

**Senate Public Lecture Program**

**UNCHAINING THE WATCH-DOGS SERIES, NO.3**

**Canberra, Thursday, 7 December 1989**

**Professor Cheryl Saunders  
President, Administrative Review Council\***

**THE ROLE AND INDEPENDENCE OF  
STATUTORY OFFICE-HOLDERS:  
THE PARTICULAR CASE OF ADVISORY BODIES**

\* The views expressed in this paper are mine, and do not necessarily represent the views of the Administrative Review Council or any other members of it.

## **Mr Harry Evans, Clerk of the Senate**

Welcome ladies and gentlemen, this is the third of our series called “Unchaining the Watch-dogs”.

We have heard from the Ombudsman, professor Dennis Pearce, and we have heard from John Taylor, the Auditor-General. This is the third in our series and we have with us today the President of the Administrative Review Council. Since our circular was put out referring to her as Dr Cheryl Saunders, she has in fact become Professor Cheryl Saunders, I understand.

The Administrative Review Council, as you probably know, was intended to be the pinnacle of the administrative review system, a sort of council of guardians I suppose. It was supposed to oversight the whole system and see that it was working properly. Therefore it is quite appropriate that we look at the Administrative Review Council last.

## **Professor Saunders**

Well, thank you very much.

The common theme of this series is the role and independence of statutory officers who have responsibility for scrutinising aspects of administration. The other two speakers in the series, the Ombudsman and the Auditor-General, fit that theme, which is an important one, very well. In one sense, the Administrative Review Council does too. The Council is an integral part of the administrative review system which over the past 13 years has played a major part in achieving greater openness and accountability at the Commonwealth level of government in Australia. Because it is in effect the Council’s role to monitor the operation of the entire review system and to advise the Government accordingly, the Council largely designs its own work program and has the responsibility of choosing those aspects of the system on which it should concentrate its efforts from time to time. Inevitably, much of the work of the council throws light on the activities of the executive branch of government of particular components of it.

The Council differs from the other participants in this series, however, as a body whose primary function is to advise government on what might loosely be described as policy questions arising within the ambit of the administrative review system. The Ombudsman and the Auditor-General, by contrast, although dependent of government to implement their findings, have more substantive functions.

Significantly, both also provide advice directly to Parliament. On a spectrum of statutory authorities running at one end from bodies which advise government on particular references to, at the other, bodies with executive functions, the Council would be closer to the former although, perhaps, a little further down the line. If they were on the spectrum at all, which their special affiliation with the Parliament must leave open to question, both the Ombudsman and the Auditor-General would be closer to bodies with substantive functions of their own.

In my contribution to this lecture series I have therefore chosen to focus on the quite distinct circumstances of advisory bodies established by statute. Much of what I have to

say initially has been informed by my experience with the Administrative Review Council, and the second part of the lecture will deal specifically with the functions and operation of the Council. I intend to begin with some general observations about advisory bodies, however, the relevance of which is not confined to the Council. I hope that they might have the effect of stimulating thought about the role which statutory advisory bodies play in the overall structure of government.

Statutory advisory bodies have received very little detailed attention as a phenomenon in their own right. By contrast, statutory authorities generally and, more recently, independent statutory officers, have been the focus of quite a lot of research and writing. At one level the issues that arise are the same. Where do these bodies fit within the traditional theories, to which we still cling, of ministerial responsibility to Parliament for the business of government? What relationship do they have to the departments of state, particularly for the purposes of resource allocation and management? In the case of advisory bodies, however, these issues may take different forms or require different emphases, because of the advisory function itself.

## **Advisory bodies**

There are three features of the circumstances of advisory bodies which raise particular questions for their relationship with the rest of the system.

The first is that, like other statutory authorities, advisory bodies have links with both the government and the Parliament which must be accommodated appropriately and consistently with constitutional principle. The functions of most advisory bodies require them to advise the Government, rather than Parliament. On the other hand, the fact of creation by statute gives such bodies a special standing, which may have implications for both the political and judicial processes. While accepting that advisory bodies are part of the executive branch, it is clearly appropriate in these circumstances that the Parliament from which they derive their authority takes a continuing interest in the way that authority is used.

