SECOND DIVISION OFFICERS' ASSOCIATION

VICTORIAN BRANCH

MELBOURNE, 6 APRIL 1982, 1.30 P.M.

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The Hon. Mr. Justice M.D. Kirby
Chairman of the Australian Law Reform Commission
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TO THE NEW VICTORIAN GOVERNMENT

The people of Victoria last Saturday elected a new State Government under Mr. John Cain. It is understood that, at least at the outset, Mr. Cain intends to be the Attorney-General as well as the Premier. It would be wrong of a Commonwealth Officer, like myself, to interfere in or even comment significantly upon the task ahead of Mr. Cain. However, I feel that, so long as I adopt suitably eliptical language, I will be forgiven for offering John Cain a few words of advice. Just about everyone else will be doing so in the days and weeks ahead. I feel I can have my two-penneth worth because John Cain was one of the first Members of the Australian Law Reform Commission. He was appointed a part-time Commissioner in May 1975 and he held the post until 1977. He joins the distinguished alumni of the Australian Law Reform Commission who have gone on to hold important offices of State. These include Sir Zelman Cowen, the Governor-General, Sir Gerard Brennan, a Justice of the High Court of Australia (appointed to the Commission on the same day as John Cain) and now the new Premier of Victoria.

One area of operations to which it is already clear the new Premier and Attorney-General will be giving his attention is administrative law reform in Victoria. It is an area that has been developed vigorously in the Federal sphere under successive governments. Because it is concerned with the relationship between government and the individual, it is a peculiarly modern problem deserving of the new government's attention. A report of the Victorian Statute Law Revision Committee proposed 14 years ago the introduction of a general administrative tribunal for Victoria.

It has not been established. Instead ad hoc specialist tribunals have been created. During the election campaign, the parties vied with each other in respect of the freedom of information legislation they would offer. I believe it will repay Mr. Cain's time to examine aspects of the administrative law reforms that have been introduced in the Federal sphere to consider whether some of them may not be suitable for Victoria. But in examining the Federal reforms, the Victorian Government should be sensitive to the costs and benefits as well as to criticisms and praise of the Federal reforms.

I propose in this talk to:

- outline the Federal administrative reforms;
- catalogue the criticisms that have been mounted against them;
- discuss the problem of costs;
- classify the schools of thought that have emerged in the public service and elsewhere; and
- finally offer some conclusions and a suggestion.

I hope all of this will be of interest to the Second Division Officers of the Commonwealth Service. But I also hope it may be worth a glance from my former colleague, Mr. Cain, as he now assumes responsibility for the peace, order and good government of Victoria.

THE NEW ADMINISTRATIVE LAW

Many of you will know Derek Volker. He was until recently a Second Division Officer in the Commonwealth Service in the Department of Immigration and Ethnic Affairs. He was recently elevated to the First Division as Secretary of the Department of Veterans' Affairs and Chairman of the Repatriation Commission. He has not yet adapted to the bland elegancies for which First Division Officers (and I am roughly equivalent to one) are justly renowned. There is still something of the Second Division bluntness and frustration in him. A month ago, addressing the biennial congress of the Australian Federation of Totally and Permanently Incapacitated Ex-Servicemen and Women, he made a typically hard-hitting speech. He said that the law covering the repatriation system was daunting. He said the delays in settling claims and appeals was starting to improve but that there was 'still some way to go'. He claimed that administrative law changes in recent years had produced the unacceptable delays in having claims for repatriation benefits assessed and appeals resolved:

> It is unusual, but you do see instances where the reasons for decision run up to 20 pages long. They are more like High Court judgments, and they cut down the system's productivity.[1]

Mr. Volker pointed out that before the new administrative reforms, no reasons for decisions had to be given. And he reached this conclusion:

> We have some concern that administrative law changes in recent years may be running counter to a fundamental of the whole repatriation system, that claims should be resolved expeditiously and with the least amount of red tape or inconvenience to the ex-serviceman and woman.[2]

My talk to you today involves a consideration of these criticisms. I am sure that they are not limited to the Department of Veterans' Affairs. The wide-ranging and radical reforms of administrative law permeated the Australian Public Service and its associated agencies. The reforms have left some overseas observers breathless.[3] I warrant that they have left some members of the Second Division breathless too.

