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**WESTERN AUSTRALIAN CIVIL AND  
ADMINISTRATIVE REVIEW TRIBUNAL  
TASKFORCE REPORT  
ON THE ESTABLISHMENT OF THE  
STATE ADMINISTRATIVE TRIBUNAL**

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MAY 2002



10 May 2002

The Hon Jim McGinty MLA  
Attorney General  
30<sup>th</sup> Floor, Allendale Square  
77 St George's Terrace  
PERTH WA 6000

Dear Attorney

**WESTERN AUSTRALIAN CIVIL AND ADMINISTRATIVE REVIEW TRIBUNAL TASKFORCE  
REPORT**

As Chair of the above Taskforce, I have pleasure in submitting to you the final Report of the Taskforce dealing with the establishment of a Western Australian civil and administrative review tribunal.

In our report we recommend the establishment of such a tribunal to be called the *State Administrative Tribunal* (SAT).

This Report contains the final report and recommendations of the Taskforce following circulation of a draft of the Report to, and consideration of comments provided by, Ministers of the Government, Heads of Departments, the Chief Justice of Western Australia, the Chief Judge of the District Court and the Chief Stipendiary Magistrate.

Yours sincerely

Michael Barker QC  
CHAIR OF TASKFORCE



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## OVERVIEW AND SUMMARY

### THE TASKFORCE

As part of the State Government's program of law and justice reforms, the Attorney General established a Taskforce in March 2001 to develop a model of a civil and administrative review tribunal for consideration by Government.

The members of the Taskforce were:

- Mr Michael Barker QC, Barrister, Francis Burt Chambers, Chair;
- Ms Linda Savage Davis, Director until December 2001, Social Security Appeals Tribunal;
- Dr Robert Fitzgerald, PSM, Executive Director, Policy and Legislation, Department of Justice, until 29 June 2001;
- Ms Merrilee Garnett, Principal Policy Officer to the Attorney General;
- Mr Peter Johnston, Barrister and Senior Fellow, Law School, University of Western Australia;
- Mr Gary Thompson, Executive Director, Court Services, Department of Justice; and
- Dr Stephen Kay, Director, Business Improvement, Court Services, Department of Justice;
- Mr John Young, Deputy Crown Solicitor, Crown Solicitor's Office.

The Executive Officer of the Taskforce was Mr Philip Whyte, Court Services, Department of Justice.

### TERMS OF REFERENCE

The Attorney General stated the following Terms of Reference for the Taskforce:

*The Taskforce is to develop a model of a Civil and Administrative Review Tribunal, for consideration by Government. In preparing this model, the Taskforce is to have regard to:*

- *recommendations made in relevant reports prepared to date including:*
  - *1996 Commission on Government Report;*
  - *1996 Report to the Attorney General on Tribunals;*
  - *1999 Report of the WALRC on the review of the Civil and Criminal Justice System; and*
- *the Victorian, New South Wales, Commonwealth and other relevant models of Administrative Review Tribunals.*

*The report from the Taskforce should address:*

- *the scope or jurisdiction of the Tribunal;*
- *the structure of the Tribunal;*
- *the relationships between the Civil and Administrative Tribunal, the Courts and all boards and tribunals across government which are to remain separate from the Tribunal; and*
- *any other matter the Taskforce considers relevant.*

## **THE CURRENT SITUATION**

There currently exists a large number of statutory bodies usually described as tribunals or boards, as well as ministers and public officials (all of which may be referred to as administrative tribunals), which exercise a wide range of administrative review functions and other administrative powers. Many of these administrative tribunals, together with existing courts, conduct review of administrative decisions.



It has been a long-standing policy concern in this State that, while citizens can turn to a large number of bodies to appeal against particular administrative decisions or apply for the resolution of disputes, there is no coherent, unified and relatively comprehensive system through which they can seek redress of their grievances.

## **PREVIOUS REPORTS**

Proposals to reform the administrative review system have a long history in Western Australia. The first major review of the system was the report in 1982 of the Law Reform Commission of Western Australia (WALRC). It concluded that in place of the many disparate bodies then engaged in review of discrete administrative matters, the various jurisdictions should be consolidated into divisions of the Supreme Court and Local Court.

