

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Program 1.1 AJD

Question No. 99

Senator Boyce asked the following question at the hearing on 14 February 2012:

1. How many inquiries/references is the Administrative Review Council currently undertaking? What are the reporting dates for these inquiries?
2. Is the ARC maintaining a 'watching brief' on agency adherence to ARC report number 20 in regards of use of coercive powers?
3. Is the ARC fully resourced in terms of ARC staff and ARC members of the support staff?
4. There has been some recent media re to the Model Litigant Rules, has the ARC considered reviewing these?

The answer to the honourable senator's question is as follows:

1. The Administrative Review Council (the Council) is currently working on an inquiry into the Federal judicial review system. The Council is undertaking the inquiry at its own motion under s 51 of the *Administrative Appeals Tribunal Act 1975*. As such, there is no reporting date for this inquiry. The Council will produce a report outlining its findings and recommendations. Section 51C of the *Administrative Appeals Tribunal Act 1975* requires that the Council present its reports to the Attorney-General, and that the Attorney-General table the report before each House of Parliament within 15 sitting days after the Attorney-General receives the report.
2. The Council's Report No 20 is titled *Review of Pension Decisions under Repatriation Legislation* (1983). However, the Council discussed the use of coercive powers by government in Report No 48, *The Coercive Information-gathering Powers of Government Agencies* (2008). In that report the Council identified 20 best practice principles. The Council put forward the principles as a "guide to fair, efficient and effective use of coercive information-gathering powers" (ix). The Council recommended that "Government should take them into account when offering such powers to new agencies, when reviewing the powers of existing agencies, and when determining the annual expectations of agencies" (ix). The Council did not recommend any ongoing monitoring role for the Council in relation to these principles.
3. Currently the Council has 13 members. Section 49 of the *Administrative Appeals Tribunal Act 1975* states that the Council will consist of five ex officio members and not fewer than 3 or greater than 10 other members.

The ex officio members of the Council are:

- the President of the Administrative Appeals Tribunal,
- the Commonwealth Ombudsman,
- the President of the Australian Law Reform Commission,
- the Australian Information Commissioner, and

— the President of the Australian Human Rights Commission.

Currently, in addition to the ex officio members, the Council has seven appointed members:

- Colin Neave, AM, Chairperson, Legal Services Board of Victoria (Council President)
- Mr Roger Wilkins AO, Secretary, Attorney-General's Department,
- Mr Andrew Metcalf, Secretary, Department of Immigration and Citizenship,
- Ms Linda Pearson, Commissioner, New South Wales Land and Environment Court,
- Dr Melissa Perry QC, Barrister,
- Ms Glenys Beauchamp PSM, Secretary, Department of Regional Australia, Regional Development and Local Government,
- Dr Matthew Groves, Associate Professor, Monash University Law School, and
- Ms Sue Tongue, Consultant.

The Council is supported by officers within the Attorney-General's Department. Currently one Principal Legal Officer, one Senior Legal Officer and one Legal Officer provide support to the Council as part of their work in the Administrative Law Unit, under the supervision of the Assistant Secretary of the Justice Policy and Administrative Law Branch.

4. The Council has not considered an inquiry into the Model Litigant Rules. The functions and powers of the Council are set out in s 51 of the *Administrative Appeals Tribunal Act 1975*. The Council would only be able to look at the Model Litigant Rules insofar as they had a connection to the powers and functions listed in s 51.