

Review of the Ombudsman's Office

The Senate Standing Committee on Finance and Public Administration is conducting a review of the Ombudsman's Office, with particular reference to:

- the scope of the Ombudsman's jurisdiction;

- the performance of the Office in the exercise of its powers and functions;
- the adequacy of the Office's resources to perform its various functions;
- whether any consequential amendments of the *Ombudsman Act 1976* are desirable.

ADMINISTRATIVE LAW WATCH

ARC Report - Statements of Reasons for Decisions

Council Report number 33 'Review of the Administrative Decisions (Judicial Review) Act: Statements of Reasons for Decisions' now published, completed the Council's current review of the AD(JR) Act.

Previous Reports in this review were

- Number 26, Review of the Administrative Decisions (Judicial Review) Act 1977: Stage 1 - in 1986, and
- Number 32, Review of the Administrative Decisions (Judicial Review) Act: The Ambit of the Act - in 1989.

The Report notes that, following ten years of operation, requests for statements of reasons for decisions under the AD(JR) Act fell to 284 in 1989 from a peak of over 2000 in the mid-1980s. That reduction is significant evidence that the requirement to give reasons for decisions upon request has improved the standard of Commonwealth decision making. It is also evidence that the requirement cannot be said to impose a great burden upon administrators.

The Report recommends that Schedule 2 of the AD(JR) Act be repealed so that the right to seek judicial review under the Act will be co-extensive with the right to request reasons. At the same time the Council recommends that some decisions should be removed from the scope of the Act altogether and that section 13A of the AD(JR) Act be bolstered so that decisions based on information which ought not be disclosed in a statement of reasons in the public interest, need not be disclosed.

Report number 33 is now available from the Australian Government Publishing Service.

ARC Discussion Paper - ABT inquiries procedures

The Council has recently released a discussion paper on the Australian Broadcasting Tribunal's inquiries procedures. The paper was prepared in consultation with a Council committee by the Communication Law Centre of the University of New South Wales, as consultants. The Council's broadcasting project has previously produced

- Report number 12, 'Australian Broadcasting Tribunal Procedures' - in 1981, and
- Report number 16, 'Review of Decisions under the Broadcasting and Television Act 1942' - in 1982.

The paper is concerned with the appropriateness of the procedures contained in the ABT inquires regulations and discusses whether

- changes should be made in ABT procedure to ensure that its powers are exercised in a just, equitable, effective and efficient manner, and
- provision should be made in the regulation for the review on the merits of ABT procedural decisions.

The paper considered the following issues:

- uniformity of procedures
- a right to initiate an ABT inquiry
- the ABT's powers to reject applications and dispose of minor matters
- the public inquiry file and giving public notice of an inquiry
- the status of parties
- optional hearings
- the Tribunal's role in inquiries
- whether ABT procedural decisions should be subject to review on the merits.

The Council is aware that recent develop-

ments in the broadcasting industry, including the foreshadowed shift in government policy, are likely to lead to a different regulatory approach to broadcasting. The Discussion Paper is intended to be a contribution to the development of any new regime. It is now available from the Australian Government Publishing service.

EARC Report on Judicial Review

The Queensland Electoral and Administrative Review Commission continues to produce important reports. The Report on Judicial Review of Administrative Decisions and Actions, delivered in December 1990, is such a report. The Report recommends enactment of an adaptation of the Commonwealth AD(JR) Act, and retention of the common law forms of relief, suitably modified for procedural simplicity.

The suggested modifications to the AD(JR) regime are particularly interesting. These include the following

- decisions made by non-statutory bodies under programs involving public monies or monies exacted under statute, are to be reviewable. This adapts a recommendation of the Council in its Report No 32 'Review of the Administrative Decisions (Judicial Review) Act: The Ambit of the Act'
- statutory decisions of the Governor in Council are to be reviewable with the Minister responsible for the advice leading to the formal decision becoming the named respondent in any proceedings. This would not preclude a court from regarding particular decisions of this type as being non-justiciable, in accordance with the developing judicial notions of justiciability
- standing requirements for statutory or common law review will be the same so that a person adversely affected by a decision or liable to be adversely affected by a proposed decision will have standing to seek review
- time limits for applications for statutory review are to be identical with the AD(JR) Act limits, and common law relief is to be brought within three months. Either period may, with leave of the Court, be extended
- the Supreme Court is to be given express power to set a timetable for reconsideration of a decision when a decision is remitted to a decision maker for that purpose
- joinder of actions for damages with an appli-

cation for judicial review will be permitted, subject to the Court's overriding discretion

- the Court may make special orders as to costs of an action, upon application by a party at an early stage, including an order, (taking into account the financial resources of the applicant, and the merits of the case including the public interest involved in the case):
 - that another party will, from the time of the costs application, indemnify the applicant for costs it properly incurred, or
 - that, regardless of outcome, a party is only to bear its own costs.

Finally the Commission makes comprehensive recommendations concerning the requirement to provide written reasons for a decision on request.

EARC Report on Freedom of Information

The EARC Report on Freedom of Information, also delivered during December 1990, recommends enactment of a Freedom of Information Act in Queensland as soon as practicable.

Clause 3 of the draft bill notes that:

- the public interest is served by promoting open discussion of public affairs and enhancing the accountability of the Government
- the community should be kept informed of the operations of the Government including, in particular, the rules and practices followed by the Government in its dealings with members of the community
- members of the community should have access to information held by the Government concerning their personal affairs and should be provided with the means to ensure that information of that kind is accurate, complete, up-to-date and not misleading; and
- there may be exceptions to these principles where the disclosure of particular information could be contrary to the public interest because its disclosure in some instances would have a prejudicial effect on:
 - essential public interests; or
 - the private or business affairs of members of the community in respect of whom information is collected and held by the Government.

The Bill, if enacted, would confer the three basic rights conferred under the Commonwealth