F O C U S

Statements of Reasons

In 1978 the Council produced an explanatory memorandum, published in its 3rd Annual Report and reproduced in Butterworths Administrative Law Service, on statements of reasons. Currently, as part of its review of the operation of the Administrative Decisions (Judicial Review) (AD(JR)) Act, the Council is examining in detail section 13 of the AD(JR) Act and the other provisions dealing with statements of reasons. This short note highlights some of the decisions that have focussed on the provision of reasons under the AD(JR) Act and AAT Act.

Section 13 of the AD(JR) Act and sections 28 and 37 of the AAT Act create obligations to furnish statements of reasons for decisions coming within the ambit of those Acts. Each provision basically requires 'a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision'.

The statutory obligation to give reasons for a decision is one of the most significant reforms made by the Commonwealth administrative law package (see for example Roger Gyles, QC in [1983] Fed Law Review 184). One outcome of this requirement is to enable persons affected by a decision to see what was taken into account and whether an error had been made, so that they may determine whether to challenge the decision and what means to adopt for doing so. (Ansett Transport Industries v Taylor 10 April 1987). Another consequence is to remedy the real grievance persons experience, even where the original decision was correct, when they are not told why something affecting them has been done. (Re Palmer and Minister for the Capital Territory (1978) 1 ALD 183).

The requirement for statements of reasons also has beneficial implications for governmental efficiency in several ways which, though not easily quantified, must be weighed against the cost of preparing such statements. First, the possible need to justify a decision in formal terms tends to encourage more careful decision-making. Second, if an error has been made, it may be identified on receipt of a request for reasons, and corrected at a relatively early stage. Third, where the agency's decision is correct, the provision of adequate reasons may well satisfy the applicant or at least discourage further costly challenge. The provisions for statements of reasons thus may help to prevent unnecessary appeals (see Commonwealth Ombudsman, Annual Report 1979:7).

Whether a statement of reasons is adequate will depend on the circumstances of the particular case. Generally, the adequacy of a statement of reasons can be tested by asking what (if anything) the applicant had to show or to seek to show; and what the decision-maker had to determine in order to reach the decision made. A statement should answer these questions and should state how the decision maker dealt with the matters contained in his answers. In other words, to meet the requirement that the applicant should be able to determine from the statement whether to challenge the decision, the decision maker should draw the attention of the applicant to the relevant law, to enable him to understand the legislative framework in which the decision was made, should present any findings of fact on which his conclusions depend (especially if those facts have been in dispute), and should explain the reasoning process which led him to those conclusions. This should be in clear and unambiguous language, not in vague generalities or the formal language of legislation (Ansett Transport v Wraith (1983) 48 ALR 500).

A statement need not be lengthy, but will not be adequate if the reasons are so brief that they do not allow the applicant to determine if there has been an error of law, if any relevant consideration has been disregarded, if any irrelevant consideration has been taken into account, or if the statement does not specify the facts upon which the decision was made (Hatfield v Health Insurance Commission (1988) 137 FCR 48). A statement will also be deficient if it states conclusions without particulars or explanations for those conclusions (Our Town FM v Australian Broadcasting Tribunal & Anor 4 September 1987).

Findings on all questions of fact are not required. It is sufficient if the statement sets out findings on material questions of fact. That is, the decision maker must set out such findings of fact as addressed the material issues and were taken into account in making the decision. If a statement of reasons does not set out findings of fact on a matter, the court may infer that those facts were considered immaterial (Sullivan v Department of Transport (1978) 20 ALR 323). If the decision maker does not give any reason for his decision the court may infer that he had no good reason (Public Service Board of N.S.W. v Osmond (1986) 60 ALJR 209).

The evidence or other material upon which the findings on material questions of fact are based must be referred to in the statement, though not necessarily set out in full (Ansett Transport Industries v Taylor). The evidence may be identified by stating its source or nature, whichever is the more intelligible and informative. A purported list of all the documents that were before the decision maker may not be sufficient (ARM Constructions Pty Ltd v Deputy Commissioner of Taxation (1986) 65 ALR 343).

However, section 13 is remedial in character and a statement of reasons should not be interpreted narrowly or technically. The reasons are those of an administrator, not of a legal draftsman (ARM Constructions Pty Ltd supra). A decision maker need not specify all the relevant law or offer a legal opinion. The provisions in the AD(JR) Act and AAT Act for statements of reasons seek to strike a balance between the requirement that persons affected by an administrative decision know the basis upon which it was made, and the need for government administration to be carried on without undue intervention by the courts (Ansett Transport Industries v Taylor).

A statement may state a finding by reference to some other document - for example a summary of the facts in an earlier report - but it must explain to the reader the reasons why the particular decision was taken (Maitan v Minister for Immigration and Ethnic Affairs 9 September 1987). The statutory obligation in this respect is on a decision maker personally. It is up to the decision maker himself to formulate in his statement the conclusions he reached on material questions of fact and the reasons for his decision. A statement in which the decision maker merely says that he adopts the findings or proposed findings and reasoning set out in a departmental submission made to him may not meet this obligation (Palko & Anor v Minister for Immigration and Ethnic Affairs 6 March 1987).

A statement under section 13 of the AD(JR) Act, however, does not set limits to the entitlement to information about a decision and does not preclude resort to the facilities of discovery, interrogatories and subpoena in review proceedings (Haoucher v Minister for Immigration and Ethnic Affairs 4 November 1987). The Federal Court in Commissioner of Taxation v Nestle Australia Ltd (1986) 69 ALR 445 at 453, said that a section 13 statement and the court's power in relation to discovery and inspection are basically different. In the latter case courts may take into account whether a section 13 statement has been sought or provided, whether it is sufficient and whether it is appropriate to leave the parties to their rights under section 13, including the right to obtain further and better particulars under section 13(7). However, the extent to which those matters are relevant to an application for discovery or inspection lies solely within the discretion of the court.

A more comprehensive analysis of the law relating to statements of reasons is contained in the Commissioner of Taxation's Taxation Ruling No MT 2037 dated 1 July 1987.

REGULAR REPORTS

Administrative Review Council

LETTERS OF ADVICE

Since the last issue of Admin Review (January 1988), the Council has sent letters of advice to the Attorney-General on the following issues:

- the application of Australian Public Service streamlining provisions to the Australian Federal Police;
- the A.C.T. and Christmas Island Casino Control Ordinances;
- the draft Fisheries Amendment Bill 1988;
- the proposed exclusion from the AD(JR) Act of certain decisions under section 56(2) of the Archives Act and the proposed exclusion of the Ombudsman's jurisdiction;
- the Administrative Appeals Tribunal filing fee;
- review of decisions under the Agricultural and Veterinary Chemicals Bill 1988;
- consultation with the Administrative Review Council;
- proposal to establish AUSTEL with Telecommunications review role;
- the fee for reconsideration of certain decisions under the Migration Act;
- Lands Acquisition Bill 1988;
- review of decisions under the proposed Commonwealth companies scheme.

CURRENT WORK PROGRAM - DEVELOPMENTS

Access to administrative review. The Council's report on the Provision of Legal and Financial Assistance in Administrative Law Matters has been transmitted to the Attorney-General. The Council is presently considering the appointment of a consultant to undertake a limited further survey on the Social Security review officer system.

Review of the AD(JR) Act Stage 2. The Council's AD(JR) Act Committee has completed several sections of the draft report. It recently met with practitioners in Sydney and with Judges of the Federal Court, as part of the ongoing review of the AD(JR) Act.