Since then reports of the 1992 Western Australian Royal Commission and the 1996 Commission on Government and the report to the Attorney General by Gotjamanos and Merton (1996) have further recommended there should be an amalgamation and consolidation of many of the existing jurisdictions into a single, overarching body. Rather than providing for review by the Supreme Court and Local Court, however, they envisaged or proposed the establishment of a single administrative tribunal.

The terms of reference of this Taskforce draw their impetus most immediately from the recommendations of the WALRC in the 1999 WALRC Report, which proposed the following :

*A Western Australian Civil and Administrative Tribunal (WACAT) should be established to amalgamate the adjudicative functions of existing boards and tribunals, except in industrial relations and Workcover areas.*

These various reports recognise the well established distinction between tribunals and courts. While tribunals may share with traditional courts the same features of independence and respect for fairness and legality, they differ from courts in other regards. For example, tribunals :

- a. can be composed of both legal and non-legal experts;
- b. can adopt a wide variety of flexible procedures according to the nature of the matter before them;
- c. can deal with the merits of the matter, and do not merely apply existing legal rights or decide whether a decision was made legally; and
- d. are concerned with administrative decision making and with administrative justice.

The reasons supporting these earlier recommendations went beyond simply the administrative advantages that might result from rationalising a large number of diverse jurisdictions into a single adjudicative body. Major benefits identified included:

- a. the removal of confusion in the public mind if one overarching tribunal was identified as the place where they could seek redress;
- b. the establishment of a body that, by adopting a less adversarial and a more inquisitorial approach, would develop procedures of a less formal, less expensive and more flexible kind than used in traditional courts;
- c. the potential for the development of best tribunal practices, both procedural and in terms of common decision making principles, across the various jurisdictions;
- d. in a democratic context, the provision of a more appropriate and timely means for citizens to obtain administrative justice;
- e. in many instances, the improvement in public accountability of official decision making flowing from heightened scrutiny of administrative decisions; and

- f. avoiding the ad hoc creation of new tribunals to provide administrative review in evolving areas of government decision making.

## **OVERVIEW OF OTHER AUSTRALIAN JURISDICTIONS**

Most governments in Australia have adopted procedures intended, to varying degrees, to meet these ends. The Commonwealth virtually led the way for the common law world with the establishment of a comprehensive package of reforms in the 1970s and 1980s, its setting up of the Administrative Appeals Tribunal (AAT) being the most relevant to the current exercise. The AAT is a general tribunal which replaced a vast number of existing Commonwealth review bodies. With over two decades of experience, during which there has been further growth in the number of single tribunals dealing with particular federal matters, the Commonwealth recently embarked on a review of its system of administrative appeals with a view to consolidating them once again into a single, overarching tribunal.

With differing approaches, each of the other States (except Queensland which currently has the matter under consideration), have adopted a system of administrative review. Most notably, both Victoria and New South Wales have established general administrative tribunals in the last three years. Allowing for variations to accommodate the different history and traditions of Western Australian bodies, these tribunals, particularly the Victorian Civil and Administrative Tribunal, provide appropriate models for Western Australia to consider.

## **PROPOSAL FOR A WESTERN AUSTRALIAN CIVIL AND ADMINISTRATIVE REVIEW TRIBUNAL TO BE CALLED THE *STATE ADMINISTRATIVE TRIBUNAL***

Chapter 4 sets out the primary recommendations of the Taskforce concerning the structure, composition and operation of a Western Australian civil and administrative review tribunal to be called the *State Administrative Tribunal* (SAT) that, in the opinion of the Taskforce, will achieve the required reform of the administrative review system.

The SAT would assume the civil or administrative review functions of the following administrative tribunals and courts:

- appeals tribunals;
- administrative appeals currently heard in the Supreme Court of Western Australia, District Court, Local Court and Courts of Petty Sessions;
- a range of ministerial appeals;
- a number of appeals heard by public officials;
- the disciplinary and supervisory functions of professional, occupational and business tribunals and boards; and
- a number of tribunals and boards that make primary administrative decisions of a personal, commercial or equal opportunity nature.