The second feature concerns the relationship between an advisory body and its portfolio department. The reliance of such bodies on departmental support and advocacy is most obvious in relation to resource allocation although it occurs in other contexts as well. An advisory body can effectively be stymied by an inadequate allocation of resources, whatever the lofty goals of its constituent statute.

The third feature is the need for advisory bodies to operate independently in formulating the advice which they give to government. This flows from the purpose for which they are established. In most cases the justification for creation of a statutory body to give advice to Government is to introduce expertise of a particular kind or kinds into the decision-making process. Variations on this theme sometimes occur where the advisory body is required to canvass public opinion, or to represent the views of a particular segment of the community. Even in these cases, however, the essential function of the body is to offer facts or opinions which would not necessarily find their way into the process otherwise. Both the Government and the Parliament are entitled to rely on the integrity of that advice. In such a scheme, bureaucratic and political perspectives are introduced after the advice is given. They may result in the advice being modified or, perhaps, not accepted at all, but at least everyone will know where they stand.

If the views of the advisory body are not formulated independently, within its terms of reference, their value as an element in the decision-making process is lost. From the standpoint of the community, at least, the exercise has been a waste of time and money. From the standpoint of the Parliament, moreover, the true responsibility for the decision ultimately taken is likely to be confused. A decision of a Minister to act on the advice of a statutory body established for the purpose may be subject to a different sort of scrutiny to a decision within the department and/or ministry in the traditional way. If the advice is not in fact independent, it is relevant for the Parliament to know.

These features suggest some standard principles which might be adopted, or considered for adoption, in relation to statutory advisory bodies.

1. There should be a statutory requirement for reports from such bodies to be tabled in the Parliament, within a fixed period after submission to government. This at least makes the report a public document and its existence a matter of public knowledge.
2. The ambit of the terms of reference within which the body is being asked to give advice must be clear and public. In some cases, of which the Administrative Review Council is an example, its functions will be fully described in its constituent statute. In others, including the Australian Law Reform Commission, the body is dependent on formal terms of reference from government which, again, describe the ambit of the advice required. Under a third technique, the constituent statute describes the subject matter on which advice is or may be sought, but enables it to be further circumscribed by directions or guidelines issued by the Minister. The principles espoused here demand that any such directions or guidelines be made public, preferably by tabling in the Parliament. To the extent that these instruments qualify or supplement functions conferred on a body by statute, there is a question whether they are legislative in character and should be subject to disallowance as well as tabling. This was one of the issues raised at the conference on rule making hosted by the Administrative Review Council earlier this year.
3. The constituent statute should prescribe criteria or selection mechanisms for appointment to the advisory body. The criteria should be set in the light of the function which the body is intended to perform. They may well need to be phrased in general terms, so as not to unduly inhibit appointments. Even on this basis the existence of criteria will require appointments to be justified and enable them to be evaluated by reference to the purpose for which the body was created. This requirement would not only help to ensure that advisory bodies were satisfactorily constituted but would have the advantage of focussing attention on the purpose of the body at the time of its establishment.
4. An independent secretariat should be provided to service each statutory advisory body, adequate to the purpose for which the body is created. It is unrealistic to expect a body to provide high quality independent advice if it is limited to a pool of hard-pressed departmental officers for its support.

5. A mechanism might be developed within the Parliament, to review the appropriations to advisory bodies within each portfolio, in the light of the purposes each body is intended to serve.
6. The role of advisory bodies should be borne in mind in measuring their performance. Adoption of recommendations by government alone is too blunt a measure. A high adoption rate may indicate high performance; equally, it may indicate advice unduly tailored to suit known governmental or departmental preferences. A low adoption rate may have implications for the performance of the government or the department, as well as the advisory body itself. There are circumstances, moreover, in which high quality, expert advice has an important educative effect, however unlikely it is to be accepted in toto in the short term. There are often circumstances in which it cannot be clear-cut whether advice has been accepted or not, in whole or in part.

