

The last issue of *Admin Review* provided a new format that was designed to be more attractive and readable. In this issue, *Admin Review* seeks to upgrade its regular reports on the AAT, FOI and the Courts. The reports will include detailed notes on important cases and brief notes on other cases that raise, perhaps incidentally, interesting issues or reveal developments in the law or practice.

## FOCUS ARTICLE

### The Council's Multicultural Australia Project: a new role for the Commonwealth Ombudsman\*

Denis Tracey, Project Officer responsible for the Council's Multicultural Australia Project

#### Background

The Report of the Council's Multicultural Australia Project, *Access to Administrative Review by Members of Ethnic Communities*, was published in September 1991. The Project has been described in the Council's Annual Report for 1990/91 and in various publications of the Office of Multicultural Affairs (Department of the Prime Minister and Cabinet).

The Project was established to find out whether members of Australia's ethnic communities have effective access to the Commonwealth administrative review system and, if not, to identify obstacles and try out different ways of overcoming them.

#### Conclusions

The Project concluded that there is little knowledge or understanding, either theoretical or practical, of administrative review within Australia's ethnic communities.

Some of the impediments, such as language difficulties and cultural alienation, are fairly obvious. Others have more subtle origins. For example, many members of ethnic communities do not understand the concept of administrative review - that is, the simple fact that people in Australia have a right to complain or appeal against government actions. This ignorance is made more serious by the fact that many of the people to whom members of ethnic communities

look for help and advice are themselves poorly informed and apprehensive about how to deal with government agencies.

While some obstacles to effective access defy simple solutions, the Project concluded that many are, to some extent, within the control of review agencies. With the exceptions of the Social Security Appeals Tribunal and the Immigration Review Tribunal, agencies have done little to consider the specific needs of people from non-English-speaking backgrounds. Nor have they made proper arrangements to provide interpreters and translators.

Finally, there is a good deal of evidence that some confusion is caused by the diversity of institutions and remedies for review.

To date, efforts to publicise administrative review have mostly been uncoordinated and have concentrated on individual agencies rather than on the basic availability of a right of review. This message is not, in itself, a particularly complex one; nor need it be difficult to convey.

#### Recommendations

Administrative review agencies have a responsibility to make themselves accessible to all members of the community. The Report recommends a number of new procedures (and changes to existing ones) for administrative review agencies and primary service providers that have extensive dealings with the public. The key recommendations concern the Office of the Commonwealth Ombudsman. In brief, the Council considers that the Ombudsman should:

- publicise the fact that his Office is available as a central reference point for those who are dissatisfied with a government decision, but who do not know what remedies are available;
- adopt a leading role in the dissemination of information about administrative review, particularly the basic message that one can complain or appeal;

\*This paper concentrates on aspects of the Report that affect the Ombudsman. A more comprehensive summary of the Report is included in *Administrative Law Watch* at page [49].

- in consultation with the other review agencies, take a leading and coordinating role in the promotion of administrative review, especially towards specific communities whose need can be demonstrated; and
- receive additional resources to enable these recommendations to be implemented.

### **Favourable public perceptions**

The Project found that many people who do not have a detailed understanding of what the Ombudsman actually does, seem nevertheless to be familiar with the title and have some idea - albeit quite vague - of his general role. This may to some extent be due to recent publicity concerning the appointment of a Banking Industry Ombudsman and proposals for Ombudsmen in other fields, such as insurance, telecommunications and broadcasting. Whatever the cause, this wide if imprecise awareness seems to be accompanied by a general approval of the institution, and general agreement that the Ombudsman is a good thing. This is an excellent basis upon which to develop better public awareness, understanding and confidence.

### **Central reference agency**

The Ombudsman already provides an extensive referral service, but this is not widely known. Many of the 20,000 or so approaches to his Office every year come from people who are dissatisfied with their dealings with government (and sometimes with other organisations and individuals), but who do not know where to turn for help. The need for such a referral agency is clear. The Ombudsman is ideally placed (given sufficient resources) to carry out this role. The Council believes that the Ombudsman should publicise his preparedness to provide information and advice to people who are dissatisfied over their dealings with government, but do not know how or where to appeal or complain.