Additionally, the Guardianship and Administration Board and the Mental Health Review Board would be co-located with the SAT and members of these Boards would become members of the SAT. The President (or Deputy Presidents) of the SAT would chair each of these Boards.

## **THE STRUCTURE, COMPOSITION AND OPERATION OF THE SAT**

The detailed proposals of the Taskforce concerning the structure, composition and operation of the SAT are set out in Chapter 5. The recommendations of the Taskforce emphasise that the SAT is an administrative tribunal, not a court, and should operate fairly, flexibly, speedily and inexpensively.

## **SUMMARY**

The Taskforce believes that the SAT it has recommended will avoid the proliferation of tribunals and boards and various court and ministerial administrative appeal avenues,

reverse the apparent lack of uniformity and confusing variety of both procedures and administrative appeal avenues that currently exist, ensure effective and timely decision making, and provide the people of Western Australia with an administrative review and original decision making system which is independent and impartial and in which the people of the State may have the fullest confidence.



## GLOSSARY

**AAT** - Administrative Appeals Tribunal established by the *Administrative Appeals Tribunal Act 1975 (Cth)*.

**Administrative tribunals** - tribunals, boards, ministers and public officials which exercise a range of administrative review functions and other administrative powers.

**ADT** - Administrative Decisions Tribunal, New South Wales, established by the *Administrative Decisions Tribunal Act 1997 (NSW)*.

**AAT Act** - *Administrative Appeals Tribunal Act 1975 (Cth)*.

**ARC** - Administrative Review Council established by the *Administrative Appeals Tribunal Act (Cth)* to conduct reviews of the Act's operation.

**ART** - Administrative Review Tribunal proposed by the ARC in the Better Decisions Report and in the *Administrative Decisions Tribunal Bill 2000 (Cth)*.

**Better Decisions** - Better Decisions: Review of Commonwealth Merits Review Tribunals, Administrative Review Council 1995. Report to the Commonwealth Minister for Justice (Report number 39).

**COG Report** - Commission on Government Report No 4, July 1996.

**Consumer Affairs boards and committees** - Builders' Registration Board; Building Disputes Committee; Finance Brokers Supervisory Board; Land Valuers Licensing Board; Motor Vehicle Dealers Licensing Board; Painters' Registration Board; Real Estate Business Agents Supervisory Board; and Settlement Agents Supervisory Board, which were the subject of the Gunning Inquiry.

**DOLA** - Department of Land Administration.

**Gunning Inquiry** - Committee of inquiry established in February 2000 under the *Public Sector Management Act 1994* to inquire into the effectiveness and efficiency of seven occupational licensing boards and a dispute resolution committee within the Fair Trading portfolio.

**Gunning Report** - Report of the Gunning Inquiry 15 December 2000.

**Kerr Report** - Report of the Commonwealth Administrative Review Committee chaired by the Hon Mr Justice Kerr, Parliamentary Paper No 144 of 1971.

**Leggatt Report** - Tribunals for Users: One System, One Service. Report of the Review of Tribunals by Sir Arthur Leggatt to the United Kingdom Government, March 2001.

**1982 WALRC Report** - Report on Review of Administrative Decisions Appeals, Project No 26 Part I, 1982, The Law Reform Commission of Western Australia.

**1992 Royal Commission Report** - Report of the Royal Commission into Commercial Activities of Government and Other Matters, November 1992.

**1996 Review** - Report of Tribunals Review to the Attorney General, Commissioner J Gotjamanos and Mr G Merton, August 1996.

**1999 WALRC Report** - Review of the Criminal and Civil Justice System Recommendations - Final Report, Project 92, 1999 The Law Reform Commission of Western Australia.

**SAAT** - State Administrative Appeals Tribunal proposed by the 1996 Review.

**SART** - Administrative Review Tribunals proposed by the COG Report.

**SAT** - State Administrative Tribunal proposed by this Report.

**Temby Royal Commission** - Royal Commission into the Finance Broking Industry.

**VCAT** - Victorian Civil and Administrative Tribunal established by the Victorian Civil and *Administrative Tribunal Act 1998 (Vic)*.

