

## REGULAR REPORTS

### Administrative Review Council

#### Reports, submissions and letters of advice

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

- the Attorney-General in relation to the work of the Interdepartmental Committee on implementation of the Council's *Better Decisions* Report;
- the Attorney-General's Department in response to ALRC Report No 75: *Cost Shifting - who pays for litigation*;
- the Senate Legal and Constitutional Legislation Committee transmitting Council comments on Anthony Morris QC's further Submission to the Inquiry into the Administrative Review Council;
- the Public Service Commissioner transmitting Council comments on the document entitled *The Public Service Act 1997 - Accountability in a Devolved Management Framework*;
- the Parliamentary Joint Committee of Public Accounts concerning the review of the Public Service Bill 1997;
- the Senate Standing Committee on Regulations and Ordinances concerning the Occupational Health and Safety (Commonwealth Employees)(National Standards) Regulation (Amendment);
- the Senate Standing Committee on Regulations and Ordinances concerning the Family Law Regulations (Amendment).

The Council has also presented its Twenty-first Annual Report 1996-1997, which was tabled in the Parliament on 30 October 1997.

#### STOP PRESS

*Appeals from the AAT to the Federal Court*

This Council Report (No 41) was tabled in the

Parliament in early December. A summary will appear in the next *Admin Review*. Meanwhile if you would like a copy of the Report please contact the Council Secretariat on 02 62475100.

#### Senate Committee Report on the Role and Functions of the Administrative Review Council

*Admin Review* 47 reported that the Senate Legal and Constitutional Legislation Committee had received a reference from the Senate on 18 September 1996 for inquiry and report on:

The optimal role and function of the ARC and the relationship between the ARC and other relevant bodies including, but not limited to, the Attorney-General's Department, other Commonwealth departments, Commonwealth merits review tribunals, the Australian Law Reform Commission, tertiary institutions, the private sector, and territory and state agencies, with particular reference to:

- (a) the benefit of a separate and permanent administrative law advisory body;
- (b) the membership structure of the ARC;
- (c) the functions and powers of the ARC;
- (d) the effectiveness of the ARC in performing its functions and any obstacles to that effectiveness; and
- (e) the need for any amendment to Part V of the Administrative Appeals Tribunal Act.

The Senate Committee's report was presented in June 1997. The Committee reached a number of conclusions and made 11 recommendations. Those conclusions and recommendations are as follows.

#### "Effectiveness of the ARC

The Committee found that it is difficult to identify objective criteria against which to assess

the effectiveness of the Administrative Review Council.

Nonetheless, the evidence received by the Committee supports the view that the Administrative Review Council has been an effective body, providing useful and timely advice on administrative review matters.

### The need for the ARC

The Committee concludes that there is a continuing need for the Commonwealth Government to receive advice and recommendations on administrative review and decision-making, and to promote a comprehensive, affordable and cost-effective administrative law system.

The Committee notes suggestions that the Administrative Review Council should be abolished and its functions transferred to the Attorney-General's Department or merged with those of the Australian Law Reform Commission.

#### *Recommendation No. 1*

The Committee **recommends** 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.

### Performance indicators for the ARC

The Committee notes that it may be possible to improve the scope of the information provided by the ARC on its performance, in order to assist the community to assess the value of its work more precisely.

#### *Recommendation No. 2*

The Committee **recommends** 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.

In the Committee's view, this use of performance indicators will facilitate a better public

appreciation of the performance of the Administrative Review Council.

### Membership structure of the ARC

#### *Recommendation No. 3*

The Committee **recommends** 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.

#### *Recommendation No. 4*

The Committee **recommends** 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.

#### *Recommendation No. 5*

However, the Committee **recommends** that the Act should not be amended to require the appointment of a person having any specific qualification or representing any specific interest.

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

#### *Recommendation No. 6*

Accordingly the Committee **recommends** that the *Administrative Appeals Tribunal Act 1975* be amended to enable persons to be appointed as Administrative Review Council members for the purpose of a particular project.

The Committee considers 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.

## Amending the functions of the ARC

The Committee considers that it is undesirable to place extensive reliance on the incidental power conferred by s. 51(2) of the Administrative Appeals Tribunal Act 1975.

### *Recommendation No. 7*

Accordingly, the Committee **recommends** that s. 51(1) of the *Administrative Appeals Tribunal Act 1975*, which sets out the Administrative Review 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.

### *Recommendation No. 8*

The Committee **recommends** 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 Minister's power to refer matters and issue directions to the ARC

### *Recommendation No. 9*

The Committee recommends that the *Administrative Appeals Tribunal Act 1975* 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.

### *Recommendation No. 10*

The Committee further recommends that the *Administrative Appeals Tribunal Act 1975* 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.

## Government responses to ARC reports

### *Recommendation No. 11*

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

The Council will await the Government response to all the Committee's recommendations with considerable interest. Council welcomes the endorsement for its work expressed throughout the report and in the evidence of almost all the submissions and evidence given to the Committee.

## Council Advice on Review of Decisions under the Corporations Law

As reported in *Admin Review 47*, the Council completed its work on this project at the end of 1996 and provided advice to the Attorney-General on the appropriateness of review by the Administrative Appeals Tribunal of decisions made under the Corporations Law. In its 1996-97 Annual Report, the Council published its advice to the Attorney-General. The following is an outline of that advice.

All decisions taken under the Corporations Law by the Minister, the Australian Securities Commission and the Companies Auditors and Liquidators Disciplinary Board are subject to review by the Administrative Appeals Tribunal unless specifically exempted. The Tribunal and the Federal Court have had to determine what matters are decisions for the purposes of this conferral of review jurisdiction. Experience has shown that it can be difficult to determine when merits review is available and that sometimes review rights may be provided where this is inappropriate.

The Council examined the decisions which may be taken under the Corporations Law against its own Guidelines (as spelt out in the Council's Seventeenth Annual Report). The Council's *prima facie* position, as stated in the Guidelines, is that a person whose interests are