

Administrative Review Council

Reports, Submissions and Letters of Advice

Since the last edition of *Admin Review* the Council has provided

- a letter of advice to the Attorney-General on the National Health and Medical Research Council
- a submission to the Working Party on the Administrative Appeals Tribunal
- a report to the Attorney-General: 'Review of the Administrative Decisions (Judicial Review) Act Statements of Reasons for Decisions'
- a discussion paper from a Council consultant concerning procedures in the Australian Broadcasting Tribunal
- a letter of advice on the new telecommunications carrier arrangements
- a submission to the Senate Standing Committee on Finance and Public Administration Inquiry into the Office of Ombudsman.

Current work program - developments

Broadcasting

The discussion paper 'Review of the Australian Broadcasting Tribunal Inquiries Procedures' prepared for the Council by the Communications Law Centre of the University of New South Wales has now been published. It is noted at page 25.

Community Services & Health

The Council recently provided advice on the National Health and Medical Research Council. The Council has now commenced the next stage of the Project and is examining a range of decisions made under programs administered by the Commonwealth Department of Community Services and Health, with a view to recommending the administrative review principles which ought to apply to grants programs made within that portfolio. The Project will examine the reviewability of decisions concerning:

- funding of service providers, and
- the provision of services to consumers.

One element of the Project will be determining the extent to which any general principles arrived at should be modified when decisions are made:

- under an inter-governmental program, or
- by a non-governmental or local government body.

The Council hopes to release an Issues Paper in July and to consult widely before reporting to the Attorney General late in the year. Those interested in being consulted should contact the responsible Project Officer, Mr James Renwick, on (06) 257 6117.

Intellectual Property

Dr Margaret Allars of the University of Sydney is preparing a consultant's paper on review of patents decisions.

Rule Making

Seminars on Rule-making were held in Sydney, Melbourne and Canberra, and addresses were made to the Conference on Administrative Law held in Canberra on 29 and 30 April by various members of the Council and the Secretariat. The Report to the Attorney General is now being finalised.

Multicultural Australia

A report is to be forwarded to the Attorney General shortly.

Review of the Administrative Decisions (Judicial Review) Act: Statement of Reasons for Decisions

This report, prepared by a consultant, Mr Denis O'Brien of Minter Ellison, has now been forwarded to the Attorney-General and published. It completes the Council's consideration of the AD(JR) Act. It is noted at page 24.

Specialist Tribunals Project

This project was discussed in *Admin Review* No. 25. The current phase of the project is concerned with tribunal procedures. A conference of tribunal members and officers will be held in Melbourne on 18 and 19 October, 1991.

Government Business Enterprises

The Council has begun a new Project, examining the extent to which the Commonwealth administrative law package should apply to Government Business Enterprises of different kinds. The principal issue is the extent to which such organisations should remain accountable while still being able to operate effectively in a commercial environment.

The Council plans to circulate an Issues Paper in July, outlining the possible criteria for the application of administrative review. After consultation, the Council's report will be finalised by the end of 1991. The Project Officer is Ms Gina Foster who can be contacted on (06)257 6115.

Administrative Appeals Tribunal

New jurisdiction

Since the last edition of *Admin Review* jurisdiction has been conferred on the AAT by the following legislation:

- *Export Market Development Grants Amendment Act 1990*
- *Transport and Communications Legislation Amendment Act 1990*
- *Veterans' Affairs Legislation Amendment Act 1990*

AAT decisions

Urgent interim orders - duty of disclosure by parties

In *Re Island Voice and Great Barrier Reef Marine Park Authority* (19 October 1989) (1989-90) 20 ALD 684 Island Voice made an urgent application through Counsel to the AAT at 4.30 p.m. on a Friday afternoon for an order preventing the Marine Park Authority from building a breakwater. Mr Justice Hartigan granted an interim order. However, during a later hearing it

emerged that Island Voice had not disclosed to the Tribunal the fact that some time before, a different Tribunal member had refused to make identical orders to those sought from Mr Justice Hartigan. The Tribunal found that it had been misled. Mr Justice Hartigan said that there was an obligation upon the parties seeking an interim stay order "to supply all of the material which would otherwise be supplied by the absent party, and which is within the knowledge of the party applying ... the parties must be made aware that full and frank disclosure of all facts, and ... all matters, is essential to the orderly administration of justice". Since the Tribunal had been materially misled, the stay order was discharged. [P.G.]

Recovery of rehabilitation costs - 'special circumstances'

'In *Re Whale and Department of Community Services and Health* (23 November 1990) the Tribunal heard that Mr Whale had been seriously injured in a car accident in 1987. During the course of his recovery the Department incurred rehabilitation costs of \$16,036.95 which it sought to recover when Mr Whale's damages case was settled.

Mr Whale argued that 'special circumstances' existed so that the Department should have decided to waive recovery of the rehabilitation costs.

Mr Justice Purvis referred to cases previously heard on the recovery of sickness benefits by the Department of Social Security and confirmed the decision by the Department to recover. He considered that relevant considerations in coming to the decision included:

- the result of the settlement of the court case
- the amount of money that becomes available, and
- the extent to which that money is appropriate to meet the needs of an applicant. [P.G.]

Tribunal uses inquisitorial powers

In *Re Mourtitzikoglou and the Secretary to the Department of Social Security* (22 February 1991) Mrs Dwyer, Senior Member, used the AAT's broad inquisitorial powers to help determine the case. Section 33 of the AAT Act describes the procedure of the Tribunal and specifically states that:

'the Tribunal is not bound by the rules of