

"But the notion that administrators, who are the public's servants, can nowadays exercise power, which the legislature has conferred upon them and, hiding behind their power and their discretions, assert that they need give no reasons (and that it is not their practice to do so) amounts to an unacceptable administrative arrogance. The common law, defensive of our citizens, will not condone it."

The decision of the High Court in Osmond highlights the large question of the proper limits of the power of judges to extend the principles of the common law to circumstances to which they have not previously been applied. Much has been written on this question and it is beyond the scope of this bulletin to enter into the debate (apart perhaps from reminding readers that a similar question has arisen before in an appeal from the NSW Court of Appeal to the High Court, albeit with different judges involved: see Dugan v Mirror Newspapers Ltd (1979) 142 CLR 583).

The possibility of legislative reform was a matter expressly referred to by the High Court in Osmond. It is now up to the New South Wales Parliament whether or not it responds by taking appropriate steps to reform the law relating to the giving of reasons in that state.

R E G U L A R R E P O R T S

Administrative Review Council

CURRENT WORK PROGRAM

Access. Stage One of the Access project, Notification of Decisions and Review Rights, is nearing completion. A draft report is to be considered by the Access Committee in April and it is expected that the report will soon be considered by Council.

At its March meeting, the Council settled the list of matters to be included in Stage Two of the Access project. This stage will be confined to the Social Security, Student Assistance and Isolated Patients Travel Accommodation and Assistance Scheme jurisdictions and will examine the following specific subjects:

- . processing of 'hardship' cases
- . legal assistance under section 69 of the AAT Act and related issues
- . information on administrative review for lawyers and doctors
- . advice and assistance by agencies
- . the DSS review officer system
- . forms, advices and leaflets

The project will concentrate on aspects of the review and appeals system, in the six areas mentioned, which create barriers to administrative review and which are associated with the availability of information and advice to applicants.

AD(JR) Act. A pleasing number of responses were received to the Discussion Paper entitled "Some Aspects of the Operation of the Administrative Decisions (Judicial Review) Act 1977", concerning alleged abuses of the AD(JR) Act. The Council's advice to the Attorney-General on the matters raised in that paper is expected to be discussed at its May meeting. The larger project on the general operation of the AD(JR) Act will be resumed once that advice has been completed.

Submission on FOI legislation. The Council has written a paper on the FOI legislation for submission to the Senate Standing Committee on Constitutional and Legal Affairs. The Council concentrated its attention on those features of the legislation which concern review of decisions. Among the matters examined are: the inter-relationship of the Ombudsman and the AAT in review of FOI decisions, the Ombudsman's representative (or "counsel") role before the AAT, and some aspects of the AAT's procedures and powers in its FOI jurisdiction.

Customs and excise (anti-dumping). The Council has received a draft Discussion Paper on review of decisions in the anti-dumping and countervailing duty area from its consultant, Mr Jeffrey Waincymer of Monash University, and expects that it will be considered by the Customs Committee in the near future and shortly thereafter circulated to interested persons for comment.

Advice to the Attorney-General. The Council has recently provided advice to the Attorney-General on a number of legislative matters. Advice is also being prepared on the proposed privacy legislation which is expected to be introduced in Parliament in the near future.

Canadian visitor. Mr Mario Bouchard, who is about to complete his service as Co-ordinator, Administrative Law, Canadian Law Reform Commission, visited the Secretariat on 27 February 1986. While in Canberra, meetings were arranged for him with the President of the AAT, the Acting Ombudsman and officials in the Department of Immigration and Ethnic Affairs. The Secretariat assisted Mr Bouchard in collecting documents on matters of interest to his work.

Administrative Appeals Tribunal

NEW JURISDICTION

The following legislation confers new jurisdiction on the AAT:

- . Customs and Excise Legislation Amendment Act (No. 2) 1985
- . Grain Legumes Levy Collection Act 1985
- . Health Authority Ordinance 1985 (ACT)
- . Health Legislation Amendment Act (No. 2) 1985
- . Insurance (Agents and Brokers) Act 1984
- . Interstate Road Transport Act 1985
- . National Occupational Health and Safety Commission Act 1985
- . Public Lending Right Act 1985
- . Registration of Deaths Abroad Act 1984
- . Subsidy (Grain Harvesters and Equipment) Act 1985

ACCOMMODATION

Members and staff of the Tribunal based in Sydney are soon expected to move into the Tribunal's new premises in Kindersley House.

KEY DECISIONS

Export grant assessment not to be re-opened

In Re Labsuirs and Export Development Grants Board (6 December 1985) the applicant sought review of a decision of the Export Development Grants Board not to "re-open" assessments of claims he had made for the grant years 1975-76 to 1980-81