

TRIBUNALS AND ACCESS¹ TO JUSTICE

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On 6 September 2001, the Queensland Attorney-General Rod Welford, was reported as saying² that '[a] tribunal could be established with the power to review all government administrative decisions'. At the same time the report noted that 'no decisions on amalgamation of the review bodies into a single structure, a tribunal with special divisions, or whether one or two bodies should remain separate' had been made. However, the Attorney-General did flag that 'efficiency would improve by having a shared registry where people could file all their applications in the one place'.³ So it appears that at least co-location of tribunals is contemplated.

This paper raises a number of questions:

- What is the current system?
- What is happening elsewhere which might give a pointer to a desirable development in Queensland?
- Is the current system in need of change?
- What is the optimum structure for any tribunal system? Should it have a general jurisdiction merits review tribunal or are specialist tribunals preferable?
- What are the desirable elements of any reform?
- Who should monitor the system?

I BACKGROUND AND CURRENT SYSTEM

In 1993 the Electoral and Administrative Review Commission (EARC) recommended the establishment of a generalist merits review body, the Queensland Independent Commission for Administrative Review (QICAR).⁴ That decision, if implemented, would have seen the over 130 existing review bodies reduced to 26, the creation of appeal rights for over 1000 decisions not then subject to review, and the setting up of

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¹ The *Macquarie Dictionary* defines 'accessible' as '1. easy of access; approachable. 2. attainable: *accessible evidence*. 3. Open to the influence of ...: *accessible to bribery*'.

² At a function hosted by the Australian Institute of Administrative Law (AIAL).

³ S Monk, 'Tribunal plan to review government decisions', *Courier Mail* (Brisbane), 6 September 2001.

⁴ Electoral and Administrative Review Commission, *Report on Review of Appeals from Administrative Decisions* (1993) Vol 1, para 70, xxviii. The report followed the recommendations of the Fitzgerald Report: G E Fitzgerald, *Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (1989) which had criticised the absence of a body offering merit review of decisions in Queensland (at 128).

the Queensland Administrative Review Council as ‘an independent body to promote and co-ordinate the whole Queensland administrative review system’.⁵ The EARC report noted that the start-up cost of the development would be about \$8.3 million with recurrent operating costs being about \$10.2 million. That compared with the existing costs of about \$8.75 million a year. However, the proposed tribunal system would review nearly double the number of decisions as compared with the 2,000 under the existing scheme, so there were considerable cost savings for decisions which would be transferred, even excluding the cost of court review, estimated at a further \$1 million.⁶

The report also noted that the submissions on this issue had been almost universally supportive of the proposal, only the Ombudsman, Treasury and two local authorities expressing reservations on grounds of need and cost.⁷ In particular, EARC commented that there was ‘no objection by private individuals, or business organisations, all of whom indicated approval’.⁸

Although the Parliamentary Committee on Electoral and Administrative Review (PCEAR) endorsed the recommendation for a general jurisdiction review tribunal, the report did question the estimated costs of the proposal.⁹ So there the matter rested, an opportunity lost, until 1999 when the Legal, Constitutional and Administrative Review Committee of the Queensland Parliament, in its review of the office of the Queensland Ombudsman, recommended reactivation of the EARC and PCEAR proposals.¹⁰ That recommendation, coupled with the speech of the Attorney-General in September, may flag the government's revived interest in making changes to the tribunal system in the State.

II TRIBUNAL REFORM IN THE OTHER STATES AND TERRITORIES

In the meantime, changes have been occurring elsewhere. The prototype of a general jurisdiction tribunal was the Commonwealth's Administrative Appeals Tribunal set up in 1976¹¹ as part of a package of administrative law reforms.¹² That package has received warm commendation outside Australia. Professor Corder referred approvingly to the model when recommending administrative law reforms in South Africa;¹³ the developments have been lauded in Canada¹⁴ and more recently in the United Kingdom

⁵ Ibid xxix.

⁶ Ibid paras 64-66, 68.

⁷ Ibid para 20.

⁸ Ibid.

⁹ Parliamentary Committee on Electoral and Administrative Review, *Report on Review of Appeals from Administrative Decisions* (1995) 124-125.

¹⁰ Legal, Constitutional and Administrative Review Commission, Queensland Parliament, *Report of the Strategic Review of the Queensland Ombudsman*, rec 22.

¹¹ *Administrative Appeals Tribunal Act 1975* (Cth). The Tribunal commenced operation on 1 July 1976.

¹² These included the statutory code for judicial review by courts, the *Administrative Decisions (Judicial Review) Act 1977* (Cth), the *Ombudsman Act 1976* (Cth), the *Freedom of Information Act 1982* (Cth).

¹³ H Corder and Tiyanjana Maluwa, ‘Administrative Justice in Southern Africa: Background and some issues’ in H Corder and Tiyanjana Maluwa (eds), *Administrative Justice in Southern Africa* (Department of Public Law, University of Cape Town, 1997) 6, 15.

¹⁴ Terence G Ison, ‘The administrative appeals tribunal of Australia: a study paper prepared for the Law Reform Commission of Canada’ (Law Reform Commission of Canada, 1989).

Leggatt report on tribunals, which noted that the Commonwealth's development of a merits review tribunal model was the 'closest to the kind of coherent tribunal system we were contemplating'¹⁵ and that the United Kingdom had much to learn from Australian practices in this field.¹⁶

The adage 'a prophet is without honour in the prophet's own country' is illustrated strikingly with regard to the spread of the general jurisdiction model of tribunal within Australia. It was not for another eight years that a State chose to follow suit. The Victorian Administrative Appeals Tribunal was established in 1984.¹⁷ Another five years passed before the next move, the replication of the Commonwealth system in the Australian Capital Territory, when it achieved self-government in 1989.¹⁸ Two years later in 1991, South Australia became the first State to locate its general administrative review jurisdiction in a court, the District Court.¹⁹ So in 1995 when PCEAR reported, only one State, Victoria, and one Territory, the ACT, had followed the Commonwealth model and another State, South Australia, had taken the intermediate step of locating its administrative review jurisdiction within its court system. In other words, the prophet had remained without honour for a considerable period in most States and Territories.

