

Committees was held at Parliament House, Canberra, on 26-28 April 1989. Speakers at the conference included the Commonwealth Ombudsman and the President of the AAT. The papers from the Conference have been published by the Senate Procedure Office.

Resource Assessment Commission Act 1989

In November 1988 the Council provided a letter of advice to the Attorney-General which recommended, inter alia, greater openness and provision for public inquiries by the Australian Heritage Commission in the related area of the National Estate Register. The Resource Assessment Commission Act 1989, which received Royal Assent on 28 June, establishes such an inquiry process with regard to natural resources. It provides for a Resource Assessment Commission which will 'hold inquiries and make reports in respect of resources matters in accordance with (the) Act'. It defines 'resource' as a biological, mineral or other natural resource. The Commission will be subject to guiding policy principles, set out in Schedule 1 to the Act, for resolving conflicting claims for the use of resources.

The Minister will refer matters to the Commission on behalf of the Government or a Commonwealth authority, and the Commission will conduct an inquiry into the matter and report back to the Minister. Reports are to be tabled in Parliament. The Minister will give notice in the Commonwealth Gazette of a proposed inquiry, and the Commission is required to give public notice of its hearings.

National Companies Scheme

The various legislative instruments that make up the new national companies and securities scheme have been passed by the Parliament. Some provisions of the Australian Securities Commission Act 1989 commenced on 27 June and 1 July, and the remainder are expected to be proclaimed shortly. The legislation confers jurisdiction on the AAT in relation to orders or other decisions of the Australian Securities Commission where a person has failed to comply with a requirement during an ASC investigation or hearing.

The Corporations Act 1989, which was passed in July but is not yet proclaimed, gives the AAT power to review certain decisions of the relevant minister, the ASC and the Companies Auditors and Liquidators Disciplinary Board. The Close Corporations Act 1989 also confers jurisdiction on the AAT.

Application for appointment: special leave

The High Court on 14 April 1989 granted special leave in Attorney-General for NSW v Eris Adrian Quin to appeal a decision of the NSW Court of Appeal. Mr Quin had been a NSW Stipendiary Magistrate until the establishment of Local Courts in January 1985, when he and 5 others were not re-appointed. This decision was later declared void, but the Department was not prepared to change its selection procedures and instead invited Mr Quin to submit a fresh application when a vacancy was advertised. Mr Quin sought, and obtained from the NSW Court of Appeal, a declaration that he was entitled to have his earlier application

considered. A majority also found that the Department should give special weight to Mr Quin's position as a former Magistrate and should notify him of all matters which could be adverse to his application.

The main issue is whether a legitimate expectation giving a procedural right to natural justice in the handling of an application can include a right to favourable consideration.

Motor Vehicle Standards Act 1989

The Motor Vehicle Standards Act 1989 enables the Federal Government to establish and apply nationally uniform standards for motor vehicle safety, gaseous and noise emissions and anti-theft devices. During the Second Reading Speech on 26 May 1989 the Minister for Land Transport and Shipping Support, Mr R Brown, announced the availability of administrative review with regard to the new legislation: 'Consistent with this Government's policies on open government, the Bill provides avenues for access to the normal administrative law arrangements. Anyone who is aggrieved by a decision made under the provision of the Bill will be able to seek redress in the normal way.'

Fitzgerald Report recommendations

Among the broad-ranging recommendations of the Fitzgerald report were several with implications for administrative review. In particular, the Report recommends the establishment of a permanent body, the Electoral and Administrative Review Commission, to provide an enduring process to review and recommend the necessary electoral and administrative laws and guidelines and procedures. The proposed Commission should report directly to a Parliamentary Select Committee on Electoral and Administrative Review as well as to the Premier.

The Report commented on the problems which can arise when Cabinet becomes involved in the detail of administration, when there is no general means for external review of decisions made by the administration, and when the information available to the public on the workings of the administration is limited. It concluded that 'it is imperative in a democracy that decision-making be seen to be impartial and objective'.

The Report also drew attention to some of the competing priorities, including the need to find a workable balance between the free flow of information and the individual's right to privacy, and between law enforcement and civil rights and liberties. It pointed out that 'privacy can in some cases become secrecy, which can allow corruption to flourish. One aspect of such secrecy is self-regulation, which is sought by many institutions, but which is the antithesis of accountability'.

With regard to administrative review, the Report remarked in particular on the lack of freedom of information legislation; the difficulties where a person may be unable to discover 'the basis, the reasons or even the fact of a decision'; and the absence in Queensland of a general mechanism for determinative review of administrative decisions on their merits. It noted