



ADMINISTRATIVE
REVIEW
COUNCIL

FIFTEENTH ANNUAL REPORT 1990-91



ADMINISTRATIVE REVIEW COUNCIL

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nment Publishing
the Manager,
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The Hon Michael Duffy MP
Attorney-General
Parliament House
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Dear Attorney-General

In accordance with section 58 of the Administrative Appeals Tribunal Act 1975, I furnish to you the Annual Report of the Administrative Review Council adopted by the Council at its meeting on 20 September 1991.

Yours sincerely

Professor C A Saunders
President

CHAPTER 7

COMMONWEALTH OMBUDSMAN

186. This chapter briefly outlines, from the Council's point of view, the major issues that have arisen in the Commonwealth Ombudsman's Office during the year. Detailed information on the activities of the Commonwealth and Defence Force Ombudsman will be found in his 1990-91 Annual Report. The Commonwealth Ombudsman also serves as Ombudsman for the Australian Capital Territory, and a separate report on that Office is issued annually.

Change of Ombudsman

187. Professor Dennis Pearce completed his three-year appointment as Commonwealth Ombudsman on 31 January 1991. Deputy Ombudsman, Ms Lindsay Shaw, acted as Ombudsman from 1 February until the new Ombudsman, Mr Alan Cameron, took up his Office on 1 April 1991. Previously the national executive partner of the legal firm Blake Dawson Waldron, Mr Cameron was also a judicial member of the New South Wales Equal Opportunity Tribunal and Chairman of the Business Law Section of the Law Council of Australia. Mr Cameron has been appointed for three years.

Review of the Ombudsman's Office

188. A review of the Ombudsman's Office by the Senate Standing Committee on Finance and Public Administration was announced by the Prime Minister on 13 December 1990 following a suggestion by Professor Pearce upon his retirement as Ombudsman. The Committee is inquiring into

- the scope of the Ombudsman's jurisdiction
- the performance of the Office in the exercise of its powers and functions
- the adequacy of the Office's resources to perform its various functions
- whether any consequential amendments to the *Ombudsman Act 1976* are desirable.

189. The Committee invited submissions from the public and from Commonwealth agencies. The Ombudsman's Office made a comprehensive submission in February 1991. An important theme in that submission was the difficulties the Office faces in carrying out its statutory and administrative functions because of a lack of adequate resources. The Council also lodged a submission and the President and members of the Secretariat appeared before the Committee. A summary of the Council's submission is at paras 87-89.

Exercise of formal powers

190. Four notices were issued under section 9 of the Ombudsman Act requiring persons to produce documents relevant to investigations.

191. Only one section 16 report was lodged during the year. It remained outstanding at the end of June 1991 and concerns the actions of Telecom in advising one of its employees of his retirement settlement. A second section 16 report, which was lodged in 1986, also remained outstanding. It concerns delay in correcting an anomaly in the Defence Force Retirement and Death Benefits legislation.

192. Responses from the Prime Minister to two earlier section 16 reports were received during the year. One case concerns a subcontractor which had successfully tendered to supply equipment for hospital renovations. It won the contract, but before it supplied the goods the major contractor went into liquidation. The contract was then issued by the new major contractor to a competitor of the subcontractor. The subcontractor argued that, under the Australia-New Zealand Preference Policy expressed in the tender documents, its tender should have been accepted despite its high price.

193. The Prime Minister accepted the view of the then Minister for Administrative Services that the Department of Administrative Services could take no responsibility for the obligations of outside contractors to their subcontractors, although it was conceded that the Department had not correctly applied the Australia-New Zealand Preference Policy.

194. The other case involved a recommendation for the making of an act of grace compensation payment to a fisherman engaged in the Southern Blue Fin Tuna fishery. The Prime Minister advised that after careful examination of the claim he accepted the advice tendered by both the then Minister for Primary Industries and Energy and the former Minister for Finance that no payment was justified.

Telecom

195. In April 1991 the Minister for Transport and Communications announced that a telecommunications industry ombudsman would be established by 1 January 1993. Until then the proposed new Telecom-OTC merged entity will be subject to the Ombudsman's jurisdiction.

Australian Broadcasting Corporation

196. For many years, the Australian Broadcasting Corporation ('ABC') has disputed the Ombudsman's jurisdiction over complaints about ABC programming matters, which the ABC maintains do not constitute 'a matter of administration' (section 5(1) of the Ombudsman Act). Attempts to resolve the jurisdictional issue by agreement have not been successful.

197. It has been the policy of all Ombudsmen to refrain from intervening in disputes about program content arising from allegations such as lack of balance or bias, unless they also involve allegations that misleading information was broadcast