However, in the six years since 1995, use of the single, generalist, model has accelerated, albeit the model has been adapted. In 1997, New South Wales set up the Administrative Decisions Tribunal,²⁰ to combine a general jurisdiction administrative tribunal with existing civil jurisdiction. Victoria has followed suit. That State abandoned its administrative review-only tribunal and in 1998 set up a tribunal which brings under the one tribunal roof routine civil (citizen v citizen) matters as well as challenges to administrative decisions.²¹ The combination of matters in the Victorian Civil and Administrative Tribunal gives it a caseload of over 90,000 cases per annum and makes it the largest and busiest tribunal in Australia.²² The flexibility of the model is indicated by the fact that the New South Wales and Victorian tribunals make both primary and review decisions.²³

Western Australia is poised to follow the New South Wales and Victorian model and combine low-level judicial with administrative review in a Western Australian Civil and Administrative Review Tribunal (WACART).²⁴ The Tasmanian government has also drafted a Magistrates Court (Administrative Appeals Division) Bill 2001 which places the administrative review jurisdiction in the Magistrates Court in that State. When

¹⁵ Sir A Leggatt, *Tribunals for Users One System, One Service: Report of the Review of Tribunals* (2001) Part II, Individual Tribunals, The Australian Example, para 3.

¹⁶ Ibid for example 1.18, 2.5.

¹⁷ *Administrative Appeals Tribunal Act 1984* (Vic).

¹⁸ *Administrative Appeals Tribunal Act 1989* (ACT). It could be argued that there was minimal choice involved in this development since, prior to self-government, ACT residents had enjoyed the benefits of the Commonwealth's scheme.

¹⁹ *District Court Act 1991* (SA). Section 7 describes the relevant division of the Court as the Administrative Appeals Court.

²⁰ *Administrative Decisions Tribunal Act 1997* (NSW). The Tribunal was not launched officially until 25 February 1999.

²¹ *Victorian Civil and Administrative Tribunal Act 1998* (Vic).

²² *Victorian Civil and Administrative Tribunal Annual Report 2000-2001*, 3.

²³ NSW: *Administrative Decisions Tribunal Act 1997* ss 7-8, 37-38; Vic: *Victorian Civil and Administrative Decisions Tribunal Act 1998* ss 41-42, 44, 48.

²⁴ Gotjamanos and Merton, *Report of Tribunals Review to the Attorney General* (1996) (Gotjamanos and Merton report).

Tasmania and Western Australia have implemented their proposals, only Queensland and the Northern Territory will not have a general jurisdiction tribunal at which citizens who are aggrieved by government decisions may seek review.

III SHOULD QUEENSLAND INTRODUCE REFORMS?

So should Queensland follow these leads and establish a general jurisdiction merits review body? Is the prophet worthy of honour above the Tweed? Queensland already has an Ombudsman,²⁵ a Supreme Court exercising both common law and statutory judicial review,²⁶ and numerous specialist review tribunals.²⁷ These are added to the existing parliamentary review avenues, the media, and increasingly, internal review.²⁸ In addition, Queensland has the *Legislative Standards Act 1992* which defines the core principles which should desirably underpin legislation, including the requirement that legislation which provides for administrative decisions impacting on the rights and obligations of citizens should be 'sufficiently defined and subject to appropriate review'.²⁹ Queensland has also opened the door to access to information held by government through its *Freedom of Information Act 1992* (Qld). Why go further? What is the advantage of having a generalist tribunal, as has been done elsewhere, rather than a series of specialist tribunals? Could it not be argued that the objective in the *Legislative Standards Act 1992* of providing for appropriate review rights is met by having subject-specific tribunals?

Before responding to these specific questions it is salutary to be reminded of the rationale for independent external review of administrative action. The most authoritative analysis of the accuracy of decision-making within government - the Commonwealth Auditor-General's series of reports on executive decision-making - suggests that executive decisions at the Commonwealth level display an error rate which is disturbing. Should a similar analysis be undertaken of decisions within public administration in the States and Territories, there is no reason to doubt that the same results would be replicated.

In an assessment in 2001 of new age pension claims, the Auditor-General estimated that there was an 'actionable'³⁰ error rate (that is significant errors) of 52.1 per cent (+/-6.8

²⁵ The Parliamentary Commissioner for Administrative Investigations.

²⁶ *Judicial Review Act 1991* (Qld); and the Queensland Supreme Court's inherent jurisdiction to issue the equitable and the common law remedies, including the prerogative writs.

²⁷ The EARC report estimated in 1993 that there were over 130 review bodies in Queensland at that time (EARC, *Report on Review of Appeals from Administrative Decisions* (1993) Vol 1, para 18, xxii.) The Department of the Premier and Cabinet Discussion Paper, *Appeals from Administrative Decisions* (2001) 16 estimates that there are some 33 separate external review bodies. The Queensland Government Register of appointees to Queensland Government Bodies, has estimated that at the end of 2001 there were 38 bodies with the title "tribunal" <<http://statauth.premiers.qld.gov.au/stat/list-board.html>>. The disparity clearly suggests that the criteria for deciding what is an external review body differed.

²⁸ EARC, *Report on Review of Appeals from Administrative Decisions* (1993) Vol 1, para 2.147.

²⁹ *Legislative Standards Act 1992* (Qld) s 4(3)(a).

³⁰ An 'actionable' error was defined as an error against one of eight criteria which related broadly to whether the claim was for the 'right person' and related to the 'right product' (or benefit type), was at the 'right rate' and was assessed from the 'right date'. Each of these matters is critical to an accurate assessment of entitlement: Auditor-General Audit Report No 34 2000-2001 Performance Audit, *Assessment of New Claims for the Age Pension by Centrelink* 18-19.

percentage points).³¹ Administrative procedure errors such as incomplete forms, or failure to date stamp forms were higher still at 95.6 per cent (+/-3.5 percentage points).³² Error rates which impacted directly on payments occurred in 27.6 (+/- 5.9 per cent) of new age pension claims.³³ What is more, Centrelink's assessments were very different. Using Centrelink's own quality assurance tools, the error rate for the same period was only 3.2 per cent, within the 5 per cent error rate which was the agreed standard in the business agreement between the Department of Family and Community Service and Centrelink.³⁴ In an earlier audit of special benefit, another income support measure, the Auditor-General concluded that 43 per cent of new claims were incorrectly assessed, and a further 25 per cent were not fully assessed, placing the potential error rate at nearly two-thirds of decisions.³⁵

These figures are consistent with more conservative figures produced by Softlaw Corporation Pty Ltd. Softlaw has assessed the accuracy of government decision-making as part of its provision of expert IT systems to replicate and introduce greater consistency and accuracy in the processes of decision-making under statute. Softlaw's assessments have placed the error rate within government generally as between 25 to 30 per cent.³⁶

If arguably between one in four and sometimes as high as one in two decisions by the executive contain 'actionable' errors which could affect the outcome, there is an urgent need to improve decision-making processes. The implications of defective decision-making are many. Pre-eminently there is the human dimension, confronting the clients of government with bewildering outcomes and a potential loss of legal entitlements. Disputation between citizen and government is likely to intensify as a result, causing stress on both sides of the relationship. There are cost implications for government too, in money mistakenly paid to claimants, and in administrative and other resources devoted to the resolution of disputes arising from contested or defective decisions. That suggests that every avenue should be used which could enhance the possibility that citizens receive their correct entitlements and that the widest selection of administrative review mechanisms should be adopted to keep government accountable.