**WALRC** - The Law Reform Commission of Western Australia.

**WACAT** - Western Australian Civil and Administrative Tribunal proposed in the 1999 WALRC Report.



## CHAPTER 1 - THE CURRENT PICTURE

### INTRODUCTION : A RANGE OF ADMINISTRATIVE TRIBUNALS AND ADMINISTRATIVE REVIEW PROCESSES

1. In Western Australia today there are numerous tribunals or boards, as well as ministers and other public officials, that do not form part of the judicial or court system but which are empowered by statute to make administrative decisions affecting a range of personal, professional, occupational, trade, industry and commercial activities. For ease of reference these are called collectively 'administrative tribunals' in this Report. While not courts, these administrative tribunals are in some respects akin to courts in that they are intended to be impartial in their decision making processes and make decisions which are intended to be independent of previous decisions and the public officials who made them. Additionally, existing courts are also authorised by statute to hear 'appeals' against a variety of administrative decisions, in circumstances where the appeal is not limited merely to questions of law.
2. The administrative tribunals and courts with which we are concerned include:
  - a. appeals tribunals where persons affected by certain administrative decisions may appeal to an independent and impartial tribunal to have the merits, not just the legality, of the decision reviewed;
  - b. Supreme Court of Western Australia, the District Court of Western Australia, the Local Court and Courts of Petty Sessions which are empowered to conduct a wide range of appeals, usually by re-hearing an earlier administrative proceeding;
  - c. ministers of government and public officials who are authorised to review a wide range of decisions;

- d. numerous boards which regulate professional, occupational and business activities and have the power to conduct disciplinary hearings that may result in the imposition of penalties entailing the loss of reputation and livelihood; and
  - e. a number of administrative tribunals and boards which make primary or 'original' administrative and commercial decisions.
3. We are not concerned with those bodies – whether styled courts, commissions, boards, or the like – which regulate industrial relations, employment practices, workers' compensation or common law entitlements, or liquor licensing.

#### **APPEALS TRIBUNALS**

4. Tribunals which currently hear appeals against administrative decisions made by other public officials include the following:
- a. Firearms Appeals Tribunal, established by the *Firearms Act 1973 (WA)*. This Tribunal determines appeals against the refusal of a firearm licence;
  - b. Fisheries Objections Tribunal, appointed from time to time by the Minister responsible for the administration of the *Fish Resources Management Act 1994 (WA)*. This Tribunal has the function of determining objections to certain proposed licensing decisions of the Executive Director, Fisheries;
  - c. Land Valuations Tribunals, established by the *Land Valuations Tribunal Act 1978 (WA)*. This Tribunal determines appeals and objections relating to the valuation, use or classification of land under the *Valuation of Land Act 1978 (WA)*, *Local Government Act 1995 (WA)*, *Land Tax Assessment Act 1976 (WA)*,

*Rights in Water and Irrigation Act 1914 (WA), Water Boards Act 1904 (WA), Country Towns Sewerage Act 1948 (WA), Land Drainage Act 1925 (WA) and Country Areas Water Supply Act 1947 (WA);*

- d. Marine Appeals Authority, established by the *Western Australian Marine Act 1982 (WA)*, and comprising a Chairman appointed by the Governor and two other members appointed from time to time by the Minister. This Authority hears appeals in relation to certificates of competency granted by the Chief Executive Officer;
- e. Racing Penalties Appeals Tribunal, established under the *Racing Penalties (Appeals) Act 1990 (WA)*. This Tribunal hears appeals from the thoroughbred, harness and greyhound racing codes;
- f. Town Planning Appeals Tribunal, established by the *Town Planning and Development Act 1928 (WA)*, and soon to be affected by the passage of the *Planning Appeals Amendment Bill 2001 (WA)*. This Tribunal determines appeals made under the *Town Planning and Development Act*, the *Strata Titles Act 1985 (WA)*, the *Metropolitan Region Town Planning Scheme Act 1959 (WA)*, town planning schemes, including the Metropolitan Region Scheme, made under each of those Acts, the *Strata Titles Act*, and the *Heritage of Western Australia Act 1990 (WA)*;
- g. Water Resources Appeals Tribunal, established under Schedule 2 of the *Rights in Water and Irrigation Act*. This Tribunal hears appeals against water licensing decisions made under this Act; and
- h. Western Australian Gas Review Board, established by the *Gas Pipelines Access (Western Australia) Act 1998 (WA)*. This Board has the function under Division 8 of the *Energy Coordination Act 1994 (WA)* of reviewing

decisions of the Coordinator of Energy in respect of the licensing of gas supplies.