There have been reforms of particular statutes. There have been internal administrative changes (such as the introduction of the review officer in the Department of Social Security)[4]. But it is sufficient for present purposes to reflect upon the broad changes that have been introduced, across the departments and authorities of the Commonwealth. They include:

- A general Administrative Appeals Tribunal (AAT) has been created. It has novel powers, which include the power to require statements of reasons to be given for Federal administrative acts under its scrutiny and a power to substitute a decision 'on the merits' for that reached by the admininistrator appealed against.[5]
- An Administrative Review Council has been created, of which I am a member, to monitor and push forward developments of a new system of administrative review, designed to be more accountable to the people coming into contact with Commonwealth administrators at every level.[6]
- A Commonwealth Ombudsman has been established with wide powers to investigate individual grievances of bad administration. The Ombudsman has power to gain access to documents on behalf of the complainant. The innovative use of the telephone, especially suitable in our large Federal country and in the current age, has meant that Professor Richardson has been able very rapidly to encourage a more responsive administration, answerable to individual and community concerns.[7]
- A still little-known reform involves significant change in the law governing the judicial review of Federal administrative decisions. Whereas in the past, administrators could coldly provide their files with minimal information contained in them, the new law positively obliges Commonwealth officials to supply to a complainant the reasons for their decision, findings on material matters of fact and a reference to any evidence relied on.[8]

Other reforms are introduced by the Judicial Review Act, including the centralisation of those cases of judicial review which do not go to the High Court in the Federal Court of Australia instead of the State courts, the over-riding of privative clauses excluding judicial review and the provision of a simplified procedure based on broadly stated grounds collected in the statute.

. The latest addition to the catalogue is the Freedom of Information Act 1982. The passage of this Act has brought to an end a debate which lasted nearly ten years. The Commonwealth Attorney-General is reported to have said that the Act will be operating by 1 October 1982. He acknowledges that there are a number of administrative problems to be sorted out before the new legislation can operate. However, because of the recognised benefits to the community of the legislation, he has expressed the hope that the implementation can be quickly organised.[9] The Act establishes the prima facie right of access to documents in the hands of the Commonwealth and its agencies. It provides a list of exceptions and machinery in the AAT and a new Documents Review Tribunal to scrutinise claims for exemption. It is a major shift from the tradition of secrecy in the public administration of the Commonwealth.

Further developments are likely to occur as a result of the ongoing work of the Administrative Review Council. The breadth of the programme before that Council can be seen from a perusal of the five Annual Reports that have been delivered by it. Its first Chairman was Mr. Justice Brennan, now a Justice of the High Court. Its present Chairman is Mr. Ernest Tucker. Though it includes a number of senior Commonwealth officers, there are also members from outside the service. In addition to the work of the Council, bodies such as the Law Reform Commission have relevant programmes. For example, the Law Reform Commission has already delivered a major report recommending changes in the Commonwealth's system of compensating those from whom the Commonwealth acquires property under compulsory process.[10] Under the leadership of Professor Robert Hayes, the Commission is also currently working on a report on privacy protection which it hopes to deliver later this year. That report will suggest new rules to govern intrusion and surveillance by Commonwealth officials.[11] Perhaps more relevantly, it will provide a suggested new regime of data protection and data security, appropriate to accompany the increasing penetration of the service by computications : computers linked by telecommunications.[12]

Developments in the Federal sphere are paralleled by changes that are occurring in the States. Similar changes are also occurring overseas. I set out a schedule of the status of freedom of information and public access legislation in the countries of the OECD as the position stands at January 1982:

SCHEDULE[13]

Freedom of Information – Status of Legislation January 1982

Country	Study	Report	Bill in Parliament	Date of First Law	Personal Data Access Law	Document Publicity Law
Australia			✓			
Austria				1974	✓	✓
Canada			✓		✓	
Denmark		✓[1]				
Finland				1970	✓	
France				1951		
Germany (FR)				1978	✓	✓
Ireland					✓	
Japan		✓				
Luxembourg						
Netherlands				1979	✓	
New Zealand				1979		
Norway			✓			
Sweden				1970	✓	
Switzerland				1776	✓	
United Kingdom			✓			
United States		✓[1]				
Council of Europe				1966	✓	

[1] Amendments being proposed

Transnational Data Report

YES, BUT CAN WE AFFORD IT?

