

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

## FOI Act, ie

- a general right of access to documents held by the State government and its agencies and by local government, subject only to the restrictions necessary to protect essential public and private rights
- the opportunity for individuals to be able to correct information held by government that is incomplete, incorrect, out of date or misleading
- require agencies to publish information concerning their structure and function.

## In addition

- exemption of bodies from the operation of the Act is only to be made by statute so that exemption will attract parliamentary scrutiny
- FOI access by an individual to his or her personal information is to be free, and
- there is to be internal and external review of decisions to refuse or restrict access.

## The 1991 Administrative Law Forum 1989 – 1990

This forum, with the theme 'fair and open decision making' was held in Canberra between 29 and 30 April. It was organised by the Royal Australian Institute of Public Administration and the Australian Institute of Administrative Law. The conference was opened by the Commonwealth Attorney-General, the Honourable Michael Duffy and heard from a variety of administrators, legal practitioners, academics and members of Courts and Tribunals. The main addresses were made on the following subjects

- administrative law: the state of play
- lessons and insights from other common law countries
- the cost of it all
- who is in charge?
- can review bodies lead to better decision making?
- the role of advisory bodies
- future directions for Australian administrative law.

A number of interesting workshops were held on the following topics

- freedom of information
- administrative law and commercial litigation
- rule making by Commonwealth Agencies
- whistle blowing

- administrative law advocacy
- ACT administrative law
- the Parliamentary review of the Office of the Commonwealth Ombudsman

The papers from the conference are to be published in the Canberra Bulletin of Public Administration shortly.

## Senate Committee on Regulations and Ordinances - Annual Report

The Senate Standing Committee on Regulations and Ordinances recently published its Annual Report for the year 1989-90. The Committee scrutinises delegated legislation to ensure

- a) that it is in accordance with its statute
- b) that it does not trespass unduly on personal rights and liberties
- c) that it does not unduly make the rights and liberties of citizens dependant upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal, and
- d) that it does not contain matter more appropriate for parliamentary enactment.

In the year under review the Committee considered 1258 instruments and received 47 undertakings from Ministers and others to amend legislation or to take other action to meet the concerns of the committee.

Each instrument considered during the year is listed in the report as are all instruments made under Acts which are currently subject to disallowance by either House of Parliament. The report lists examples of instruments falling within its terms of reference and notes instances of instruments which

- fail to effect legislative intent
- have uncertain expression or effect
- make legislative instruments not subject to tabling and disallowance
- have inappropriate levels of delegation and limits on powers of officials
- have inadequate explanatory material
- infringe on human rights.