## **The Administrative Review Council**

For the remainder of the paper I propose to describe the role and operation of the Administrative Review Council, in the light of some of the issues I have identified earlier.

The Council was established by the *Administrative Appeals Tribunal Act 1975*, as a component of an integrated, reformed,

Commonwealth system for administrative review. The three principal elements of the system are

- an Ombudsman, to deal with complaints about what may loosely be described as maladministration;
- the *Administrative Decisions (Judicial Review) Act 1977* (AD(JR) Act), providing a simplified process and codification of the grounds and remedies for judicial review in the Federal Court, including a right to reasons;
- the Administrative Appeals Tribunal (AAT), as a general appeals tribunal providing a mechanism for high quality, independent review on the merits.

The Council's statutory function is to advise the Attorney General on the matters set out in section 51 of the AAT Act, which between them effectively cover all aspects of administrative review at the Commonwealth level which were features of the system in the 1970s. They do not encompass features more recently introduced, most notably the FOI and privacy legislation, and there is a question whether they should do so. Nor do they extend to the mechanisms for review of decisions of the ACT administration since self-government, although a close relationship continues to exist between the two review systems. The admittedly short experience so far points to a need for some ongoing monitoring of the operation and scope of administrative review in the ACT, by a body constituted by the ACT legislature for the purpose.

The manner of the creation of the Council suggests that the primary focus of its advice initially was expected to be the operation and jurisdiction of the AAT, perceived as the

most innovative feature of the new system. The Council's terms of reference, however, have enabled it to adapt its activities to the changing needs of the review system as it has evolved. While the Council does not depend on references from the Government, requests to deal with particular issues are of course given priority and met as quickly as circumstances permit.

## **Membership**

The Council has 13 members. Three of them are ex officio: the President of the Australian Law Reform Commission (ALRC), the President of the AAT and the Ombudsman. The ex officio membership has proved an important feature of the constitution of the Council. The co-ordination of administrative review at the Commonwealth level is one of its most distinctive features, justifying its description as a 'system' rather than as a series of disparate review bodies. The participation of the Ombudsman and the President of the AAT enables the Council to monitor and maintain that co-ordination as well as providing a direct source of information and understanding for the performance of its other statutory responsibilities. The links with the ALRC has facilitated co-ordination of a different kind, between the work programs of these two bodies. Two current projects in which this collaboration has practical significance are customs and multiculturalism. All three ex officio members, of course, are valuable contributors to the work of the Council as individuals in their own right.

The remaining 10 members of the Council are appointed on a part time basis in accordance with criteria set out in section 50 of the AAT Act. The criteria are general but have served the purpose foreshadowed earlier of focussing attention on the particular qualifications of individuals proposed for appointment to the Council. Over the years a pattern has begun to emerge in the composition of the Council, one of the most distinguishing features of which is its diversity. The current membership, for example, might be assigned to the following categories:

- Representatives of the community which uses the review system.
- Public service officers traditionally at departmental secretary or deputy secretary level. Line departments and central agencies are usually represented. The line departments are significant users of administrative review.
- The central agencies are the Department of the Prime Minister and Cabinet and the Attorney-General's Department. The link with the Department of the Prime Minister and Cabinet is particularly important given the need for review issues to be considered at a comparatively early stage in the formulation of policy. The link with the Attorney-General's Department has now become traditional and is founded in common sense. It is one mechanism for dealing with the problem which all advisory bodies face, of competing advice to the Minister from the portfolio department. While cross-membership alone cannot prevent such competition, it at least engenders mutual understanding between the department and the advisory body.
- Members drawn from the private sector, with business or management qualifications.

- Members of the legal community, for example judges, legal practitioners and academic lawyers.

Another hallmark of the Council's membership, which also has become traditional, is its quality. The Council has generally been fortunate enough to attract members who are leaders in their fields and able to speak authoritatively from their particular perspective. It never ceases to amaze me that such busy people contribute so whole-heartedly to the work of the Council and I take this opportunity to put my appreciation of that fact on record .