IV GOVERNMENT-WIDE V SPECIALIST-JURISDICTION TRIBUNALS

So how does a generalist tribunal rather than a series of specialist tribunals better respond to these findings? The advantage of tribunals generally is that they are 'faster, simpler and cheaper than recourse to the courts'.³⁷ But that comment is capable of applying to all tribunals. The biggest criticism of tribunal systems composed solely of specialist tribunals is that their tribunals have been developed in a haphazard fashion.

³¹ Auditor-General Audit Report No 35 2000-2001 Performance Audit, *Family and Community Services' Oversight of Centrelink's Assessment of New Claims for the Age Pension* 15.

³² Ibid 16.

³³ Ibid 27.

³⁴ Centrelink's Procedure and Accuracy Check and Quality on-Line systems.

³⁵ Australian National Audit Office, *Special Benefit, Centrelink, Department of Family and Community Services*, Audit Report No 20 (1999-2000) para 11. See also Commonwealth Ombudsman, *Balancing the Risks* (1999), *Issues Relating to Oral Advice: Clients Beware* (1997).

³⁶ P Johnson, 'Softlaw Corporation Pty Ltd' (unpublished paper, 1999).

³⁷ Sir A Leggatt, *Tribunals for Users One System, One Service: Report of the Review of Tribunals* (2001) Chapter 2, 6.

The result is that there is no consistent pattern of decisions which are reviewable, and no common procedures, making it difficult for citizens bringing claims and those who appear for them. Other criticisms are that they duplicate resources, premises and infrastructure, and are generally an inefficient way to administer administrative justice.

In advocating a general jurisdiction model for Queensland, EARC had this to say:

It is clear enough that the present arrangements do not provide adequate administrative review. There are too many decisions which are either not reviewable at all, or which the review body (eg the Ombudsman) does not have authority and power to change or persuade decision-makers to reverse. Where there are review rights, they are less "accessible" than they could be, and there also appear to be too many review bodies and too many people eligible to review administrative decisions.³⁸

A *Leggatt report*

Similar arguments have been made in the 2001 Leggatt report on tribunals which recommended that the 70 or so tribunals in England and Wales be brought together into a single and separate system. The report proposed a single Tribunal Service to run tribunals under the auspices of the Lord Chancellor's Department. There would be a unified structure for tribunals with like tribunals grouped together in nine divisions and rights of appeal for each group within the same structure. Key aspects of the proposals are evident from the following extracts. They highlight some of the advantages of the general jurisdiction model, namely, coherence, accessibility, and enhanced stature.

- 'The important place which tribunals now play in the modern system of administrative law would best be recognised by forming them into a coherent system to sit alongside the ordinary courts'.³⁹
- 'The overriding aim should be to present the citizen with a single, overarching structure. It would give access to all tribunals. Any citizen who wished to appeal to a tribunal would only have to submit the appeal, confident in the knowledge that one system handled all such disputes, and could be relied upon to allocate it to the right tribunal. This would be a considerable advance in clarity and simplicity for users and their advisers. The single system would enable a coherent, user-focussed approach to the provision of information which would enable tribunals to meet the claim that they operate in ways which enable citizens to participate directly in preparing and presenting their own cases'.⁴⁰
- 'Tribunals should do all they can to render themselves understandable, unthreatening, and useful to users, who should be able to obtain all the information they need about venues, timetables, and sources of professional advice' from a single source.⁴¹

³⁸ EARC, *Report on Review of Appeals from Administrative Decisions* (1993) Vol 1, para 2.149.

³⁹ Sir A Leggatt *Tribunals for Users One System, One Service: Report of the Review of Tribunals* (2001) para 2.25.

⁴⁰ *Ibid* para 3.8.

⁴¹ *Ibid* Overview, para 6.

- ‘The procedural reform of formal dispute resolution processes, in courts and tribunals, involves a distinctive and common set of issues ... [L]eaving procedural reform of tribunals scattered across a series of departments is impeding modernisation’.⁴²

B *NSW Administrative Decisions Tribunal*

Those views have been replicated in this country. In introducing the Bills to set up the Administrative Decisions Tribunal, the Minister for Police, the Hon Mr Whelan, commented that:

The growth of tribunals has fragmented responsibility for determining legal rights, leading to a lack of consistency and in some cases arbitrary decision making. It may also lead to poor resource allocation in relation to decision making.⁴³

Other criticisms he made of the existing system were that:

- The functions, operation and constitutions of tribunals varied enormously;
- Clear conflicts of interest often arise between agencies and their specific tribunals;
- The lack of independence of tribunals leads to a lack of confidence in tribunals;
- Tribunals often lack the commitment or capacity to apply principles of natural justice;
- Tribunal decision-making may become arbitrary, inconsistent and lack coherence;
- The resource allocation to tribunals, especially when each tribunal has its own infrastructure and administrative support, is inefficient;
- It is inequitable for citizens to be faced with different fee structures and time limits when dealing with different tribunals.⁴⁴

C *Victorian Civil and Administrative Tribunal*

In 1998, the Victorian Attorney-General, Mrs Wade, said much the same. In advocating the consolidation of Victorian tribunals, the Attorney-General referred to the ‘problems created by the undisciplined proliferation of tribunals’ and the need for ‘administrative efficiencies and the scope for sittings in rural Victoria’.⁴⁵ In her speech introducing the Bill she said:

The establishment of the Victorian Civil and Administrative Tribunal, to be known as VCAT, will:

- Improve access to justice for all Victorians including the business community;
- Facilitate the use of technology (such as video link-up and interactive terminals), consequently improving access to justice for Victorians living in both metropolitan and rural areas;

⁴² Ibid para 2.27.

⁴³ New South Wales, *Parliamentary Debates*, Legislative Assembly, 29 May 1997, 9605.

⁴⁴ Ibid.

⁴⁵ The Hon Jan Wade MP, Attorney-General, *Tribunals in the Department of Justice: A Principled Approach*, Discussion Paper (1996) 8.