Senator Alan Missen recently wrote that the opponents of freedom of information laws (and one might say administrative law reforms generally) rarely come out into the open.[14] This unusual diffidence may be attributed to various causes:

- First, the Prime Minister, the Attorney-General and most of the Cabinet have made speeches drawing attention to the new administrative law changes as important achievements of the government. Public servants may feel that they can grumble quietly about these things but should not speak out openly, appearing to challenge established government policy.
- Some public servants are probably little affected. Certainly the dire predictions of the threatened impact of the new administrative law has not been borne out in at least some departments. The impact of the reforms has fallen more heavily on some rather than others. Those who have escaped the burden may wonder what the fuss was all about.
- A more likely reason for public silence is that Commonwealth administrators learn very early in their service that 'behind the scenes' action can speak louder than words. A hint dropped here and there, a reference to the cost implications, a complaint behind closed doors, may be much more powerful in shaping future policy or delaying the further implementation of reform than a reasoned address at a

Let us examine the real administrative reaction to the new administrative law. To those already on the receiving end of Ombudsman inquiries, the inspection by the Administrative Review Council, the occasional case in the AAT and, lately, orders for judicial review from the Federal Court, the Freedom of Information Act may appear the 'last straw'. I have heard it described as such by members of your Association.

In part, this attitude is a reflection of that well known bureaucratic phenomenon of following precedent : observing the settled ways of doing things. Things have been done without public participation, review on the merits, Ombudsman scrutiny, rights to reason and judicial review, for a very long time. For such critics, the proponents of reform bear an Atlas-like burden of convincing them, and their political masters, that things should be changed. There are many, including many in influential positions in our country, who see these reforms not as matters of adjustment to changing technology of information, greater levels of education and information in the community and modern notions of civic rights. To them, these reforms are the work of lawyers and gadflies who will not 'leave well alone'.

Because the arguments against the new administrative law have rarely been openly expressed, one can only surmise the reasons and make the most of the hints dropped in hushed tones by anxious officials. Take this sample:

- Ruins firm government. The new administrative law, it is said, will ruin firm government. Instead of being allowed to get on with the business of government, to the advantage of the aggregate mass of the citizenry, administrators will have to tarry to locate information, to answer Ombudsman queries, to supply statutory reasons, to assess claims for judicial review — all to satisfy inquisitive or disgruntled individuals.
- It is non productive The new administrative law, it is said, is non-productive activity. Government trading corporations will be put at a disadvantage against their competitors. They will have to provide information and explain things. All of this involves 'non-productive' time at a period in our history when the razor gang and staff ceilings limit the capacity of the public sector to do its job effectively for the mass of people who will never make these unreasonable demands.
- It is a foreign idea. The new administrative law has also been said to be an American invention out of keeping with our system of responsible government. According to this view, we do not need it, for our Ministers are answerable in Parliament and 'responsible' for things done or omitted under their administration. The unreality of holding Ministers responsible for the vastly expanded public service under them is now generally recognised as a reason for laying this myth to rest.

. It will be misused. The new administrative law, it is suggested, will be misused. Though intended for the ordinary decent citizen, it will become the means by which the media or other powerful interests harass administrators already distracted from their tasks of firm government. Especially in the AAT and the Federal Court, ordinary citizens will not be able to afford the exquisite procedures. Well-lawyered corporations will tend to use these procedures to spy on each other and secure advantages as against orderly administration protecting the public interest.

THE PROBLEM OF COSTS

Above all, there is the recurring problem of costs. There is no doubt that many of the procedures of the new administrative law are costly. The least expensive are internal adjustments such as the creation of review officers. But even these require the appointment and training of able people, capable of exercising a serious review. Ombudsman review is next in the hierarchy of costs. It has the advantage of being approachable to the citizen across the counter. It is an inquisitorial procedure. It obviates the necessity of lawyers as intermediaries. The Ombudsman becomes the informal intermediary. Professor Richardson has been innovative in the use of the telephone. This was specially suitable for our country with its great distances. The cost of handling complaints can be cut if the paper work is cut. But a cost exists. Busy administrators, often at a very senior level, including in the Second Division, have to give the Ombudsman's inquiries urgent attention, lest they fall victim to a further complaint that they are delaying action and thereby compounding bad administration. The involvement of senior people in considering Ombudsman investigations has coincided with staff ceilings and budgetary restraint which have added to the burdens of the Commonwealth public servant at or near the top. There is undoubtedly a cost in Ombudsman review. Especially in the large client agencies of the Ombudsman, the cost would be significant, in aggregate terms.