## **Secretariat**

In view of my earlier remarks I should note that the Council has a secretariat of its own, which has convinced me of the importance of this arrangement. Not only does a separate secretariat assist the Council to provide independent advice to the government, but it tends to enjoy the confidence of other participants in the administrative review process, whether from the public sector, the community or the review bodies themselves. Again, the Council has benefited greatly from the talented array of directors of research and project officers it has managed to attract, who have been essential to the success of its operation.

## **Work program**

The work program of the Council over time can be divided into three phases.

Initially, the Council concentrated heavily, although not exclusively, on identifying the principles which should govern review on the merits for the purposes of deciding which jurisdictions should be conferred on the AAT. It did so by systematically examining each of the major portfolios in which Commonwealth decision-making impacts directly on individuals. Social security, tax, customs, veterans' affairs and migration were dealt with in that way.

By the middle of this decade, the relevant principles were fairly well established and the Council had reported to the government on decision-making in the more obvious portfolios. A change of emphasis thus became possible. Review on the merits remains an important part of the work of the Council but it is no longer its major preoccupation. The Council's activities in relation to merits review, moreover, are taking new directions. First, the Council has recently embarked on an examination of decision-making in some of the remaining portfolios which has a more complicated aspect. Often, for example, as in the community services and health portfolio, it involves decisions taken in the course of administering grant programs to the States. There is an important and difficult question, presently being examined by the Council, how the principles which underlie the review arrangements should be implemented in relation to decisions of this kind.

A second development which has affected the merits review role of the Council is the growth in the number of review tribunals in addition to the AAT. Some of these are intermediate tribunals, providing first tier external review in large volume jurisdictions, and have been established with the encouragement of the Council. The Social Security appeals Tribunal, the Veterans' Review Board and the Student Assistance Review

Tribunal fall into this category. More recently a new single jurisdiction tribunal, the Immigration Review Tribunal, was established, with no formal links with the rest of the system.

The creation of additional review tribunals clearly has the potential to detract from the efficiency of the original concept of a single appeals tribunal. In itself, however, it does not necessarily represent a retreat from the values of capable, independent review on the merits hitherto offered primarily by the AAT. My personal assessment is that such a retreat would now be unacceptable. Nevertheless, in the interests of maintaining both the efficiency and fairness of the system, the merits review aspect of the Council's work now also extends to the activities of the intermediate and single jurisdiction tribunals. Under one of its current projects, the Council is sponsoring a series of meetings between members of all tribunals to identify opportunities for co-operation, discuss issues of current concern, and work out a future relationship between the Council and each tribunal on a mutually satisfactory basis.

The second phase in the evolution of the Council's own work program began several years ago, when the emphasis on extension of merits review was balanced by a roughly equal emphasis on the operation of the system as a whole. An important component of the latter is the accessibility of the system to all groups in the community who might benefit from it. The Council's ongoing access project has identified a range of actual or potential impediments to access including lack of knowledge about the system; costs of using it; deterrence by primary decision-makers or internal review bodies; and perceptions by potential users of the review bodies themselves. The access project is currently running in parallel with the Council's multiculturalism project, which is concerned with the effect of different cultural backgrounds on the ability and willingness of members of the community to question government decisions which affect them. I suspect that one of the major problems we are likely to uncover is lack of knowledge and understanding about the way in which the system of government works. That problem is not, of course, confined to newcomers to Australia, as the report from the Senate Standing Committee on Employment, Education and Training last year made abundantly clear.

The activities of the Council are now moving into a third phase, in which advice to government is linked to a more comprehensive and specific view of the role of the administrative review system, in its broadest sense, in the overall structure of government. I would like to say a bit more about this in my concluding remarks. The Council is take a correspondingly greater interest in those aspects of the governmental structure which impinge upon administrative review. Some evidence of this development is provided, however, by the Council's current project on rule making, launched so successfully in the Senate committee rooms earlier this year.

## **Achievement**

The Council keeps a running record of acceptance or otherwise of its advice, in terms of the Government's response. Information on this matter also is included in its annual report. In general, I think the record is quite good. My purpose here is not to judge the Council's actual performance, however, which is best done by others, but to mention some of the issues that arise in the course of judging the performance of a body like the Council.



