Aboriginal and Torres Strait Islander Commission

The Ombudsman received a complaint from an Aboriginal community alleging that ATSIC had failed to ensure that adequate funding was available to the community in time to avoid an overdraft with the community's bankers and had refused to pay some $40,000 due to the community as an on-cost payment in respect of community development employment project funds for 1 July to 31 December 1990. The community also sought the Ombudsman's assistance in respect of the recovery of the extra bank charges incurred by the community because of the lack of timely funding.

ATSIC admitted that errors had occurred, largely caused by computer malfunctions and inadequacies in the handling of documentation. ATSIC took appropriate remedial action, including repayment of the bank charges incurred by the community and the implementation of changes to administrative arrangements for future payments to the community.

ADMINISTRATIVE LAW WATCH

ARC report - Multicultural Australia Project

Council Report Number 34 *Access to Administrative Review by Members of Australia's Ethnic Communities* was tabled in Parliament on 12 September 1991. It represents the Council's most recent report on the topic of access. The previous reports on access were:

- No 27, *Access to Administrative Review: Stage One - Notification of Decisions and Rights of Review;* and
- No 30, *Access to Administrative Review, Provision of Legal and Financial Assistance in Administrative Law Matters.*

Report No 34 concluded that members of ethnic communities do not have effective access to administrative review. This was mainly because review agencies have failed adequately to publicise themselves and their services. More specifically, the Report, which was the result of the Council's Multicultural Australia Project, made the following observations:

- The Project's strategy based on the application of basic marketing principles to publicising administrative review has been demonstrably successful.
- There is at present little knowledge or understanding, either theoretical or practical, of administrative review within Australia's ethnic communities.
- Impediments to effective access include:
  - ignorance of the concept of administrative review - that is, that people have a right to complain or appeal;
  - language difficulties and cultural alienation;
  - the fact that the people to whom members of ethnic communities look for help and advice are themselves often poorly informed and apprehensive about how to deal effectively with government agencies;
  - confusion caused by the diversity of institutions and remedies for review;
  - agencies' failure to consider the specific needs of people from non-English-speaking backgrounds; and
  - the absence of proper arrangements for the provision of translators and interpreters.
- To date, efforts to publicise administrative review have mostly been uncoordinated and have concentrated on individual agencies rather than on the basic availability of a right of review. This message is not, in itself, a particularly complex one; nor need it be difficult to convey.
- While the Project has concentrated on ethnic communities, there is little doubt that most of these conclusions apply to the community as a whole, especially to disadvantaged groups which depend more on government and welfare services and which might therefore be expected to have most need of review agencies' services. Most of the following recommendations seem to be applicable to the wider community.
- Access to the administrative review agencies cannot properly be considered in isolation from the primary service-providers. People who do not know that they have a right to

review are likely to be handicapped in all their dealings with government agencies.

Note that the focus article in this issue provides a more detailed analysis of the Report's recommendations concerning a new role for the Ombudsman.

Appeals from administrative decisions 1

In July 1991, the Northern Territory Law Reform Committee released its *Report on Appeals from Administrative Decisions*. Among the Report's recommendations were:

- A general appeals tribunal should be established to specialise in appeals from administrative decisions.
- A decision reviewable by the tribunal should include a decision of an administrative character which:
  - alters rights or imposes liabilities;
  - has a real practical effect although not altering rights or imposing liabilities; or
  - is a failure or refusal, for whatever reason, to take a decision or perform an act.
- All decisions under an enactment should be reviewable by the tribunal subject to certain specified exemptions.
- The tribunal should have power to review de novo the whole decision and should not be confined to matters raised before the original decision-maker.
- No special provision should be made in respect of the way the tribunal reviews decisions that involve government policy.
- Any person, group or organisation whose interests are affected by a decision should be able to apply for the decision to be reviewed.
- A decision-maker should be able to apply for an advisory opinion from the tribunal where provision is made for this under an enactment.
- A group of persons or an organisation should be able to act by a representative where similar issues and similar relief would arise if individual actions were taken.
- There should be an entitlement to reasons for an administrative decision.
- Exemption from the requirement to give reasons should only be available:
  - where the decision could be the basis for a claim in a judicial proceeding that the information should not be disclosed; or
  - for security, defence and international relations reasons and for documents of Cabinet, Executive Council and committees of Cabinet, on certification by the Attorney-General.
- A fee which constitutes a nominal contribution towards administrative costs should be payable on lodging of an appeal.
- Applications should generally be by way of standard form but other methods of application, including oral application, should be accepted.
- The tribunal should have the power to grant interim relief.
- Contempt provisions should apply to the operation of the tribunal.
- The tribunal should be empowered to award compensation but not damages.
- An independent body, to be known as the Administrative Review Committee, should be created by statute to keep under review all of the procedures, including those of the courts and other bodies, by which administrative decisions may be challenged.

From this selection of the report's recommendations it can be seen that the proposed system owes much to the Commonwealth administrative review system but that in many respects it has gone further.

Appeals from administrative decisions 2

In June 1991, Queensland's Electoral and Administrative Review Commission released its fourteenth issues paper, *Appeals from Administrative Decisions*. The Paper considers many matters concerning administrative review, including:

- a comparison of administrative appeals with other measures for redress of grievance against government action;
- the existing arrangements for administrative appeals;
- benefits and costs of merits review;
- the kind of decisions that are appropriate for review;
- the kind of review powers that an appeal body should be given;
- the procedures that an appeal body should follow;
- the institutional framework that should be established, for example one general tribunal or several specialist tribunals; and
- analysis of other models including, the UK system, the Commonwealth administrative review system and the establishment of an administrative law division of an existing court.