5. Each of these tribunals is wholly government funded. In the case of the Racing Penalties Appeals Tribunal, funding is provided by way of a first charge on Totalisator Agency Board profits before they are distributed to the racing codes.

## **COURT APPEALS – SUPREME COURT**

6. The Supreme Court of WA currently has jurisdiction to hear the appeals in respect of administrative decisions listed in Appendix 1. These appeals are made under the following legislation:

*Aboriginal Heritage Act 1972 (WA)*

*Chicken Meat Industry Act 1977 (WA)*

*Co-operative and Provident Societies Act 1903 (WA)*

*Debts Tax Assessment Act 1990 (WA)*

*Dental Act 1939 (WA)*

*Equal Opportunity Act 1984 (WA)*

*Fire Brigades Act 1942 (WA)*

*Freedom of Information Act 1992 (WA)*

*Guardianship and Administration Act 1990 (WA)*

*Health Act 1911 (WA)*

*Heritage of Western Australia Act 1990 (WA)*

*Human Reproductive Technology Act 1991 (WA)*

*Land Valuations Tribunalss Act 1978 (WA)*

*Legal Practitioners Act 1893 (WA)*

*Medical Act 1894 (WA)*

*Mental Health Act 1996 (WA)*

*Optometrists Act 1940 (WA)*

*Osteopaths Act 1997 (WA)*

*Pay-roll Tax Assessment Act 1971 (WA)*

*Petroleum Act 1967 (WA)*  
*Petroleum Pipelines Act 1969 (WA)*  
*Petroleum (Registration Fees) Act 1967 (WA)*  
*Petroleum (Submerged Lands) Act 1982 (WA)*  
*Petroleum (Submerged Lands) (Registration Fees) Act 1982 (WA)*  
*Pharmacy Act 1964 (WA)*  
*Psychologists Registration Act 1976 (WA)*  
*Radiation Safety Act 1975 (WA)*  
*State Superannuation Act 2000 (WA)*  
*Superannuation and Family Benefits Act 1938 (WA)*  
*Stamp Act 1921 (WA)*  
*Town Planning and Development Act 1928 (WA)*  
*Travel Agents Act 1985 (WA)*  
*Waterways Conservation Act 1976 (WA)*

7. The cost of discharging these various appellate functions is met wholly from government funds.

## **COURT APPEALS – DISTRICT COURT**

8. The District Court currently has the jurisdiction to hear the appeals in respect of administrative decisions listed in Appendix 2. These appeals are made under the following legislation:

*Adoption Act 1994 (WA) and Adoption Regulations 1995 (WA)*  
*Architects Act 1921 (WA)*  
*Builders' Registration Act 1939 (WA)*  
*Censorship Act 1996 (WA)*  
*Commercial Tribunal Act 1984 (WA)*  
*Credit (Administration) Act 1984 (WA)*  
*Criminal Injuries Compensation Act 1985 (WA)*  
*Energy Coordination Act 1994 (WA)*

*Finance Brokers Control Act 1975 (WA)*  
*Housing Societies Act 1976 (WA)*  
*Land Valuers Licensing Act 1978 (WA)*  
*Licensed Surveyors Act 1909 (WA)*  
*Medical Act 1894 (WA)*  
*Rail Safety Act 1998 (WA)*  
*Real Estate and Business Agents Act 1978 (WA)*  
*Retirement Villages Act 1992 (WA)*  
*Securities Industry Act 1975 (WA)*  
*Settlement Agents Act 1981 (WA)*  
*Strata Titles Act 1985 (WA)*  
*Travel Agents Act 1985 (WA)*  
*Veterinary Surgeons Act 1960 (WA)*  
*Water Services Coordination Act 1995 (WA)*

9. The cost of discharging these various appellate functions is met wholly from government funds.

#### **COURT APPEALS – LOCAL COURT**

10. The Local Court currently has jurisdiction to hear the appeals in respect of administrative decisions listed in Appendix 3. These appeals are made under the following legislation:

