

COMMONWEALTH OF AUSTRALIA

SPEECH

BY

The Rt Hon. W. McMAHON, M.P.

Prime Ministers

ON

Report of the Commonwealth Administrative Review Committee

Ministerial Statement

[From the 'Parliamentary Debates', 14 October 1971]

Mr McMAHON (Lowe—Prime Minister) (11.30)—For the information of honourable members I present the report of the Commonwealth Administrative Review Committee. The Committee was composed of a group of eminent Australian lawyers. It was charged with recommending to the Government the procedures by which administrative decisions could be reviewed either in law or on their merits. The members of the Committee were: Mr Justice Kerr, a member of the Commonwealth Industrial Court, as Chairman; Mr Justice Mason, who was first appointed to the Committee in his capacity at the time as the Solicitor-General of the Commonwealth and who continued to be a member of the Committee following his appointment in 1969 as a Judge of Appeal of the Supreme Court of New South Wales; Mr R. J. Ellicott, Q.C., who joined the Committee on his appointment as Solicitor-General of the Commonwealth on 15th May 1969; and Professor J. Whitmore, presently Dean of the Faculty of Law in the Australian National University and an acknowledged authority on administrative law.

The report is a valuable contribution to Australian study of the subject of administrative review. It reflects the considerable expertise and industry which the

members of the Committee brought to their task. A glance at the chapter headings of the report will serve to indicate the breadth of the Committee's consideration of the matters referred to it. The report canvasses the problems associated with the review of administrative decisions. Against the background of experience in some overseas countries, it discusses the efficacy of traditional means of redress of grievances, including by representations by members of the Parliament. It notes the steps taken by the Parliament itself in particular statutes to provide for review of the decisions of administrative tribunals. It examines the adequacy of the traditional review procedures through the courts by the prerogative writs of mandamus, prohibition and certiorari. The Committee has concluded that a Commonwealth administrative court should be established to provide a means for judicial review of the decisions of Commonwealth Ministers, officials and administrative bodies. The jurisdiction of the court would be limited to judicial review on legal grounds. Alongside the court would be established an administrative review tribunal. The tribunal would, in appropriate cases, review on the merits the exercise of administrative discretions under Commonwealth statutes and regulations.

In addition, the report outlines a proposal for an administrative review council. The council would be charged with supervising the procedures of administrative tribunals, and with making recommendations as to the administrative discretions to be reviewed on their merits by the tribunal. The tribunal would be assisted by a general counsel for grievances and a small research staff. The general counsel for grievances would be a member of the council and have a right of audience before both the Commonwealth administrative court and the administrative review tribunal. It can be seen that the Committee has produced a report which sets out in an informed and elegant fashion a comprehensive structure for administrative review. Even from this summary honourable members will appreciate that the report will require considerable study. We have decided to make it available at this stage in order to promote informed and considered discussion in the Parliament and in public, academic and professional circles.

The Government has not had an opportunity to consider the report in detail. But we have decided that immediate action on 2 fronts is appropriate. A group of 3 people will be appointed to examine existing administrative discretions under Commonwealth statutes and regulations and to advise the Government as to those in respect of which it considers a review on the merits should be provided. This study of needs will proceed immediately, and ahead of any decisions about further aspects of the report. We intend that the group to study and make recommendations on the review of administrative discretions under statute and regulations will be constituted at a high level. It will include perhaps one member of the Committee whose report is now being tabled, a very senior and experienced public servant or ex-public servant and perhaps one other with wide experience in the legal, political or administrative fields. In the light of the recommendations from the group and of responses from those interested in the report now tabled, the Government will be able to determine in detail what additional arrangements for administrative review may be necessary.

In addition, the Government has decided to ask the Attorney-General (Senator Greenwood) to institute a review of the prerogative writ procedures available in the

courts. We accept the comment of the Committee that the legal grounds on which remedies can at present be obtained are limited and often complicated. The Attorney-General's review of remedies available in the courts will take place concurrently with the study I have mentioned of the existing range of administrative discretions under statute or regulation. This review should also lead to recommendations which the Government will consider. The Government believes that these two immediate decisions relating to the report of the Commonwealth Administrative review committee will be taken as a tangible demonstration of the significance it attaches to the protection of the rights of individuals at a time when governments exercise extensive powers on their behalf.

I think it appropriate to add at this stage 2 comments. The first is that this report should be of particular concern to members of the Parliament. They themselves have a significant role in the review and criticism of the administrative processes. It is important that their own role be regarded as central and that any steps taken in response to the report should have this in mind. My second comment relates to the possibility of these reforms causing delays in the administrative process. The Government, and the Commonwealth Service, are often criticised for delays that occur in administration. In large part, these are due to the need for co-ordination and for clearance to ensure that all aspects of any particular matter are fully considered. It must be recognised that any substantial extension of institutions and procedures for the formal review of administrative action will in the nature of things add materially both to the time taken in the administrative process and to the costs it entails. I need not remind honourable members that speed and efficiency in the conduct of Government business are important both for the Government itself and for those who rely on decisions of the Government. I believe honourable members will welcome the report and the action the Government proposes to take. I commend the report to the House for consideration. I present the following paper:

Report of the Commonwealth Administrative Review Committee—Ministerial Statement,—14th October 1971.