- Complement measures to increase alternative dispute resolution programs by providing a range of procedures including mediation and compulsory conferences to help parties reach agreement quickly;
- Streamline the administrative structures of tribunals, thereby improving their efficiency;
- Develop and maintain flexible, cost-effective practices;
- Introduce common procedures for all matters, yet retain the flexibility to recognise the needs of parties in specialised jurisdictions; and
- Achieve administrative efficiencies through the centralisation of registry functions, improvement of information technology systems and more efficient use of tribunal resources.⁴⁶

The evidence from its *Annual Reports* and speeches by its President, Mr Justice Kellam, suggest that many of these benefits have already been achieved, despite the short time which has elapsed since it has been set up.⁴⁷

D Queensland?

Is there any reason to think these same advantages would not occur in Queensland? There is evidence of some residual scepticism about adopting a New South Wales or Victorian model in Queensland. In a 1999 report commissioned by the Queensland Department of State Development it was suggested that the Queensland business community is indifferent to the advantages of synthesising the Queensland tribunal system.⁴⁸ This attitude contrasts with the earlier view of business reported in the EARC report which expressed support for reform to the system of administrative review.⁴⁹

There are two responses to this indifference. It is arguable that the use made by companies and business interests of tribunals is relatively low.⁵⁰ Of more significance, however, is that in Queensland, more than in other Australian jurisdictions, business has embraced alternative dispute resolution processes at the expense of using courts or tribunals. The reason is that these are seen as being more cost-efficient, more satisfactory in terms of time taken to resolve disputes, and better able to secure the confidentiality of the outcomes than other forms of dispute settlement.⁵¹

This should not lead to the conclusion that alternative dispute resolution, rather than a generalist tribunal, would best meet the needs of aggrieved citizens generally. There are other special reasons for the use by business of alternative dispute resolution. Business

⁴⁶ Victoria, *Parliamentary Debates*, Hansard, Legislative Assembly, 9 April 1998, 973 (J Wade, Attorney-General).

⁴⁷ *Victorian Civil and Administrative Tribunal Annual Reports* for 1999-2000 and 2000-2001.

⁴⁸ Department of State Development, *Report on Administration of Regulations - Enforcement Procedures and Access to Administrative Appeal Mechanisms for Business in Queensland*, March 1999.

⁴⁹ See above n 5.

⁵⁰ Robin Creyke, John McMillan and Dennis Pearce, *Judicial Review Project Draft Report: A Draft Report on a project on the impact of court decisions on government administration*, December 2000. The survey of ten years of judicial review applications found that only 20.5% of applicants were corporations. Similarly, appeals to the Administrative Division of the Victorian Civil and Administrative Tribunal numbered only some 5000 for 1999-2000, of which it is probable that less than half were brought by business interests: *VCAT Annual Report 1999-2000*, 30-36.

⁵¹ Impression from lectures on dispute resolution processes in Queensland, given by the Queensland University of Technology, Bar Practice Course (Brisbane, January 2000).

is better able to access the advantages of these processes since business people and corporations are able to meet their contradictors on equal terms; and they can more easily afford often privately offered alternative dispute resolution. It should be remembered that a prerequisite to achieving a negotiated outcome is that both parties stand on an equal footing. Many applicants for government assistance do not meet this criterion. The cost of alternative dispute resolution is also relatively high, a cost able to be absorbed by business, and warranted by the matters at stake. An individual seeking to overturn the removal of a driving licence needed for occupational purposes, for example, may not want, nor be able, to pay the costs of employing a private dispute resolution service.

So much has been conceded by the Attorney-General when he flagged his interest in changing the current system. As he is reported to have said, his aim 'was to make the system less bureaucratic and more responsive to people's needs'. Moreover, his reference to an administrative appeals tribunal with specialist divisions indicates more than a minimum co-location model and suggests that he is contemplating bringing together tribunals under a common umbrella.⁵² So there is current recognition within government of the advantages of some form of amalgamation.

That said, Queensland could adopt one of two models: simple co-location of all or most Queensland specialist tribunals; or a single, generalist jurisdiction tribunal. The advantages of the co-location model are that it preserves the status quo, retains the flexibility of a variety of specialist bodies, while permitting cost savings from use of a common registry and administrative infrastructure. The disadvantages are that it perpetuates the complexity and lack of coherence of the system, does not permit further savings other than those involved in co-location, and enhances the possibility of tribunal capture by its respective agency. This first option also denies the possibility for development of an administrative law jurisprudence across tribunals on matters of common interest, such as, for example, the failure to notify citizens of decisions, the minimum content of statements of reasons, the circumstances in which tribunals can revisit their decisions, and when tribunals are estopped from acting.

Counter-arguments to a single administrative appeals body with wide jurisdiction are that it would not be cost effective and might lead to greater formalism and inflexibility. The cost argument can be met by examining the books of the VCAT. In its first year of operations, the VCAT dealt with 75,076 cases within its budget of \$18.3 million.⁵³ In its second year of operations, with a slight increase (9 per cent) to the budget (\$20 million), VCAT resolved 89,368 cases, an increased caseload of 19 per cent.⁵⁴ Matters finalised for 2000-2001 exceeded 92,000 with no increase in the cost.⁵⁵ It is clear that VCAT is demonstrating the greater efficiencies from having a unified, not just a co-located, system.

As to formalism and inflexibility, that too is discounted by the Victorian experience. Despite having members of the new tribunal who were formerly magistrates and therefore more familiar with formal court processes, the presence in the VCAT

⁵² Sue Monk, 'Tribunal plan to review government decisions' *Courier Mail* (Brisbane), 6 September 2001.

⁵³ *VCAT Annual Report 1999-2000*, 3.

⁵⁴ *Ibid.*

⁵⁵ *Victorian Civil and Administrative Tribunal Annual Report 2000-2001*, 3.

headquarters in Melbourne of several styles of hearing rooms, and a concerted focus by the presidential members on changing the culture of tribunal members, has helped develop a flexible attitude amongst most tribunal members.⁵⁶ Of critical importance is the need to avoid over-judicialisation of processes. As the Leggatt report noted there was a need for ‘tribunal decision-making processes not ... [to] be excessively elaborate and heavy-handed, if they were to have a pervasive effect in improving agencies' decision-making’. The report went on to note that if they were to be effective processes ‘had to be reasonably replicable in the administrative context, and to take account of the kind of sensible risk-management that administrative decision-makers needed’.⁵⁷ Attention to these issues at the management level can avoid problems developing.

These arguments suggest that not only is a single tribunal structure desirable, but it is also feasible. Embracing the concept of a general jurisdiction tribunal will assist the development of legal principles across government, will make for certainty and will provide a fairer system of administration. These advantages will only occur if there is a common structure and a single body offering merits review akin to the model in New South Wales and Victoria and proposed for the Commonwealth's now dormant Administrative Review Tribunal.