*Aboriginal Heritage Act 1972 (WA)*  
*Agriculture and Related Resources Protection Act 1976 (WA)*  
*Agricultural Produce Commission Act 1988 (WA)*  
*Boxing Control Act 1987 (WA)*  
*Bread Act 1982 (WA)*  
*Cemeteries Act 1986 (WA)*  
*Chiropractors Act 1964 (WA)*  
*Community Services Act 1972 (WA)*

*Dental Prosthetists Act 1985 (WA)*  
*Dog Act 1976 (WA)*  
*Electricity (Licensing) Regulations 1991 (WA)*  
*Explosives and Dangerous Goods Act 1961 (WA)*  
*First Home Owners Grant Act 2000 (WA)*  
*Forest Products Act 2000 and Forest Management Regulations 1993 (WA)*  
*Gas Standards Act 1972 (WA)*  
*Health Act 1911 (WA)*  
*Hire-Purchase Act 1959 (WA)*  
*Hospitals and Health Services Act 1927 (WA)*  
*Local Government Act 1995 (WA)*  
*Mental Health (Transitional) Regulations 1997 (WA)*  
*Metropolitan Water Supply Sewerage and Drainage Act 1909 (WA)*  
*Motor Vehicle Dealers Act 1973 (WA)*  
*Nurses Act 1992 (WA)*  
*Occupational Therapists Registration Act 1980 (WA)*  
*Painters' Registration Act 1961 (WA)*  
*Plant Pests and Diseases (Eradication Funds) Act 1974 (WA)*  
*Podiatrists Registration Act 1984 (WA)*  
*Taxi Act 1994 (WA)*  
*Transport Co-ordination Act 1966 (WA)*  
*Transport (Country Taxi-Car) Regulations 1982 (WA)*  
*Water Services Coordination (Plumbers Licensing) Regulations 2000 (WA)*

11. The cost of discharging these various appellate functions is met wholly from government funds.

## **COURT APPEALS – COURTS OF PETTY SESSIONS**

12. Courts of Petty Sessions currently have jurisdiction to hear the appeals in respect of administrative decisions listed in Appendix 4. These appeals are made under the following legislation:

*Aerial Spraying Control Act 1966 (WA)*

*Control of Vehicles (Off-Road Areas) Act 1978 (WA)*

*Firearms Act 1973 (WA)*

*Fire Brigades Act 1942 (WA)*

*Hairdressers Registration Act 1946 (WA)*

*Health Act 1911 (WA)*

*Local Government (Qualification of Municipal Officers) Regulations 1984 (WA)*

*Motor Vehicle Drivers Instructors Act 1963 (WA)*

*Pawnbrokers and Second-hand Dealers Act 1994 (WA)*

*Poisons Act 1964 (WA)*

*Radiation Safety Act 1975 (WA)*

*Road Traffic Act 1974 (WA)*

*Security and Related Activities (Control) Act 1996 (WA)*

*Transport Co-ordination Act 1966 (WA)*

*Veterinary Preparations and Animal Feeding Stuffs Act 1976 (WA)*

13. The cost of discharging these various appellate functions is met wholly from government funds.

## **MINISTERIAL APPEALS**

14. Ministers responsible for the administration of the relevant Acts currently have the power to determine the appeals listed in Appendix 5. These appeals are made under the following legislation:



*Aerial Spraying Control Act 1966 (WA)*

*Agricultural Produce (Chemical Residues) Act 1983 (WA)*

*Agriculture and Related Resources Protection (Property Quarantine) Regulations 1981 (WA)*

*Associations Incorporation Act 1987 (WA)*

*Births Deaths and Marriages Registration Act 1998 (WA)*

*Building and Construction Industry Training Fund and Levy Collection Act 1990 (WA)*

*Caravan Parks and Camping Grounds Act 1995 (WA)*

*Chicken Meat Industry Act 1977 (WA)*

*Child Welfare Act 1947 (WA)*

*Community Services Act 1972 (WA)*

*Country Areas Water Supply Act 1947 (WA)*

*Disability Services Act 1993 (WA)*

*Dog Act 1976 (WA)*

*East Perth Redevelopment Act 1991*

*Education Service Providers (Full Fee Overseas Students) Registration Act 1991 (WA)*

