F O C U S

100 meetings of the ARC - a period of substantial achievement for the Australian community

On Friday 7 October 1988 the Administrative Review Council held its 100th meeting, marking over a decade since it was established. Dr Cheryl Saunders, the President of the Council, suggested that it was an appropriate opportunity for the community to reflect on what had been achieved by the administrative law reforms in the Commonwealth and to consider future directions. 'It is easy to forget', she said, 'that not too many years ago most members of the public had no real way of successfully challenging a decision made by a Commonwealth government body. Today that has all changed. We have become so used to the benefits of these reforms that we have almost forgotten what it used to be like under the old law. In 1977, for example, a school leaver, Karen Green, was forced to go to the High Court to try to get a decision changed which wrongly denied her unemployment benefits. Even then, despite a finding by the High Court that the Director-General of Social Security had applied a wrong test in determining eligibility for unemployment benefit, nothing happened for four years. Now, appeals like that can be dealt with by an administrative tribunal and a new decision made. The new procedures have introduced greater fairness and accountability into Australian public administration and have become an integral part of it.'

What have the achievements been? The major ones have been:

- the establishment of the office of Ombudsman;
- the establishment of a general appeals tribunal, the Administrative Appeals Tribunal, which enables decisions made in very many areas of Commonwealth administration to be reviewed on their merits;
- the establishment of a simplified and streamlined procedure for obtaining judicial review of Commonwealth decisions under an Act which, in setting out the grounds of review, has an educative force concerning principles of good administration;

the establishment by statute of the right of members of the public to obtain a statement of reasons for a decision which affects them.

The Australian reforms of administrative law have been in the forefront of international developments in this area, and continue to provide the model for review of administrative decisions elsewhere. This is demonstrated by a reading of the recently released United Kingdom report on reforms of administrative justice made by the committee formed under the auspices of JUSTICE (the British Section of the International Commission of Jurists) and All Souls College, Oxford (the JUSTICE - All Souls Review Committee). Amongst its recommendations are recommendations that the law in the United Kingdom be amended to give individuals a statutory right to obtain reasons for administrative decisions, that a monitoring body (an Administrative Review Commission) along the lines of the Australian Administrative Review Council be established in the United Kingdom to monitor the institutions of administrative law and that the grounds on which judicial review can be sought in the United Kingdom be codified in a statute.

Reforms of administrative law as made in Australia and as aspired to in the United Kingdom have as their aim more accountable administration which is capable of securing a greater degree of justice and equity to individuals in their dealings with government.

In this context, the recent growth of the 'new managerialism' in public sector administration has caused concern in some quarters. This approach to administration has accompanied the introduction of program management in the public sector, whereby the orientation of managers is directed primarily to quantifiable outputs and outcomes. Under the new managerialism, the purpose of administration tends to be seen in terms of the efficient management of human and fiscal resources to produce given outcomes. As a consequence, the effectiveness of government programs and delivery of services is measured almost exclusively in fiscal terms. The focus tends to be on financial and often short-term ends rather than means. The challenge which this presents to those who practise and promote administrative law is described in an upcoming article by Peter Bayne in the November 1988 issue of the Australian Law Journal.

The dangers of the new managerialism for government administration and government administrators are threefold. The first is the danger that administrators in focussing on ends will lose sight of proper procedures in decision making, resulting in a politically and financially costly deterioration in the standards of primary decision making. The second is the danger that the importance of ensuring justice and equity to individuals in their dealings with government will be undervalued or simply ignored - again, with costly implications for government. The third is the danger that the usefulness of the very organisations which were set up to prevent this sort of

problem - the administrative review institutions - will be questioned by government itself, with the possible consequences that access to them is restricted and they become effectively quarantined from the problems they were designed to overcome.

Notwithstanding these dangers, however, this publication is firmly of the view that the administrative law reforms will remain an integral feature of Australian government administration. The Australian community would not be prepared to contemplate a return to the Karen Green days or to a situation where administrators could hide behind a wall of silence without being obliged to give reasons for their decisions. Concern about government accountability will ensure that suitable means for reviewing government decisions remain in place, that access to them not be unduly impeded and that they be extended beyond their present ambit as necessary to cover new needs and problems.

The major endeavour of the next decade of administrative law in the Commonwealth may well be to fit the administrative law reforms within new perceptions of government administration. An accommodation is surely possible. The efficient management of human and financial resources to produce given outcomes is not, of course, incompatible with equity issues. The most efficient program may well be the one which, because of its attention to fairness and equity issues, is able to achieve generally acceptable outcomes in a way which ensures that there is little wastage due to poor primary decision-making, subsequent challenges and the costs of correction of errors. Fundamentally, acceptance of what a democratic system of government is all about postulates no necessary inconsistency between accountability and efficiency.

REGULAR REPORTS

Administrative Review Council

REPORTS

Report No. 30, Access to Administrative Review: Provision of Legal and Financial Assistance in Administrative Law Matters, was tabled in the Parliament on 11 October 1988. Copies of the report are available for purchase from AGPS outlets.

Report No. 31, Review of Decisions under Industry Research and Development Legislation, was transmitted to the Attorney-General on 15 September 1988. It is presently being printed and is expected to be available for tabling soon.