Whichever of the two models is adopted, co-location should be a goal. When tribunals are co-located in a recognisable “Tribunals Centre”, akin to the Courthouse or Court building, when Tribunal Centres are found in each capital city and every major regional centre, and when tribunals are developed under a common statutory umbrella, they will be truly accessible to the public, will have acquired a visibility and a presence which will improve their standing in the community, and will better be able to fulfil their purpose of providing accessible justice to Australian citizens.

V DESIRABLE ELEMENTS FOR REFORMED TRIBUNAL SYSTEM

Even if it is accepted that a coherent, simplified structure for tribunals is desirable, any change to the system will only reap the advantages the change makes possible if certain pre-requisites are met. These include common benchmarks for funding; the assurance of tribunal independence; and a mechanism to monitor compliance with tribunal decisions. It is only if these conditions are satisfied that the improvement generally to decision-making - the systemic effect of administrative review - will occur.

A Funding

Accurate costing of tribunal amalgamation is a chancy business. No Australian jurisdiction has managed to establish how many tribunals exist, much less how much they cost.⁵⁸ Indeed, there is no satisfactory definition of what is a tribunal.⁵⁹ The EARC

⁵⁶ Kellam J (paper presented at the ANU's Public Law Weekend, 11 November 2000); (2001) 29 *FL Rev* 427.

⁵⁷ Sir A Leggatt, *Tribunals for Users One System, One Service: Report of the Review of Tribunals* (2001) Part II Individual Tribunals 40.

⁵⁸ For example EARC report Vol 1, above n 4, paras 2.78-2.82; Gotjamanos and Merton report, above n 24, 25-26.

⁵⁹ Australian Law Reform Commission, *Review of the Adversarial system of litigation: Federal tribunal proceedings*, Issues Paper 24 (1998) para 2.3- 2.9.

report, based on its assessment of what bodies should be categorised as tribunals, estimated that it would cost over \$8 million to introduce a general jurisdiction tribunal for Queensland. However, after the establishment costs had been absorbed, the report indicated that there would be a reduction in the overall costs of the system.⁶⁰ That view appears to be vindicated, as indicated earlier, by the cost savings of bodies like the VCAT.

The Leggatt report addressed the issue of costs at two levels: savings to be achieved from having a single body managing tribunals, and those reaped from centralising the determination of salary levels of tribunal members. The report recommended that there be a co-ordinating body, the Tribunals Service, managing tribunals. The cost of establishing that Service is to be borne by agencies in proportion to the number of cases that each agency generates.⁶¹ This is an additional and new cost. Against this, the report noted that avoiding the duplication of accommodation and services, establishing a common network of hearing centres providing ‘accessible venues for smaller tribunals, and efficiency and economies of scale for the larger tribunals’ means ‘savings can be passed on to departments and authorities in the form of low unit costs’.⁶² The report also recommended that assessment of pay and conditions of individual tribunals be made by a single body.⁶³ In that way, benchmarks and consistent salary scales could be devised so that variations would need to be justified, and justified openly, with further potential for savings.

In a jurisdiction like Queensland which does not have comparable numbers of tribunals or matters to contend with to those which exist in the United Kingdom, it is not essential to set up a new agency for these purposes.⁶⁴ All that is required to concentrate the administration of tribunals, is to use an existing agency such as the Department of Justice. Assessment of salary scales for tribunal members is also desirable and can be achieved by pegging tribunal salaries to public service or judicial salary scales, or by having salary levels decided by an independent body like the Commonwealth Remuneration Tribunal. Use of devices such as these provides for a fair and transparent system and mean that, over time, the increased cost argument can be met.

B Expertise

A criticism of a general jurisdiction tribunal, often made by those within public administration, is that its membership does not boast the expertise of the primary decision-maker, much less of any specialist review body. As Sir Gerard Brennan once remarked in relation to this issue and the Commonwealth's generalist tribunal, the Administrative Appeal Tribunal (AAT):

⁶⁰ EARC report, above n 4, paras 64-66, 68.

⁶¹ Sir A Leggatt *Tribunals for Users - One System, One Service: Report of the Review of Tribunals* (2001), Overview, para 29.

⁶² Ibid para 5.35. The Commonwealth's proposed amalgamation of the major federal merits review tribunals was estimated to result in a net saving of \$13.5m over four years: see The Hon D Williams AM QC MP, News Release, Budget 2000-2001, *Establishment of the Administrative Review Tribunal*, (9 May 2000).

⁶³ Sir A Leggatt, *Tribunals for Users - One System, One Service: Report of the Review of Tribunals* (2001), paras 6.48 - 6.50.

⁶⁴ In England and Wales the Leggatt report estimates that there are some 70 tribunals making over one million decisions annually: Sir A Leggatt, *Tribunals for Users - One System, One Service: Report of the Review of Tribunals*, (2001), Overview, para 2, para 1.1.

There are two chief justifications for providing a system of external merits review: first, the decisions on review are the product of more mature abilities and greater powers than those possessed by the group of primary decision-makers and can reflect a more detached consideration than that which can be given by the primary decision-makers; secondly, the independence of a review tribunal satisfies the individual applicant that perceived injustice at the hands of government can be rectified or at least a fair hearing can be had. If the proposed ART [the Commonwealth's Administrative Review Tribunal proposed to replace the AAT] were to lack the status of the AAT, not to possess the same legal strengths nor to exhibit expertise higher than that possessed by primary decision-makers, to be constituted by members appointed on the recommendation of the Minister whose department's decisions are to be reviewed and to be funded to the extent that that department determines, its utility would be much less than that of the AAT.⁶⁵

The issue can be addressed by appointing members to tribunals who have expertise in all the areas of specialism reviewed by the general jurisdiction review body. The generalist tribunal may also require detailed briefs from agencies or applicants to supplement the general knowledge of tribunal members. More controversially the general jurisdiction tribunal could accord a degree of deference to the fact-finding of the original or review decision-maker, thus obviating the need for the tribunal to second-guess the earlier, more specialist, decision-maker on factual issues. Since it is in the area of fact-finding that much disputation occurs, this solution is rarely likely to be adopted.