So far as the AAT is concerned, efforts have been made to quantify the cost of an appeal to that tribunal. Because it has followed, largely, the adversary trial system, advocates will normally be engaged, certainly by the department or agency involved. But in addition to costs of advocates or lawyers, there must be added the other costs that have to be incurred by the Commonwealth to deliver the tribunal's product. These include:

. Preparation of required documentation, including the supply of reasons and supporting documents as required by the Act.
. Preparation by officers for the hearing.
. Participation of officers in the hearing.

. Participation of the tribunal Member, clerk of the court and transcription officers.
. Cost of the hearing room and other capital costs, including, in many cases, the significant cost of interstate travel.

I have seen one assessment for the Public Service Board which suggests that although appeals include work by Fourth Division Officers, the majority of the work undertaken for the appeal is at the Clerk Class 8/9 level. According to this assessment, although the amount at stake in the cases studied (ACT rate cases) was relatively small — the maximum variation of a valuation by the tribunal resulted in rates reduction of $45 per annum, the average reduction being in the order of $15 per annum — the total cost of servicing each appeal was said to be between $2000 and $3000. Even if one discounts entirely the costs of the tribunal, transcript and so on, the costs of departmental response to an AAT or judicial review case is clearly very significant for each unit claim. To the hourly cost of manpower devoted to the claim must be added the not inconsiderable cost of training and staff development necessarily involved. The Department of Administrative Services, for example, expressed the view in connection with FOI:

> Extensive education of Departmental officers in all facets of the legislation is required ... to raise the awareness of officers of the implications of the legislation for Departmental operations. Training courses on more specific procedural aspects will be arranged. ... Consideration is being given to arranging training in the Department's regional offices, preferably with the use of audio-visual aid to inerease coverage and reduce costs.[15]

The above quantification of costs makes no reference to the costs of appeals beyond the AAT or the Federal Court. Although, admittedly, these are relatively rare, when they do occur they are extremely expensive. Mr. Volker told an earlier seminar in Canberra:

> Some people go to the Ombudsman, some to the Administrative Appeals Tribunal and others to the Federal Court. ... as well as making representations to the Minister or the Department. Some try all of these avenues. In the area of criminal deportations where there can be patterns of similarities in offences, particular cases may become intricately entwined with others of a like nature which go to appeal. Mr. Justice Kirby asked me if I was going to mention the case where the cost to the taxpayer exceeded $60,000. Well, indeed I am, because it is now up to $70,000 and I was told yesterday it was $74,000 because the appeal books have cost $4,000 to print.

> Linked with the question of costs is the question of delay in decision-making where literally years may elapse now in some deportation cases which go to the High Court.[16]

Special pleading? Perhaps it is. It may even be unfair to take the extreme case. The AAT is itself taking steps — by innovative telephone conferences and preliminary hearings — to contain costs. But cases of the kind mentioned become notorious. They are the common talk of bureaucratic watering holes. They help to shape attitudes to the new administrative law. They influence politicians and lawmakers.

FROM 'TOO BAD' TO 'THE LAST STRAW'

Too Bad. The response of those who design or are pressing forward the new administrative law to even wider application throughout the Commonwealth service ranges from what might be termed the 'too bad' school to the 'last straw' school — the members of the lastmentioned school believing that we have now reached the need for the admdnistrative pause that refreshes.

The 'too bad' school would assert that the costs of the new administrative law are simply part of the costs of running a modern sophisticated government. To some extent the costs are seen as inflated by reasons beyond anyone's control, including the continental size of our country and the Federal system of its government. The total costs of the new administrative law, however elaborated, when measured against the total costs of Federal administration, are miniscule. Disputes do arise. In a democracy, whose members are increasingly better educated, better informed and more assertive of their rights, means of resolution of some kind must be found. Sometimes, at least, costs are incurred because of official obduracy or injustice. It would be wrong to debit these costs against the new administrative law. Costs must, according to this school, be put in their right perspective and not exaggerated. There is an inescapable cost factor in any modern bureaucracy for solving citizen disputes and claims. According to this view, it is not legitimate to look at particular or even raw total costs. It is only legitimate to look at the margin of extra cost involved in the new administrative law procedures over and above what would be involved if the lowest tolerable governmental machinery were provided. Thus, the Comptroller-General of the United States has reported the impression of one official of the US Immigration and Naturalisation Service, a very high request volume agency under the US FOI Act, that 'about 90% of their requests would have been received and answered even without the existence of [the Freedom of Information and Privacy] Acts.[17]

