collection Act 1989 as amended by the Horticultural Legislation Amendment Act 1989;
- . Horticultural Levy Collection Act 1987 as amended by the Horticultural Legislation Amendment Act 1989;
- . Insurance Supervisory Levies Collection Act 1989;
- . Trade Practices Act 1974 as amended by the Trade Practices (International Liner Cargo Shipping) Amendment Act 1989;
- . Wheat Industry Fund Levy Act 1989.

KEY DECISIONS

Taxation: split income from consultancy services

On 23 June 1989 the President of the AAT found that an applicant taxpayer had entered into and carried out a scheme for the purpose of obtaining a tax benefit and that the whole of that benefit should be cancelled.

The taxpayer, then employed in Sydney, had sought employment in Hobart without success, and eventually agreed to a consultancy arrangement. This required him to set up a corporate entity, and the taxpayer's accountants advised him that the company should also act as the corporate trustee for a discretionary family trust. The taxpayer agreed that in effect the company acted as an extension of himself.

At issue was the question whether the Commissioner of Taxation can, pursuant to section 177F of the Income Tax Assessment Act 1936, cancel the tax benefit gained by the taxpayer through the non-inclusion in his assessable income of the full consultancy fee. The consultancy fee was distributed as salary to the taxpayer as an employee and the balance as trust income to the taxpayer and his family. The case required a decision on whether the anti-avoidance provisions of Part IVA of the Act applied in these circumstances. Counsel for the taxpayer submitted that the provisions of Part IVA should not apply to ordinary commercial arrangements and family arrangements. Counsel for the Commissioner submitted that the taxpayer had entered into a scheme which operated in such a way that he ostensibly received as salary an income considerably less than that his exertions had generated, and thereby gained taxation benefits.