Another way of meeting this criticism is to ensure that where expertise is required, that expertise is specified in the statute constituting the reviewing body. In its discussion of the selection processes for tribunal members, the *Better Decisions* report recommended that 'all prospective members should be assessed against selection criteria that relate to the tribunal's review functions and statutory objectives'.⁶⁶ The Leggatt report also recommended that '[s]tatutory qualifications for appointment to all tribunals should ... be amended to provide specific criteria for appointment'⁶⁷ and to ensure that 'candidates will be chosen for their ability and propensity to develop and display the necessary interpersonal skills, as well as possessing other relevant professional skills and knowledge'.⁶⁸

The reference to 'propensity' is significant. Empirical research has indicated that over time, there is a tendency for each member of a multi-disciplinary tribunal panel to acquire a comparable level of expertise to others on a panel.⁶⁹ This too is an argument for discounting the call for specialist expertise, since it suggests that given intelligence, training, and flexibility, a member of a tribunal is capable of developing familiarity with discipline-specific concepts and facts sufficient to enable the member to test and evaluate technical evidence. That too was the conclusion of the *Better Decisions* report which argued tribunal members should at least have core skills and competencies, namely, demonstrable intelligence, analytical skills, an ability to write, and decision-making experience in order to be effective tribunal members.⁷⁰

⁶⁵ 'The Mechanics of Responsibility in Government' *The 1998 Sir Robert Garran Oration* (Institute of Public Administration, Annual Conference, Hobart, 25 November 1998) 2.

⁶⁶ *Better Decisions*, below n 70, para 4.35.

⁶⁷ Sir A Leggatt, above n 39, para 7.23.

⁶⁸ *Ibid* para 7.7.

⁶⁹ J Huck, 'Perceptions of member roles on an inter-disciplinary tribunal' a research report in L Rodopoulos (ed), *'Non-Legal' Members on Review Bodies: Social Welfare Jurisdictions* (1993) 44, 50.

⁷⁰ Administrative Review Council, *Better Decisions: report of Commonwealth merits review tribunals (Better Decisions)*, Report No 39 (1995) paras 4.8-4.20.

These recommendations indicate that the need for specialist expertise should not be overstated. Indeed, it is not a pressing issue in all areas. For example, the assessment of entitlement to funds for income support or deciding whether discriminatory or harassing behaviour has occurred, are matters which reasonably intelligent people are capable of undertaking without specialist expertise. However, in areas such as awarding of occupational licences, assessment of entitlement to medical or pharmaceutical benefits, or determination of environmental, and land disputes, technical knowledge and expertise may be necessary. Nonetheless, having at least core competencies is essential for all tribunal members, particularly if their decisions are to earn the respect of primary decision-makers. Attention to these issues is of critical importance for, as an experienced former tribunal head and member of public administration noted: ‘Appointments strongly influence not only the quality of tribunal decisions but also public opinion and perceptions of tribunals’.⁷¹

C Independence

How to be and be perceived to be independent is one of the most pressing issues for tribunals. The *Better Decisions* report noted, in words which apply generally to tribunals:

The Council ... acknowledges that many issues of independence arise in relation to tribunals as well as courts. It is crucial that members of the community feel confident that tribunal members are of the highest standard of competence and integrity, and that they perform their duties free from undue government or other influence. The Council noted in its discussion paper that satisfaction with a tribunal's performance appears to be highly correlated with opinions as to the quality of its members, and this point has been reinforced during the inquiry.⁷²

Several of the well-recognised methods of achieving an optimal level of independence have been discussed earlier in this paper. Others are sufficiently well-known to need only a brief mention. These include centralising the management of tribunals, ensuring an arrangement for administrative support for tribunals separate from those which apply generally within public administration, managing the appointments process through a single, preferably “neutral” agency, devising a transparent and rational way of allocating administrative costs of tribunals and of determining the salaries of members, and introducing specific statutory criteria which identify desirable membership qualifications. Further, regularly canvassed suggestions are that members have adequate terms of appointment, usually in excess of a parliamentary term,⁷³ and that there should be judges on a tribunal, with the advantage of tenure for either the lifetime or to standard retiring age that is a normal incident of judicial office. Appointment to tribunals of judicial members mean that judges can be allocated to hear controversial or political cases. As a management tool, use of judicial members in such cases insulates tribunal members on lesser terms from any political consequences. Each of these practices, if accepted by the Queensland government, would go some way to ensuring the independence of its tribunal system.

⁷¹ S Skehill, ‘Future Directions in Administrative Law’ in K Cole (ed), *Administrative Law & Public Administration: Form vs Substance* (1995) 335.

⁷² *Better Decisions*, above n 70, para 4.4

⁷³ For example *Better Decisions*, above n 70, paras 4.54-4.66.

Two further steps would cement that outcome: eschewing use of tribunals as “parking spots” for “mates” of politicians; and raising the entry level for tribunal members. The two are interrelated.

D *Apolitical Appointments Process*

The issue of political appointments to tribunals is a contentious one. Australia has seen its share of political cronyism in the appointments process.⁷⁴ How can such practices be avoided, particularly in a system in which appointments are made at the discretion of individual ministers?⁷⁵ The *Better Decisions* report commented on the inquiry into appointments to the Immigration Review Tribunal and called for ‘more open and merit-based selection and appointment processes for all tribunals’ and noted that ‘[s]uch processes would minimise the scope for speculation about the basis upon which members have been selected’.⁷⁶ Open selection meant appointments following public advertisement - the advertisement listing the selection criteria - from a pool of persons who had successfully passed a preliminary assessment of suitability. There would be a register of those who met the criteria and merit-based selection would mean that appointments would be made solely from those listed on the register. Although some of these requirements are met by the appointment processes for some tribunals, there are many examples of tribunals appointment which fall short of such a process.⁷⁷

In England and Wales, an independent Judicial Appointments Commission is under contemplation.⁷⁸ The use of such a body does not obviate ministerial appointments. However, if the proposal is accepted the Appointments Commission will review ‘the processes and policies for making and reviewing ... appointments’ and ‘for handling grievances and appeals’, and will provide an independent filter for the appointments process which will make it harder for political appointments to occur.⁷⁹

An alternative approach has been adopted in Victoria. The President of VCAT, Justice Kellam, has developed a protocol for conclusion with the incumbent government, relating to the selection, appointment, and reappointment processes for VCAT. This form of semi-formal agreement on the issue is an assurance that the processes will be

⁷⁴ For example, see the discussion of the parliamentary inquiry into appointments to the Immigration Review Tribunal in 1994, which followed questions raised in the Australian and Victorian Parliaments, referred to in *Better Decisions*, above n 70, paras 4.29-4.34. Although the majority of the Joint Standing Committee on Migration, a Committee of the Commonwealth Parliament, did not make findings upholding the suspicions, the dissenting minority report by Opposition members criticised the appointments process and particular appointments which had been made. See also the comment by Ms Sue Tongue in Evelyn McWilliams, “‘Tribunals’ code of conduct no safeguard’ *Australian Financial Review*, 12 October 2001, 55. See also comments by Kellam J, President of the Victorian Civil and Administrative Tribunal, concerning political appointments to tribunals in Victoria in ‘Developments in Administrative Tribunals in the last two years’ (Paper presented at the ANU Law Faculty’s Public Law Weekend, 11 November 2000) 3; (2001) 29 *FL Rev* 427.