The Franks Committee's view in Britain was that the more cost-intensive administrative tribunal with its hearing procedure must be seen as an aspect of the fair administration of justice in society rather than as an aspect of public administration. This view is reflected in the foreword written by the current Chairman of the Administrative Review Council, Mr. E.J.L. Tucker, in the Fifth Annual Report of the Council for 1980-81:

> It is no argument against administrative review that it involves a cost. It is in that respect no different from the Parliament, the Courts and other institutions which are essential to the preservation of a free and just society. Clearly it is necessary to avoid extravagance and an unreasonable quest for perfection, for if natural resources were committed without restraint other things of value might be sacrificed in the process. An assessment of both the benefits and the costs of recent reforms will provide helpful guidance in this respect. ... In the end it will be for the Parliament to maintain an appropriate balance between the needs of economical and efficient government and the requirements of freedom and justice for the individual citizen.[18]

Proponents of this school point to the fact that following AAT, Ombudsman and Federal Court decisions, people have secured benefits they were originally denied, procedures of departments and agencies have been changed and improved, greater uniformity in the approach to administration has been secured and discretions have been tamed and submitted to the health obligation of justification.

I told you so. A second school is made up of that hardy band of stalwarts whom we can find in all walks of life and who are not absent from the Commonwealth service. I refer to the 'I told you so' school. According to these people, the new administrative law, with its tribunals, rights to reasons, access to public documents and so on is a misfortune but one which must be bravely borne. It is perceived as a lawyers' enterprise, designed by committees of lawyers, pressed forward by groups predominating lawyers, largely administered by lawyers and often argued out by lawyers against lawyers in front of lawyers. But this school accepts the fact that the new administrative law is with us. It has the commitment of the Government and the support of the Opposition and the Democrats. This too is ascribed to the preponderance of lawyers in these parties. Too many speeches have been made praising the system and claiming credit for it to see it now dismantled. The most that can be hoped for by this school is containment. The weapons of containment are there. They include:

- Limiting the expansion in the jurisdiction of the AAT — which is confined to the review of matters positively included in its jurisdiction and which still remains far short of the general administrative appeals tribunal envisaged by the Kerr Committee.
- Continued the creation of ad hoc tribunals under departmental aegis rather than conferring new wider jurisdictions on the general AAT — a decision that may be justified by reference to the need for 'greater informality', 'greater speed' or 'specialist representative members'.
- Continuing the exemption from judicial review and from the obligation to provide reasons for decisions, as contained in the long lists collected in the schedules to the Administrative Decisions (Judicial Review) Act.
- Imposing high fees which may be justified on the 'user pays' principle or on the basis that a significant threshold fee will discourage nuisance, bulk claims. It already costs $100 court costs to start a Federal Court action for judicial review. The fees under the FOI Act are still to be prescribed.
- Resisting or stonewalling further reforms. The Law Reform Commission's report on Lands Acquisition and Compensation (ALRC 14, 1980) appears to be have disappeared without trace with the bowels of the Department of Administrative Services.

Value for money. The 'value for money' school has no time for this carping criticism. It seeks to justify the new administrative law by reference to the intangible benefits that are secured by its machinery and procedures. Costs are always much easier to see and assess than are the benefits. Costs can be assessed largely in money terms. The main benefits are not so readily quantifiable but they are nonetheless real and substantial and important in a democratic country. The Fourth Annual Report of the Administrative Review Council points to the following chief considerations as having to be weighed against the costs:

- Increasing general public confidence that comes from a manifestly just system of government decision-making ie not only justice to the individuals who secure review but confidence across the community spreading from the knowledge that the facility of review exists, if ever one should need it.
- The improvement in the quality of primary decision-making because of scrutiny of what amount to 'test cases' by highly trained people, skilled in assessing the legality and merits of the administrative action.

> The benefits which accrue to government are less immediate and difficult to quantify. ... [T]here is a danger that the costs may at times appear to loom larger than the benefits, particularly to the departments and authorities immediately concerned.[19]

According to this view, whilst the costs have to be picked up by particular agencies of government, the benefits accrue in confidence in the whole system of government. Furthermore, the Federal Court, the AAT and the Ombudsman have the beneficial impact of ensuring compliance with the law. If we are serious about the Rule of Law, including in public administration, the value of this scrutiny should not be overlooked.