Two preliminary points should be made initially. The first picks up the issue I raised earlier, about the approach of the Council in developing its advice to government. As with any advisory body, there is a question whether the advice it would give on the basis of its expertise or accepted principles should be tempered by reference to considerations of what is likely to be feasible or acceptable in economic or political terms. Advice unduly influenced by such considerations may be more likely to be accepted. On the other hand, it may also be less reliable. in the long term, as a basis for the formulation of policy.

The line to be drawn here is a subtle one. Utopian advice is not particularly helpful either and will not be taken seriously. Within the bounds of reasonableness, however, the Council tends to take the view that it should give government the advice which it considers correct or preferable, without being swayed unduly by whether it will be adopted at once. On one occasion when it departed from this approach, in relation to migration review, the result complicated the ensuing debate even further. In some cases the Council deals with this problem by advising on what it perceives to be the correct outcome and also suggesting a fallback position, if that advice is not acceptable. This technique has the danger that the fallback position will be automatically adopted, but at least it makes clear for future reference what the relevant principles are.

The other preliminary point concerns the manner in which government determines whether or not to act on the Council's advice. Under the Australian system of government the reality is that the Minister will be briefed on the advice by the department. There are two potential difficulties with this. One is expertise, particularly where a report is long and complex, or has involved outside consultations and represents a delicate balance between competing principles or interests. Another is the time which the department can dedicate to such work, which may not reflect its own priorities. Over time the Council and the Attorney-General's Department have worked out a *modus vivendi* on this issue which seems to be satisfactory. There is a useful level of interaction between officers from both bodies and the Council has expressed its readiness to discuss its reports with departmental officers when briefs are being prepared.

There are at least four factors which complicate accurate measurement of the effect of Council activities. I mention these here partly to give a better understanding of what the Council does and partly because some of them, at least, are likely to be common to other advisory bodies.

1. The point of time at which an issue reaches the Council is a relevant factor. Sometimes an issue arrives too late: after it has been decided by Cabinet or, worse, included in a bill which has been introduced into the Parliament. The Council is aware that contrary advice is unlikely to alter the immediate course of events at that stage. Nevertheless, it often offers the advice, as a guide to later development of the system. By contrast, sometimes issues are brought to the Council's attention at such an early stage that the Council's views are reflected in the initial formulation of policy. If, as increasingly happens, this contact takes place at officer level with informal reference. to the Council, the Council's advice will not appear on the public record although it will have influenced the outcome on the issue.

2. On some occasions the views of the Council influence the action that is taken by government, quite significantly, although the detail is so different that it would not be accurate to say that the Council's advice had been adopted. An example is the migration review arrangements, enacted by the Parliament earlier this year (*Migration Legislation Amendment Act 1989*). Those arrangements differ markedly from the Council's advice. Nevertheless, the need for external merits review of migration decisions and the usefulness of a preliminary filter of some kind in such a large volume jurisdiction are both features of the new system in which the Council's influence can be seen.
3. Sometimes the Council's advice floats ideas which may take a while to become accepted but which ultimately are likely to influence government action. One example may be the work the Council is presently doing on the review of decision taken in the course of intergovernmental arrangements. Another may be the advice recently given in the Council's report on the ambit of the AD(JR) Act on judicial review of decisions taken under non-statutory schemes.
4. Finally, there is a significant proportion of the Council's work which does not fully manifest itself in public advice at all. A recent example is the project on intermediate and single jurisdiction tribunals, the chief benefits of which will lie, at least initially, in getting tribunal members together and providing a basis for informed, future action.

## **Administrative review and Parliament**

I would like to conclude by speaking briefly about the relations which the Council has with the Parliament and the relationship between administrative review and the work of the Parliament.

The Council has the normal, formal, relationship of a statutory advisory body with the Parliament. Under section 58 of the AAT Act it is required to prepare an annual report which must be tabled in the Parliament within 15 sitting days after receipt. There is no requirement to table other reports, although to the best of my knowledge they have always been tabled. The Council's shorter letters of advice, which comprise a substantial proportion of its work, are appended to its annual report.