⁷⁵ *Better Decisions*, above n 70, para 4.66.

⁷⁶ *Ibid* para 4.34.

⁷⁷ For example, the fact that five of the six appointees to the Australian Industrial Relations Commission in September 2001 had an employer-background suggests there may have been an attempt by the Commonwealth Government to “stack” the Commission.

⁷⁸ Sir A Leggatt, *Tribunals for Users One System, One Service: Report of the Review of Tribunals* (2001) para 7.10 referring to the separate inquiry into such a Commission undertaken by Sir Leonard Peach (the Peach Inquiry).

⁷⁹ *Ibid* para 7.9.

more open and merit-based. The Protocol was successfully concluded with the previous Kennett Government. Although the current Government has not yet entered into a comparable agreement, the existence of the previous agreement creates political pressure for the arrangement to continue. The agreement also sensitises those involved to the need to avoid political cronyism appointment practices, and is itself a step forward.

Ideas can also be sought outside the common law and an examination of the French system is instructive. The French have probably the most sophisticated administrative system of the civil law states.⁸⁰ That system is identified by the separation from its court system of the institutions which resolve disputes concerning public administration. This separation of the judicial from the administrative system is an offshoot of the historical antipathy between the Parliament and the courts and resulted in post 1789 Revolution times in a decree forbidding the courts from exercising jurisdiction over administrative matters. The decree created the *Conseil D'Etat* or Council of State, the Council being at the apex of administrative bodies responsible for deciding complaints about matters of administration.⁸¹ This description indicates that the French system of handling complaints against the executive differs markedly from common law systems and in particular the rigid separation of the judicial and the executive system is the antithesis of the common law model.

What is notable about the French system is that the Council is a highly effective institution. The Council 'has been successful in winning the confidence of a public distrustful of lawyers, and also enjoys ... considerable prestige among civil servants, and the public'.⁸² As one commentator noted:

The esteem it enjoys in comparison to other public entities and departments is similar to the special aura surrounding the Supreme Court in the United States of America, or the British House of Lords, and is much greater than that of the Diplomatic Corps or other ministries, including the Ministry of Finance. Its 250 members are chosen from among the most brilliant French civil servants, and constitute a small elite.⁸³

It is this eminence of the French administrative review system which is remarkable and which warrants examination.

Since the administrative review system is regarded as part of the executive, recruitment to the Council of State and its related courts or tribunals is, for the most part, direct from the civil service, either by examination or invitation. Recruitment is generally from the *Ecole nationale d'administration* - ENA, which provides post-graduate training for civil servants. As Falcone notes:

Admission to the ENA is by a competitive examination open to university graduates and members of the civil service. After two years of intensive studies, ENA graduates are classed by order of merit, based on their scores during the more than 16 or 17

⁸⁰ John A Rohr, 'French Constitutionalism and the Administrative State: A Comparative Textual Study' in *An Introduction to French Administration* Institut Internationale d'Administration Publique (1996) 36.

⁸¹ Paul-Marie Falcone, 'The Council of State' in *A Introduction to French Administration*, see n 61, 204-205.

⁸² Ibid 205.

⁸³ Ibid.

examinations taking place along the two-year-training period, and an overall assessment of their studies. On the basis of their ranking, ENA graduates choose from among the administrative positions offered to them. The Council of State and the Inspectorate of Finances ... invariably attract the greatest number of the highest ranking graduates.⁸⁴

Such high regard is generally not bestowed on adjudicative bodies, other than courts, in Australia. The High Court's treatment of tribunals in *Craig v South Australia*⁸⁵ speaks of the lack of respect for tribunals, at least from the perspective of the judiciary. Tribunals in this country are generally seen as a more efficient and cheaper option for challenging decisions, but tribunal membership and work does not have the same social status as membership of the court system and courts have maintained a monopoly over authoritative adjudication. Nor is there more respect for the tribunal system in the United Kingdom. The Leggatt report commented on the inferior status of tribunals in England and Wales as compared with Ombudsman and courts,⁸⁶ and the decreased public confidence in their decision-making which flowed from that poor reputation.⁸⁷ As the report noted: 'All too often those who sit in tribunals see themselves, and are regarded by others, as inferior to the courts'.⁸⁸

What has the French system got that the common law system lacks? There are two possible answers: a reputation borne of the quality and effectiveness of its decision-making over more than two centuries; and a stature and public confidence due both to the high level qualifications required for service in the administrative review system and the intimate experience of public administration which is possessed by its tribunal members. As Falcone pointed out, the adjudicative system:

remains part of the administrative machinery of the state, albeit a highly specialized one.

...

When summoned before the Council deliberating on a litigation, an administrator recognizes that his judges are not strangers to the administrative process. They are not viewed as amateurs throwing legal wrenches into administrative works, which is sometimes the case with high court judges in other countries. On the contrary, French officials are well aware that their judges are administrative experts, who have a high command of the inner workings of public administration, as well as of the rule of law itself.⁸⁹

Could such a system be replicated in Australia? Normally, one should be sceptical about importing practices from a system which is the product of a different history and social system. Nonetheless, there is a lesson from the French experience. The high level training required of its tribunal members has undoubtedly contributed to the quality of the output of the French administrative review system. That in turn has earned the respect granted the Council of State and its subordinate bodies. These two factors are symbiotic in that the requirement for high level qualifications could only be imposed because of the respect accorded to the institution and its status in French society.

⁸⁴ Ibid 207.

⁸⁵ (1995) 184 CLR 163.

⁸⁶ Sir A Leggatt, *Tribunals for Users One System, One Service: Report of the Review of Tribunals* (2001) para 6.51.

⁸⁷ Ibid 10.18.

⁸⁸ Ibid, An Overview, para 12.

⁸⁹ Ibid 213.

Australian jurisdictions could emulate the French experience by imposing educational qualifications which will enhance the skill-level of tribunal members. It is not suggested that candidates should come solely from within public administration, nor that high level and specialist training in the manner which has evolved in France would be feasible in this country. Nonetheless, in time, it could become a pre-requisite for membership of a tribunal in Australia that people have graduated from one of the increasing number of dedicated courses which are relevant to the tribunal experience offered by universities.⁹⁰ If to those specialist qualifications were added courses focusing on public policy and public administration, Australia would be moving in a similar direction to the one charted in France.