One might add reference to another intangible benefit, often under-estimated. I refer to the value of the symbiosis between a dedicated, professional public servant, a member of what the Bland Committee referred to as an 'administrative culture' on the one hand, and the external, civilising generalist body, on the other.[20] Though this interaction may itself be weakened if the faults of the 'legal culture' come to dominate the review bodies, the interplay between external and sometimes novel ways of looking at a problem and routine administration, is usually healthy and stimulating.

Someone pays. A fourth school, whilst willing to concede some of the merits of individual review, external scrutiny, legal advice and intangible benefits, expresses concern that we have embarked upon a system that is just too expensive for our resources. The bipartisan report of the Senate Standing Committee on Constitutional and Legal Affairs on Freedom of Information[21] acknowledged in its chapter on resource implications that:

> It is pointless to generate proposals which, however attractive they may be in principle, are likely to be quite incapable of practical realisation by this or any other government in the immediately foreseeable future.[22]

This fourth school, whilst admitting that the mythology of ministerial and parliamentary accountability were not coping adequately with the rapid post-War growth of government, believes that care must be taken to keep costs and benefits (including allowance for intangible benefits) in reasonable balance. Speaking of the freedom of information legislation, Senator Durack has emphasised that the government is 'sensitive to the demands that this legislation will make on the resources available to Departments and authorities' and that 'costs need to be monitored'.[23] A like view is reflected, admittedly in somewhat general language, in the Annual Reports of the Administrative Review Council, which assert that it:

> recognises that the likely costs of a particular proposal should not be unreasonably high in relation to the benefits of external review.[24]

Or, put another way:

> The Council recognises that the benefits to the citizen and to the operation of government which a particular reform would secure should bear some reasonable relationship to the costs of implementing the reform.[25]

The proponents of this school believe that it is necessary to weigh proposals for the extension of the present administrative review machinery or the introduction of new rights and duties by reference to evaluating the cost of change. In particular, the differential use of the Ombudsman and tribunal review — the latter being typically more manpower-intensive, more formal and therefore more costly — is likely to be a major concern of the future. The Administrative Review Council has not yet stated clearly those matters which, of their nature (or because of their history) are appropriate for tribunal review and those which can be adequately, appropriately, more efficiently and less expensively left to Ombudsman review only — possibly enhanced on occasion with additional powers as has recently occurred in respect of complaints to the Ombudsman about the police.[26]

Last straw. Finally, I come to the 'last straw' school. The views of this school have already been canvassed adequately. These are the people, often in the Second Division, who feel themselves caught in a pincer movement between increasing obligations of public accountability and reduced staff and resources with which to respond. There is a breaking point in the capacity of hard-pressed departments hit, sometimes unevenly, by staff ceilings and funding cuts. The Chairman of the Public Service Board told the Senate Committee on FOI:

> So long as governments seek to limit the number of Public Servants and the overall cost of the Public Service, greater access by the community to the information holdings of the Service should be seen as another service of government competing for the finite resources made available. To increase resources in one area of government activity will inevitably lead to some lessening of emphasis in another, or to an increase in the overall level of resources.[27]

The comments could be generalised to apply to the new administrative law as a whole. They are reflected in like observations by the Council of Australian Government Employee Organisations and others.

CONCLUSIONS AND A SUGGESTION

I can offer no simple conclusions to this address. But it does seem that the genie is out of the bottle. The new administrative law seems not only likely to stay. It will expand to the States. It will be enhanced in the Commonwealth's sphere.

There needs to be a better understanding amongst administrators of the objects of the new administrative law. But equally, amongst lawyers and those who are pushing forward the boundaries of the new system, there needs to be a clearer appreciation of the staffing, resource and training and development implications of the new system. Perhaps thought has to be given to the capacity of a service, scattered over the continent and necessarily of varying quality, to absorb major changes in the ways of doing things, in a relatively short time.

Many of the worst terrors of the new administrative law will pass when it becomes a more familiar and accustomed part of public administration. Getting the costs in perspective and getting into proper focus the marginal costs added by the new system, is the obligation of all serious commentators — including the critics. Working out the functions that are best done respectively by the courts, a general tribunal and other specialists tribunals, on the one hand, and by the Ombudsman, procedures of internal departmental review and other means of conciliation and mediation on the other, is an urgent priority of those concerned with effective administrative review for the citizen at the counter. The moves to introduce more cost effective methods in the AAT - and perhaps a more flexible procedure that can adjust to the different nature of particular jurisdictions, will need to continue. Thought will have to be given to the criteria that would favour enhancing the AAT's jurisdiction (eg likelihood of disputes of fact susceptible to an oral hearing) and those which do not (eg involvement of high government policy, the need to consider the comparative merit of competing claims or review of disputes having a small or trivial amount at stake or depending on documentary rather than oral evidence).