As a body whose statutory function is to advise the Attorney-General, clearly there are certain proprieties that the Council observes in its relationship with the Parliament. If this represents an embryo doctrine of separation of powers between the legislature and the executive, perhaps some thought might be given to what the other elements of such a doctrine might be. Within these broad limits, however, the Council has developed a very good relationship with the Parliament over the years. It has been manifested this year, for example, in the assistance we received from the Department of the Senate in convening our conference on informal rule making and in the submission which the Council made, with the approval of the Attorney-General, to the Joint Select Committee on Tenure of Appointees to Commonwealth Tribunals. Taking a longer perspective, the inclusion of the adequacy of review arrangements in the terms of reference of the Senate Scrutiny Committees has had a substantial and important effect on the development of administrative review.

I think that we may be arriving at a critical point in the development of the Australian constitutional system. If so the opportunity to do something about it exists over the next 10 years, as we approach the centenary of the Constitution.

The need for action arises because Australia as a nation seems, for the moment at least, to have set its sights against constitutional guarantees of individual rights. Whether this position will be maintained indefinitely in the face of the adoption of such guarantees elsewhere in the world is impossible to predict. The Australian debate on the issue however, is consistently so hostile, not to mention confused, that it does not seem worthwhile to pursue it seriously at present.

If that is correct, a much greater burden of protecting individual rights and interests is thrown on the rest of the system and in particular, of course, on the Parliament. The need to ensure that Parliament works effectively becomes correspondingly more important. I suspect that everyone here will agree that there is room for improvement in that regard; in particular as far as the role of the Parliament in relation to executive action is concerned. I note, for example, the recent article in *The Australian* (6 December) about the McIntosh study, which was reported to find 'strong support for reform to balance up the Parliament-executive equation'. A more graphic statement of the problem appeared last month in *The Guardian*, apropos of parliamentary government in the United Kingdom, which described the accountability of the executive to Parliament as a 'thin and painless phenomenon' and concluded that:

'the existence of untrammelled executive power is at the heart of the entire style of British government: leader-dominated, heavily whipped, excessively disciplined, swift and ruthless to act, unaccustomed to the laborious task of building, issue by issue, a political consensus.'

Closer to home and more recently, we have seen the extreme results of an executive dominated parliamentary system in Queensland. No Australian jurisdiction is necessarily immune from those problems.

If we accept that the checks and balances in our system lie primarily in the political process, it will be necessary to look at that process carefully, to ensure that it is able to produce the desired result. It may be that quite significant rethinking will be needed. In my view, however, the relationship between the parliamentary process and administrative review has already been a significant early step in this direction. Administrative review provides avenues for individuals unhappy with executive action to seek redress. It complements the role of Members of Parliament in this regard: and I suspect that there is room for further interaction. I am aware of an incipient idea that all this external review is unnecessary because public agencies and officers can be trusted to carry out their responsibilities properly. All sorts of answers to that are possible, only two of which need to be made now. First, it is a mistake to see administrative review as a denial of the hard work and quality of the public service; but nevertheless, experience tends to show that trust alone is no substitute for good old-fashioned checks and balances over time. And secondly, a large proportion of the issues pursued through review tend to represent error or misjudgment in relation to a particular case and do not raise considerations of trust at all.

Administrative review has turned out, possibly unexpectedly, to complement the role of Parliament in another respect as well. The system has had the effect of enforcing greater openness and impartiality in executive decision-making and focussing attention not only on the decisions made but on the policies underlying them. These features in turn have contributed to the base of knowledge and understanding on which the parliamentary process can work. This approach to achieving an appropriate balance between executive flexibility and public accountability may prove to be the Australian alternative to more familiar constitutional devices adopted elsewhere. It has the potential to make a real contribution to the theory and practice of effective parliamentary government. There is a long way to go, of course, but getting there could be a satisfying process.