The French take pride in their administrative system, including the Council of State. It is a matter for the highest congratulations to be accepted into the elite administrative law stream of government. The entrance examinations are stiff and appointment highly prized. There is no doubt that their tribunal system is a part of the executive. That has not meant that tribunals should be downgraded as compared with courts. The two systems sit proudly side-by side, each fulfilling complementary and important roles. If, as suggested in this paper, a pool of suitably qualified people was to be established in this country, and protocols of the kind concluded in Victoria became the norm, these and the other steps outlined earlier would diminish the likelihood of political appointments.⁹¹ Over time, our tribunal system would be regarded more highly, with the consequence that well qualified and able people would view service on a tribunal as a goal to which to aspire. That in turn would benefit the administrative review system to the ultimate advantage of the thousands of Australian citizens who use their services.⁹²

VI SYSTEMIC EFFECT

There are two goals of administrative review: to redress individual complaints; and to improve the quality generally of primary decision-making, to the advantage of the many who seek benefits or entitlements from government. This goal has consistently been acknowledged,⁹³ but little has been done to implement it - at least in an institutional sense - in Australia. Queensland could lead the way in this critical aspect of administrative review. What is needed is an office or body charged with ensuring that

⁹⁰ For example Monash University's *Decision Making for Tribunal Members* course; and a course for those involved in veterans' law offered by Southern Cross University, both provided for the first time in the last two years. ANU also offers course in Tribunals and Government, and topics of related interest.

⁹¹ The author is under no illusion that the French administrative law system is free of political appointments, a practice adopted in all western countries. Indeed, the practice is institutionalised and there are a fixed number of places which can be filled at the discretion of government - civil service wide. Further, ENA training has also been criticised and even the existence of competitive examination has been queried: Luc Rouban, *The French Civil Service* Institut International D'Administration Publique (1998) 74-75, 81-83.

⁹² In that context it is pertinent to note that a survey of Commonwealth agencies in 1999-2000 seeking their views on external review found that the AAT was the review body with the highest approval rating as compared with the specialist tribunals and the courts. The AAT's achieved its approval rating at 89 per cent for being a mechanisms that ensures that government decision-makers are accountable and a high 78 per cent for ensuring that government agencies comply with the law: R Creyke, J McMillan and D Pearce, *External Review Project*, findings for theme 1.

⁹³ Eg EARC report, Vol 1, above n 4, 438-338; *Better Decisions*, above n 70, Ch 6; Gotjamanos and Merton, above n 24, 182, rec 33.

decisions are implemented in the individual case, that, when courts or tribunals have found anomalies, injustice or inconsistency in legislation or policy, the legislation or the policy is changed, and that front-line decision-makers take account of court and tribunal findings.

Ensuring that public administration heeds what courts and tribunals decide is a product of good communications. A disturbing aspect of an empirical report into dissemination of information from external review bodies within Commonwealth agencies is that the majority of agencies have an *ad hoc* approach to keeping their staff informed of developments. What information is shared is mostly passed on through informal methods of communication such as discussion with colleagues and email.⁹⁴ The finding is of concern since it indicates an absence of focus on the systemic impact of review. If fewer than half of all officers are able to absorb relevant developments, it is unlikely that any lessons are being learned from review bodies, let alone their recommendations implemented. This undermines the potential for external review to produce substantive change in the policy and practice of government decision-making. The findings also mean that agencies are more likely to repeat mistakes.

There have been a range of suggestions about an institutional response to these issues. EARC considered whether QICAR should have a role in monitoring systemic problems, and ensuring that steps be taken on a regular basis to advise government of them.⁹⁵ Ultimately, the monitoring role was allocated by EARC not to QICAR or to the Ombudsman, but to the proposed general administrative review body, the Queensland Administrative Review Council or QARC.⁹⁶ That recommendation has not been implemented. In Western Australia, it was recommended that the Ombudsman investigate non-compliance by an agency of an order made in a specific case, as well as non-implementation generally.⁹⁷ An earlier recommendation from that State's Commission on Government had been that a Commissioner for Public Sector Standards 'would act as a bridge between the [tribunal system] and the rest of the sector when assessing the decisions of the tribunal and their importance for decision-making'.⁹⁸ Again, neither suggestion has been implemented. The Leggatt report recommended that there be a forum for two-way feedback between tribunals and agencies in England and Wales.⁹⁹ That recommendation is based on the twice yearly formal meeting between the head of the Commonwealth AAT and government agencies. It will be interesting to see whether this relatively mild form of monitoring is adopted in England and Wales.

Queensland has the capacity to address this problem and to do so in a way which will be a trailblazer for others. In the search for an appropriate institutional mechanism, the Gotjamanos and Merton report advocated use of the Ombudsman for this purpose. That is an appropriate suggestion, not only because of the relatively high status of Ombudsman generally in Australia, but also because its officers are familiar with the internal processes of agencies, are used to conducting investigation, and have established an enviable reputation for their effective mediating role between citizens

⁹⁴ R Creyke, J McMillan and D Pearce, *External Review Project*, findings for theme 6.

⁹⁵ EARC report, above n 4, recommendation at para 13.75.

⁹⁶ *Ibid* para 13.89.

⁹⁷ Gotjamanos and Merton, above n 24, 170-182.

⁹⁸ P Johnston, 'Recent Developments Concerning Tribunals in Australia' (1996) 24 *FLRev* 331.

⁹⁹ Sir A Leggatt, *Tribunals for Users One System, One Service: Report of the Review of Tribunals* (2001) para 9.17 and recommendation 226.

and government. If Queensland were to implement this suggestion, their efforts would be watched with considerable interest elsewhere in Australia.

VII CONCLUSION

Where to from here? If the suggestions by the Attorney-General are to be implemented in Queensland, it gives the State an opportunity to draw on the experience of the different models of tribunals around Australia to upgrade its tribunal system. It is now timely, given the general acceptance of a generalist jurisdiction tribunal model elsewhere in Australia, Northern Territory excepted, for Queensland to adopt, in some form, a more coherent system. If the opportunity is seized so too will the status of its tribunals be enhanced. To quote Leggatt 'Only so will tribunals acquire a collective standing to match that of the Court System and a collective power to fulfil the needs of users in the way that was originally intended' when tribunals were established as cheaper, fairer and more accessible avenues for justice in our community.¹⁰⁰

¹⁰⁰ Ibid, Overview, para 8.