There is still much that could be done. If we are serious about aggregating the effect of decisions in particular cases, as a means of guidance, instruction, elucidation and legal clarification for the whole service, more should be done by the Public Service Board to inform the Service — particularly the Second Division — about important decisions and rulings. What is needed is no ponderous legal tome. There is no lack of learned, scholarly law reviews and case reports on this topic. What is needed is a throw-away pamphlet, widely circulated throughout the Commonwealth service, distributed weekly or monthly, which calls to general attention the decisions and rulings of the Federal Court, AAT, tribunals and the Ombudsman concerning the administration.

Only when this kind of information penetrates the service will the real value of the new administrative law be seen. This is the only way by which we can maximise the utility of individual cases for the whole system and promote education and prevention of problems, rather indulging ourselves in the usual lawyers' methodology of wisdom after the event. It is even hard to be wise after the event, if you are completely ignorant that the event ever took place. I would urge the Federal Public Service Board to accept the responsibility of producing a short informative regular document outlining the administrative law developments in language which, though accurate, can be readily understood by the laymen in the service. If this were done, the good that comes out of the system could be spread for prompter and more general application to our citizenry as a whole. And where there is room for criticism, it can be based upon knowledge and experience of the system as it is operating across the board instead of a vague feeling of discontent and frustration at a time of lowered morale in the Service.

Let me close by assuring you of my admiration for the overwhelming majority of Commonwealth officers and my appreciation of the dedication of the Second Division to the service of our country.

FOOTNOTES

* The views expressed are the author's personal views only.

1. See D. Volker, Address to the Biennial Congress of the Australian Federation of Totally and Permanently Incapacitated Ex-Service Men and Women, Canberra, 2 March 1982, as reported in the Canberra Times, 3 March 1982, 3.

2. ibid.

3. Lord Lane, Address to Australian Legal Convention, (1981) 55 Australian Law Journal, 383-4. See also [1981] Reform 123.

4. The suggestion of a review officer in the Department of Social Security is referred to in Administrative Review Council, Fourth Annual Report 1980, 32 (para. 142). The suggestion was adopted by the Department.

5. Administrative Appeals Tribunal Act 1975 (Cwlth).

6. id, s.51.

7. Ombudsman Act 1976 (Cwlth).

8. Administrative Decisions (Judicial Review) Act 1977 (Cwlth).

9. As reported, West Australian, 26 February 1982, revised to 1 October. See report Australian Financial Review, 5 April 1982.

10. Australian Law Reform Commission, Lands Acquisition and Compensation, (ALRC 14) 1980.

11. Australian Law Reform Commission, Discussion Paper No. 13, Privacy & Intrusions.

12. Discussion Paper No. 14, Privacy and Personal Information, 1980.

13. Transnational Data Report, January/February 1982, Vol. V, No. 1, 37-38.

14. A. Missen, 'The Australian Struggle for Freedom of Information' in International Freedom of Information Newsletter published in Transnational Data Report, January/February 1982, Vol. V No. 1, 35.

15. Australian Senate, Standing Committee on Constitutional and Legal Affairs, Freedom of Information, 1979, 77.

16. D. Volker, Commentary (1981) 12 Fed.L.Rev. 158, 161-2.

17. Cited FOI Report, n.15, 71.

18. E. Tucker in Administrative Review Council, Fifth Annual Report 1980-81, x.

19. Administrative Review Council, Fourth Annual Report 1980, 13.

20. J. Goldring, Commentary (1981) 12 Fed.L.Rev. 163, 164.

21. FOI Report, n.15 above.

22. ibid, 69-70.

23. P.D. Durack, The Freedom of Information Bill, Address to Pharmaceutical Manufacturers' Association, press release by the Attorney-General, mimeo, 21 August 1979, 9.

24. Administrative Review Council, Fourth Annual Report 1980, 13.

25. Administrative Review Council, Second Annual Report 1978, 2.

26. Complaints (Australian Federal Police) Act 1982 (Cwlth). The Act commenced on 2 April 1982.

27. Cited in FOI Report, n.15 above, 69.