The majority, Chief Justice Mason, and Justices Brennan and Dawson, gave weight to the public policy consideration that it is up to the Executive to determine methods of judicial appointment and that it would not be appropriate to give a remedy that required the Executive to use a disfavoured method of appointment. They further determined that the procedural obligation to be heard could be complied with under the new policy. The dissenting judges, Justices Deane and Toohey, decided that when there is no bar to the application of the policy that existed at the time of denial of natural justice, then that policy should apply so that the person is, as far as possible, in the position in which he would have been but for the original breach.

EARC release of issues papers

In May 1990 the Queensland Electoral and Administrative Review Commission (EARC) released issues papers on freedom of information and judicial review of administrative decisions and actions. These papers form the first step in addressing the 'widespread and chronic maladministration' problems identified by the Report of the Fitzgerald Royal Commission.

The FOI paper outlines the current position of FOI laws in Australia, the role of FOI legislation and its advantages and disadvantages. The paper then raises the following issues: whether there is a need for FOI legislation; what should be the scope of such legislation in respect of documents covered (eg applicability to archives) and bodies covered (eg State and/or local government); whether personal information should be dealt with differently to general information; what kind of documents should be exempt and the role of 'public interest' in this debate; what kind of access should be available; what review procedures should be provided; whether charges should be imposed and the appropriate level of any such charges; and, whether there should be a specialist body to administer the legislation.

The Judicial Review paper looks at the current law in Queensland and reviews what it calls 'the NSW model', 'the English model' and 'the Commonwealth model', drawing a distinction between the procedural nature of the reforms under the first two models and the substantive nature of the Commonwealth reform. This distinction, between improving the existing law by removing procedural obstacles on the one hand and providing a whole new integrated judicial review regime on the other, is seen as a fundamental issue of choice arising in the EARC review. Apart from matters arising out of that choice the paper also comments upon: the appropriate limitation periods in judicial review; whether more flexible remedies are required (eg damages in administrative law); the constitution of the court carrying out the review (ie single judge or full court); whether reasons for decisions should be required; whether standing rules need reform; and, whether a different rule in respect of legal costs should apply to judicial review cases. The paper also canvasses the idea of taking a more positive approach to judicial review and incorporating a 'code of principles of good administration' to assist administrators to know what is desired.

In July 1990, the EARC published all of the public submissions it had received to date concerning the above issues papers in order to give interested parties an opportunity to comment on those submissions. Any correspondence in respect of the matter should be sent to:

Electoral and Administrative Review Commission
PO Box 349
NORTH QUAY QLD 4002

Ph: (07)237 9775 Fax: (07)237 9778

Whistleblower's protection

On 7 June 1990 the report of the Parliamentary Committee for Electoral and Administrative Review on Interim Measures for Whistleblower's Protection was tabled in the Queensland Parliament. The idea for the protection arose out of the Report of the Fitzgerald Royal Commission:

> "There is an urgent need, however, for legislation which prohibits any person from penalising any other person for making accurate public statements about misconduct, inefficiency or other problems within public instrumentalities. Such measures have recently been made law in the United States of America by the Whistleblower Protection Act 1989".

The Committee recommended that interim measures be taken to protect these employees pending a complete review of the subject by the EARC.

Planning Appeals System Review - discussion paper

In January 1990 the then Attorney-General of Victoria, Mr Andrew McCutcheon MP, following the expression of community concerns about the effectiveness and efficiency of the AAT (Vic) as a merits review body for planning appeals, announced a review of the planning appeals system and called for interested parties to make submissions in writing. A discussion paper incorporating the substance of those submissions, drafted by Mr C Wren, was issued in May 1990. The paper is available from and any further comments can be made to:

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Level 20
200 Queen Street
MELBOURNE VIC 3000