

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*.

The Discussion Paper, called *The Contracting Out of Government Services - Access to Information*, focused on the public's access to information in the context of the contracting out of government services and sets out the Council's preliminary views on this topic.

The Council believes that preserving access to information is essential to the maintenance of government accountability in the context of the contracting out of government services. The Council considers that rights of access to information relating to government services should not be lost or diminished because of the contracting out process. Government agencies, rather than individual contractors, should normally be responsible for ensuring that such rights of access to information currently provided by the *Freedom of*

Information Act 1982 (the FOI Act) are not lost or diminished.

The Council has examined a number of alternative ways of ensuring that access to information relating to government services is not lost or diminished as a result of the contracting out process. These are:

- Proposal 1 - extend the FOI Act to apply to contractors ;
- Proposal 2 - deem specified documents in the possession of the contractor to be in the possession of the government agency;
- Proposal 3 - deem documents in the possession of the contractor that relate directly to the performance of their contractual obligations to be in the possession of the government agency;

- Proposal 4 - incorporate information access rights into individual contracts;
- Proposal 5 - a separate information access regime.

Each of these proposals was examined in the Discussion Paper. These proposals extend beyond access to personal information and extend to access to information that relates to the contractor's performance of its contractual obligations, such as information about services standards, the way in which a service is actually delivered to recipients, a contractor's daily running sheets or a contractor's instructions to its staff who are involved in the delivery of the service.

The Council indicated in the Discussion Paper that it favoured an amendment of the FOI Act to deem documents in the possession of the contractor that relate directly to the performance of their contractual obligations to be in the possession of the government agency. The citizen would then have a statutory right against the government agency to seek access to the document.

The Discussion Paper also included the suggestion that a separate access regime be established under which government contracts would become public documents able to be accessed directly by the public. Such a regime could operate in addition to any system for access to information established under the above proposals.

The Discussion Paper was released as a contribution to the growing body of material available on the contracting out of government services to provide guidance and practical solutions to government agencies, public service managers and other groups involved in the contracting out process.

The Council is preparing a final report to the Attorney-General that deals with a number of administrative law implications of contracting out including access to information and complaints handling.

Copies of the Discussion Paper are available, free of charge, by telephoning the Council's Secretariat on (02) 6250 5800. If you would like to receive a copy of the Contracting Out Report when published, please contact the Council Secretariat.

Further information on this project can be obtained from the Council's Director of Research, Philippa Lynch on tel (02) 6250 5800.

Internal Review

As discussed in the previous issues of *Admin Review* the Council has a project underway to assist Commonwealth agencies by developing a best practice guide for internal review. The pilot study for the project is looking at a range of internal review systems in five agencies. The Department of Social Security and Centrelink (in relation to Social Security Act matters), the Department of Veterans' Affairs, the Department of Health and Family Services and the Australian Customs Service have all agreed to participate in the pilot study. A preliminary study of the background and the practice of internal review within the 5 agencies has been completed.

As discussed in the last issue of *Admin Review*, the Council has been considering the methodology paper prepared by Professor Spencer Zifcak, from La Trobe University. The Council is now developing the second stage of the project which will focus on obtaining information to identify the

needs which agencies are seeking to satisfy in their internal review system and to examine the extent to which the internal review systems being used by those agencies meet these needs and the values and principles of administrative law.

The contact officer for this project is Gabrielle Lewis on tel (02) 6250 5800.

ADMINISTRATIVE APPEALS TRIBUNAL

NEW JURISDICTIONS

The Principal Registry of the Administrative Appeals Tribunal advise that, as at 30 June 1998, the number of enactments that confer jurisdiction on the Tribunal is 308. This number is up from 292 at 30 September 1997. The Tribunal notes that the following legislation, as at 30 June conferred jurisdiction on the AAT, or altered the existing jurisdiction of the AAT:

Air Services Regulations (Amendment) 1998
Australian Meat and Livestock Industry Act 1997
Broadcasting Services Legislation Amendment Act 1997
Child Care (Eligible Child Care Centres) Amendment Guidelines (No 1) 1998 [*Child Care Act* 1972]
Child Care (Eligibility—New Allocations) Guidelines 1998 [*Child Care Act* 1972]
Child Care (New Allocations) Guidelines 1998 [*Child Care Act* 1972]
Child Care Legislation Amendment Act 1998
Child Care Payments Act 1997
Cultural Bequests Program Guidelines (No. 1) 1997 [*Income Tax Assessment Act* 1997]
Customs and Excise Legislation Amendment Act (No. 2) 1997
Customs (Prohibited Exports) Regulations (Amendment) 1997
Customs Regulations (Amendment) 1997
Export Control (Hardwood Wood Chips) (1996) Regulations (Amendment) 1998
Customs Regulations (Amendment) 1998
Flexible Care Subsidy Principles Amendment (No. 1) 1997 [*Aged Care Act* 1997]