## DISCUSSION

**Question** – Are there any proposals for further developments in the relationship between the ARC and the Parliament?

**Professor Saunders** – I think that as far as the Council and the Parliament are concerned we should continue the way we have been going, which has been in my view very satisfactory this year. We keep an eye on the Parliamentary Committee activities and have made submissions to inquiries particularly relevant to us. If we have the time and the resources and we are permitted to do so, we hope to contribute more to that process. Of course, we will undoubtedly also be having some contact with you in the course of the rule making project.

**Question** – It has been suggested that perhaps there should be a Parliamentary Committee with the explicit task of looking after the administrative review system, or sort of oversighting it in a political way. Do you think that is of any value?

**Professor Saunders** – I think that there would be value in that. I know that the Ombudsman has had discussions with chairmen of some of the committees to ask them to look at his annual report when it comes out. Certainly we would be very glad for someone also to have responsibility for looking at our annual report; obviously we all try to flag things that we consider to be issues of current concern when we produce these reports. If you accept that the administrative review system is becoming an important component of government as an aid to openness and accountability and represents in that sense a support to Parliament, I think it would be for someone to assume a degree of responsibility for monitoring developments which affect administrative review including looking at Bills that come in that seem to be relevant. Whether you need a new body or whether it can be done through some of the existing committees is another question.

**Question** – In your view, would it be a good idea for Members of Parliament to be represented on the Administrative Review Council?

**Professor Saunders** – I have thought about that from time to time in the past, partly because I was once on the Archives Council where there is representation from the Parliament which seemed to me to work very well. In some respects it is an attractive idea. The problem it would cause for us is that we do get advice about policy proposals at the point when they are going into Cabinet and I think that that would dry that process up; in fact I am sure it would. I do not think that that would be healthy for the review system. As it is we sometimes have to struggle to get involved at that early stage, which as I said earlier is the stage when it is really helpful to give advice. If we were not involved until the Bill stage, I think that we might find things started going off the rails. So rather reluctantly I think I would have to say that that would not be a good idea.

**Question** – I was particularly interested to hear about reference to the Council's (ARC) Multicultural project currently running in parallel with the Access project. Would you be in a position to expand further upon that Multicultural project?

**Professor Saunders** – We still have to settle some details of the directions in which we are going to go. As part of the multicultural policy that was launched earlier this year, we were given some additional funds to conduct a project on the relevance of cultural diversity both to primary decision making by government and also to the way in which review operates. We have just hired someone to lead that project, which will be based in Melbourne.

The project will concentrate primarily on the relevance of cultural diversity to people who have had a decision made by government which affects them, which they are not happy about. The project is not confined to the review system in the narrow-ish sense that I was talking about it today, with its three core components. It concerns the whole range of mechanisms: whether people can even ring up the department, or use the internal review mechanism, when they are dissatisfied or unhappy with a government decision.

For the first couple of months we will be spending time trying to get some feedback from the communities themselves and seeing what sort of information is already around. Ultimately, having identified the problems and suggested possible solutions, we have to start putting them into effect ourselves in some way.

At that point, as I foreshadowed in my paper the multicultural project simply becomes part of the broader access project. It concerns what people know about government, whether they feel free, or happy to go and complain. Whatever is done in the project I think will have implications for the community as a whole. At least I hope so.

**Question** – Will Council concern itself with action by Government where no-one else is prepared to take action?

**Professor Saunders** – Is it a decision or action that affects individuals?

Yes.

**Professor Saunders** – Only incidentally. We come at the issue in different ways from time to time. We were at one stage involved in the Law Reform Commission's project on standing, for example. We have recently put in a submission to another body to draw its attention to the use of test cases in administrative law, to pick up the circumstances of people who are not willing or able to test a decision for themselves.

Of course in a sense the Access project comes at the problem from another direction by trying to make it feasible for people to use the system if they want to. But apart from that we are not dealing with this as an issue in its own right, no.

**Mr Evans** – Okay, I think we can conclude there.

I think I should mention that the paper that we have heard today will come out in polished form in the series of papers the Senate Department is putting out called Papers on Parliament. It does not quite fit the title but it will appear in that series anyway.

Thank you very much.

