Administrative Reforms Have "Teeth"

> "Let us treat men and women well; treat them as if they were real; perhaps they are."
>
> R. W. Emerson, *c.*1880.

A gentle revolution is occurring in the relationship between the citizen and the bureaucracy in Australia. As yet, it is scarcely perceived by the Public Service itself. It is largely unknown to most lawyers. The public will only come to know of it gradually.

Since the Commonwealth Ombudsman began operations last year, he has investigated over 3,000 complaints. Last month a Second Deputy Commonwealth Ombudsman was appointed. In the Northern Territory an *Ombudsman Bill* was passed giving powers that go beyond "matters of administration".

Freedom of information legislation is about to be introduced. The Administrative Review Council is busily at work in Canberra supervising the reforms. The least known developments, but potentially the most important, are:

- The operations of the Administrative Appeals Tribunal
- The passage of the *Administrative Decisions (Judicial Review) Act* 1977, yet to be proclaimed

The Administrative Appeals Tribunal (A.A.T.) had a slow start. It has been operating for less than 2 years. Its jurisdiction includes review of the:

- legality of the bureaucratic decision
- facts on which it was based
- policy underlying it

It is this third power which goes beyond orthodox judicial review and provides the real potential for the A.A.T. to "flush out" hitherto secret policy directives, so that they can be debated and justified in the market place.

The A.A.T. has shown itself no "rubber stamp" of the bureaucracy. On the contrary, taking recorded decisions to the end of December 1977, 43% saw the applicant upheld, 50% upheld the government decision, and 7% were outside jurisdiction. Even this figure is misleading. A large number of cases are disposed of before determination. 54% of all appeals lodged were conceded before hearing.

Not all Commonwealth administrative decisions are yet vested in the A.A.T. But where they are, there is important machinery to secure reasons for administrative decisions and to extract relevant facts and documents. In the age of big government, Parliament has begun to provide the answers.

The scope of the power to review policy decisions was illustrated in *Re Hospital Contribution Fund and Minister for Health*. The A.A.T. set aside a Ministerial decision agreed to by the Cabinet, to decline an increase in health fund contribution fees. The A.A.T. examined the Ministerial policy against the facts and ruled against the Minister. Likewise, in immigration appeals, policy guidelines upon which actual decisions are made, have now been brought into the light. They turned out to include a Ministerial "press release" of 1951. The aim of the new procedure is to bring the rule of law into bureaucratic processes.

Of equal potential is the *Administrative Decisions (Judicial Review) Act* 1977. That Act, when proclaimed, will require administrators to give reasons for the exercise of administrative discretions. We have come a long way since W. S. Gilbert declared that it was one of the "happiest characteristics of this glorious country that official utterances are invariably regarded as unanswerable". Now, they will be questionable. The answers will be open to judicial review.

Lawyers of Australia agonising about their loss of monopolies should have a close look at this new legislation. It opens up a new field, worthy of a learned profession, defending individual rights in a relevant way.

Nor does it appear that the changes will be confined to the federal bureaucracy. The *Interim Report* by Professor P. S. Wilenski into N.S.W. Government Administration, *Directions for Change*, urges much the same system upon the N.S.W. Parliament. And the Victorian Government has introduced the *Administrative Law Bill* 1977 to streamline judicial review of administration in that State.