Parliament as the supreme law-maker. Those concerns have not always been taken up by the Senate.

"The Committee will no doubt continue to draw the Senate's attention to these types of provisions. If the growth and use of quasi-legislative instruments is to be controlled it is incumbent on the Parliament to pay attention to the Committee's comments, to share its concerns and to act on its recommendations. However, from a practical standpoint, the capacity of the Parliament to adequately deal with an increased volume of legislative and quasi-legislative instruments must also be addressed."

The author goes on to look at possible improvements in this area, noting the importance of the Administrative Review Council's project on rule making. He states that:

"The project is significant for two reasons. First it serves to focus some much-needed attention on this area, which can only serve to heighten the awareness of what is going on. Second, the Administrative Review Council has asked all Commonwealth departments and agencies to identify their current practices in relation to instruments. Departments and agencies have been asked to supply details of the types, numbers and nomenclature of the instruments which they make as well as details of if and where they are published and how the general public can obtain copies.

"If the various departments co-operate with the inquiry, it should, at the very least, result in a comprehensive stocktake of quasi-legislative law-making in the Commonwealth."

Developments and other areas of potential change noted by Mr Argument include the greater centralisation of legislative drafting in the Office of Legislative Drafting within the Attorney-General's Department, provision for greater consultation prior to the making of quasi-legislation with parties likely to be affected by same (though he argues that consultation itself will not redress the problem of lack of accountability to the Parliament), and provision for more comprehensive publication of quasi-legislation. Each of these matters is covered in the final report of the Administrative Review Council's project, entitled *Rule Making by Commonwealth Agencies,* which was summarised in the previous issue of *Admin Review* and which is available through the AGPS.

Mr Argument's paper and others in the "Papers on Parliament" series are available from the Department of the Senate, Parliament House, Canberra.

Review of the Electoral and Administrative Review Act (Qld)

The (Queensland) Parliamentary Committee for Electoral and Administrative Review (the Committee), produced its report *Review of the Electoral and Administrative Review Act* on 9 July 1992. In the report the winding-up of both the Electoral and Administrative Review Commission (EARC) and the Committee by mid-1993 was foreshadowed, with the task set them by the Fitzgerald Report of 1989, of investigating and reporting to the Queensland Parliament on a range of electoral and administrative review projects, to be completed by then.

Among the reforms noted by the Committee as having been or proposed to be introduced as a result of that work were the:

- establishment of an ongoing, independent Electoral Commission of Queensland under the *Electoral Act 1992* to undertake future electoral redistributions;
- statutory embodiment of the right of citizens to peaceful protest under the *Peaceful Assembly Act 1992;*
- guaranteeing under the *Judicial Review Act 1991* the right of citizens to demand written reasons for administrative decisions affecting them; and
- establishment of the independent office of Information Commissioner to hear and determine appeals on citizens' access to government information.

In the report the Committee recommended the establishment of a Queensland Administrative Review Council (ARC) along the lines of the Commonwealth ARC which has been in operation since 1975. The Committee stated that the Commonwealth ARC was successful at a number of levels:

"Its reports present a comprehensive body of published research in the area

of administrative review which forms the basis for academic comment and government policy consideration. The ARC's letters of advice have a direct input into the formulation of legislation, regulations and government policy and assist in ensuring the existence of appropriate administrative review provisions from the outset of any new initiative. The mere existence of the ARC provides a readily accessed source of advice, and also a reminder to the government and bureaucracy that administrative review is an important matter that must be taken into consideration. In addition, the ARC serves as a place of meeting and exchange of ideas for practitioners in all areas of administrative review and has an important role in co-ordinating the exchange of information between bodies such as the Ombudsman, the Administrative Appeals Tribunal and practitioners."

The Committee recommended that the proposed Queensland ARC be given functions similar to those set out for the Commonwealth ARC under the *Administrative Appeals Tribunal Act 1975,* in particular in relation to the new administrative law procedures in Queensland. The Queensland ARC would consist of a number of statutory members including the Ombudsman (the Parliamentary Commissioner for Administrative Investigations), the President of the Law Reform Commission and the head of the Queensland AAT (if such a body is established), and other members including consumer representatives or persons with "extensive experience at a high level in industry, commerce, public administration, industrial relations or the service of a government or extensive knowledge of administrative law or public administration." It would report to the Attorney-General, its annual reports would be tabled in Parliament, and its annual reports would be monitored by a relevant parliamentary committee.

Assisted and substituted decisions – Queensland Law Reform Commission paper

The Queensland Law Reform Commission, in its discussion paper dated July 1992 entitled *Assisted and substituted decisions: decision-making for people who need assistance because of mental or intellectual disability,* considered with a view to reform the rules in that State relating to substituted decision-making for adults with a mental or intellectual disability who may lack the capacity to make legally valid decisions. Among the topics for discussion was the need for an appeals mechanism in this area. The Commission, having recommended the establishment of an independent tribunal to hear applications for assisted or substituted decision-making, stated that an appeals mechanism was essential because:

"A determination about assisted or substituted decision-making for a person with a mental or intellectual disability involves sensitive issues. It may impact significantly on the rights and welfare of the person for whom the order is sought. It may also have a substantial effect on the interests of that person's relatives and other members of his or her support network."

The Commission noted that an appeal process would:

- provide for the people concerned an avenue of possible remedy where they are not satisfied with the outcome of a hearing;
- aid in ensuring, from a public perspective, the accountability of the adjudicating body; and
- provide a method of establishing guidelines about the legislation and about the way in which the adjudicating body should reach its decisions.

The Commission took the view that the role of the adjudicating body would be to apply the general legislative provisions to the circumstances of a particular individual, that is, to make administrative decisions. It noted that EARC was considering the possible introduction of an AAT in Queensland, which would provide a cheaper, less formal and more flexible forum than the Supreme Court for reviewing a determination about assisted or substituted decision-making. The Commission recommended that this AAT, if established, should be given power to review decisions of the adjudicating body.

In the absence of an AAT in Queensland, the Commission took the tentative view that appeals from decisions of the Supreme Court on the grounds set out in the *Judicial Review Act 1991* (Qld), rather than by way of full merits review.