The Council does not suggest that people should be discouraged from resolving difficulties themselves, or that other agencies should not

carry out their own publicity activities. It simply thinks that the Ombudsman's Office should be more accessible to people who have a problem, but don't know where to go.

### **Coordinating agency**

In the past, review agencies have been solely responsible for publicising their own activities. On the evidence presented in the Council's Report, this has not been particularly successful and the Council believes that a more coordinated approach might be more effective. The Report also points out that it is easier to describe the basic concept of administrative review than to explain the role and function of its various agencies.

In consultation with the other review agencies, the Ombudsman ought to take a leading and coordinating role in the promotion of administrative review, especially towards specific communities whose need can be demonstrated. Once again, this does not remove the responsibility from review agencies (and departments) to carry out their own publicity and access and equity activities. The coordinating role proposed for the Ombudsman is essentially an additional function. It should also make individual publicity campaigns more effective.

The Ombudsman is well placed to carry out these functions because of several unique features including:

- his wide jurisdiction;
- his freedom to decide his own procedures;
- his generally favourable image within the community; and
- the basic simplicity of his role. (Most cultures seem to have a comparable figure such as Marco Pasham, Bao Cong or even King Solomon).

The Council intends to cooperate with the Ombudsman (who is an ex officio member of the Council) in the coordinating role described above.

The Report was tabled in the Parliament on 12 September 1991 and is now available from AGPS for \$16.95.

## Administrative Review Council

### Reports, submissions and letters of advice

Since the last edition of *Admin Review* the Council has provided:

- a report to the Attorney-General: Report No 34 *Access to Administrative Review by Members of Ethnic Communities*;
- a discussion paper on tribunal procedures for the Commonwealth Tribunals Conference;
- a letter of advice to the Attorney-General on the proposed abolition of the Taxation Relief Board;
- a letter of advice to the Attorney-General on the Fisheries Management Bill 1991; and
- a report to the Fifteenth Australasian Law Reform Agencies Conference.

### Current work program - developments

#### *Community services & health*

The Council is examining a range of decisions made under programs administered by the Commonwealth Department of Health, Housing and Community Services, with a view to recommending the administrative review principles which ought to apply to grants programs made within that portfolio. The release of an issues paper has been deferred.

#### *Intellectual property*

Dr Margaret Allars of the University of Sydney is preparing a consultant's paper on review of patents decisions.

#### *Rule making*

The Council's Rule Making Report is in the final stages and should be sent to the Attorney-General late in 1991.

#### *Multicultural Australia*

The Report has been provided to the Attorney-General and was tabled in the Parliament on 12 September 1991. Note that the focus article in this issue refers to aspects of the Report dealing with a new role for the Ombudsman. In addition, a more comprehensive summary of the Report appears in *Administrative Law Watch* at page [49].

### *Specialist tribunals*

This project was discussed at [1990] *Admin Review* 54. The current phase of this project is concerned with tribunal procedures. A conference of tribunal members and officers was held in Melbourne on 18 and 19 October 1991. Discussion focused on a paper on procedures prepared by the Council. Work has now commenced on preparation of a draft report.

### *Government business enterprises*

The Council's newest project examines the extent to which the Commonwealth administrative law package should apply to government business enterprises of different kinds. The principal issue is the extent to which such organisations should remain accountable while still being able to operate effectively in a commercial environment.

The Council plans to circulate an issues paper in the new year and will then undertake a program of consultation before making its final report.

## Administrative Appeals Tribunal

### *New jurisdiction*

Since the last edition of *Admin Review* jurisdiction has been conferred on the AAT by the following legislation:

- *Australian Wool Corporation Act 1991*
- *Bounty (Citric Acid) Act 1991*
- *Bounty Legislation Amendment Act 1991*
- *Community Services and Health Legislation Amendment Act 1991*
- *Freedom of Information Amendment Act 1991*
- *Great Barrier Reef Marine Park Amendment Act 1991*
- *Health Legislation (Pharmaceutical Benefits) Amendment Act 1991*
- *Industrial Relations Legislation Amendment Act 1991*
- *Industry Technology and Commerce Legislation Amendment Act 1991*
- *National Food Authority Act 1991*
- *National Health Amendment Act 1991*
- *Petroleum (Submerged Lands) Amendment Act 1991*