

REGULAR REPORTS

ADMINISTRATIVE REVIEW COUNCIL

(Strengthening of Provisions
relating to Character and Conduct)
Bill 1997.

SUBMISSIONS AND LETTERS OF ADVICE

Since the last issue of *Admin Review* the Council has provided advice or made submissions to:

- the Attorney-General's Department in response to the consultation on the amalgamation of Tribunals;
- the Treasury in response to the exposure draft of the Corporate Law Economic Reform Program relating to the Corporate and Securities Panel;
- the Australian Law Reform Commission in response to the Draft Recommendations Paper 4: *Review of Archives Act 1983*;
- the Attorney-General in relation to the Establishment of the Administrative Review Tribunal — Principles and Models for Management Structures;
- the Treasury in relation to the Corporate Law Economic Reform Program—Proposals for Reform Paper on Takeovers—Corporate control: a better environment for productive investment;
- the Joint Standing Committee on Migration's inquiry into criminal deportation;
- the Senate Legal and Constitutional Legislation Committee inquiry into the Migration Legislation Amendment

GOVERNMENT RESPONSE TO THE SENATE COMMITTEE REPORT ON THE ROLE AND FUNCTIONS OF THE ADMINISTRATIVE REVIEW COUNCIL

On 1 April 1998, the Government tabled its response to recommendations by the Senate Legal and Constitutional Legislation Committee in its *Report on the Role and Function of the Administrative Review Council* (Senate Hansard 1769-1771).

The Senate Committee's report was discussed in *Admin Review* 49.

Recommendation No. 1

The Committee recommended that the Administrative Review Council should remain as a separate and permanent body, provided that it is making a significant contribution towards an affordable and cost-effective system of administrative decision-making and review.

The Government accepts this recommendation.

Recommendation No. 2

The Committee recommended that, in its annual reports, the Administrative Review Council consider providing performance measures of a quantitative and qualitative kind for the activities that it performs, and discussing past-year performance in terms of these measures.

The Government accepts this recommendation. The Attorney-General will request the Council to

implement this recommendation in future annual reports by the Council.

The Council will be adopting performance indicators as suggested by the Senate Committee in its 1997-1998 Annual Report.

Recommendation No. 3

The Committee recommended that the qualifications required for membership of the Administrative Review Council be amended to enable the appointment of persons with direct knowledge and experience of the needs of groups or individuals significantly affected by government decisions.

The Government accepts this recommendation and an appropriate amendment will be made to section 50 of the *Administrative Appeals Tribunal Act 1975* (the AAT Act) ('Qualifications for appointment') in a Law and Justice Legislation Amendment Bill (LJLAB).

Recommendation No. 4

The Committee recommended that in selecting persons for appointment, the Government should continue to have regard to the need for the Administrative Review Council's membership to contain a broad spectrum of qualifications and to represent a variety of interests.

The Government accepts this recommendation which is consistent with the Government's practice when selecting persons for appointment generally, and to the Council in particular.

Recommendation No. 5

However, the Committee recommended that the AAT Act should not be amended to require the appointment of a person having any specific

qualification or representing any specific interest.

The Government accepted this recommendation.

Recommendation No. 6

The Committee considered that the Administrative Review Council may benefit in carrying out a particular project from expertise not available within its existing membership.

Accordingly the Committee recommended that the AAT Act be amended to enable persons to be appointed as Administrative Review Council members for the purpose of a particular project.

The Committee considered that such an amendment would remove the need for the President of the Australian Law Reform Commission to remain a permanent *ex officio* member of the Administrative Review Council.

The Government accepted this recommendation. However, it does not propose to change any of the *ex officio* members of the Administrative Review Council at this time. An appropriate amendment will be made to Part V of the AAT Act ('Administrative Review Council') in LJLAB to enable persons to be appointed as Administrative Review Council members for the purpose of a particular project.

Recommendation No. 7

The Committee considered that it was undesirable to place extensive reliance on the incidental power conferred by s.51(2) of the AAT Act.

Accordingly, the Committee recommended that s.51(1) of the AAT Act which sets out the Administrative Council's functions, should be amended

to reflect more clearly all the major activities that it currently performs, in particular to underpin its current focus on improving primary decision-making.

The Government accepted this recommendation and an appropriate amendment will be made to Part V of the AAT Act ('Administrative Review Council') in LAJLAB.

Recommendation No. 8

The Committee recommended that, if the proposed merger of the five main merits review tribunals goes ahead, the amendments to the Administrative Review Council's functions take into account the impact of the merger on them.

The Government accepted this recommendation. Amendments to the AAT Act, to give effect to the Government's decisions on the Committee's recommendations, will be initiated once the proposed merger of tribunals has been settled.

Recommendation No. 9

The Committee recommended that the AAT Act be amended to explicitly empower the Minister to issue directions to the Administrative Review Council and to refer matters to it for inquiry and report.

The Government accepted this recommendation. An appropriate amendment will be made to Part V of the AAT Act ('Administrative Review Council') in LAJLAB.

Recommendation No. 10

The Committee further recommended that the AAT Act be amended to provide that Administrative Review Council project reports are to be

delivered to the Minister and tabled by the Minister in the Parliament.

The Government accepted this recommendation. An appropriate amendment will be made to Part V of the AAT Act in LAJLAB.

Recommendation No. 11

The Committee recommended that the Government give an undertaking to respond to all Administrative Review Council project reports within twelve months of their delivery.

The Government did not accept this recommendation. The Government's response said that:

The Government recognises the importance of responding to Administrative Review Council project reports and other advice in a timely manner. However, the Government does not accept that it is necessary to bind itself to a response within twelve months.

CURRENT WORK PROGRAM— DEVELOPMENTS

Access to Information and the Contracting Out of Government Services

The Administrative Review Council is undertaking a major project on the administrative law implications of the contracting out of government services.

The Council released a Discussion Paper in December 1997 that presented the Council's preliminary views on access to information by the public when government services are provided by contractors. It followed an Issues Paper published by the Council in February 1997 on the *Contracting Out of Government Services*.