*Electricity Act 1945 (WA)*

*Electricity (Licensing) Regulations 1991 (WA)*

*Environmental Protection Act 1986 (WA)*

*Fire Brigades Act 1942 (WA)*

*Fish Resources Management Act 1994 (WA)*

*Fuel Energy and Power Resources Act 1972 (WA)*

*Fuel Suppliers Licensing Act 1997 (WA)*

*Gaming Commission Act 1987 (WA)*

*Gas Standards Act 1972 (WA)*

*Grain Marketing Act 1975 (WA)*

*Health (Meat Hygiene) Regulations 2001 (WA)*

*Hope Valley-Wattleup Redevelopment Act 2000 (WA)*

*Hospitals and Health Services Act 1927 (WA)*  
*Jetties Act 1926 (WA)*  
*Land Administration Act 1997 (WA)*  
*Land Tax Assessment Act 1976 (WA)*  
*Litter Act 1979 (WA)*  
*Local Government Act 1995 (WA)*  
*Local Government (Miscellaneous Provisions) Act 1960 (WA)*  
*Main Roads Act 1930 (WA)*  
*Marketing of Eggs Act 1945 (WA)*  
*Marketing of Potatoes Act 1946 (WA)*  
*Metropolitan Region Town Planning Scheme Act 1959 (WA)*  
*Midland Redevelopment Act 1999 (WA)*  
*Mines Safety and Inspection Act 1994 (WA)*  
*Mining Act 1978 (WA)*  
*Optical Dispensers Act 1966 (WA)*  
*Pearling Act 1990 (WA)*  
*Perth Parking Management Act 1999 (WA)*  
*Petroleum Retailers Rights and Liabilities Act 1982 (WA)*  
*Pharmacy Act 1964 (WA)*  
*Pig Industry Compensation Act 1942 (WA)*  
*Plant Diseases Act 1914 (WA)*  
*Ports and Harbours Regulations (WA)*  
*Retail Trading Hours Act 1987 (WA)*  
*Royal Agricultural Society Act 1926 (WA)*  
*Royal Agricultural Society Regulations 1942 (WA)*  
*School Education Act 1999 (WA)*  
*Soil and Land Conservation Act 1945 (WA)*  
*State Superannuation Regulations 2001 (WA)*  
*Strata Titles Act 1985 (WA)*

*Subiaco Redevelopment Act 1994 (WA)*

*Swan River Trust Act 1988 (WA)*

*Town Planning and Development Act 1928 (WA)*

*War Service Land Settlement Scheme Act Regulations 1954 (WA)*

*Water Services Coordination Act 1995 (WA)*

*Waterways Conservation Act 1976 (WA)*

*Western Australian Meat Industry Authority Act 1976 (WA)*

*Workers Compensation and Rehabilitation Act 1981 (WA)*

15. Appeals to the minister under the *Land Administration Act* are, in fact determined, pursuant to section 39 of that Act, by the Governor. However, appeals under that Act have been characterised for the purposes of this Report as appeals determined by the minister.
  
16. Some local government model by-laws also provide for a right of appeal to the responsible minister. The appeal right exists only where the model by-law has actually been adopted by a local government. The by-laws that provide this right are:
  - a. *Local Government Model By-laws (Caravan Parks and Camping) No 2*  
Regulation 25 enables an appeal to the minister against the cancellation of a caravan park registration, against the refusal of a local government to register or renew the registration of a caravan park, and against any conditions imposed on the registration; and
  
  - b. *Local Government Model By-laws (Holiday Accommodation) No 18*  
Regulation 22 enables an appeal to the minister against the cancellation of the registration, against the refusal or failure to renew registration or to approve a transfer of land, and against any condition imposed by a local government.

17. We have not attempted to determine what old by-laws or local laws of local governments currently provide rights of appeal to the minister.

#### **APPEALS TO PUBLIC OFFICIALS**

18. Appeals are also determined by public officials, pursuant to statute, in the following instances:
  - a. *Cremation Act 1929 (WA)*  
Section 8 enables an appeal to the Executive Director against a decision of a medical referee not to issue a cremation permit;
  - b. *Electoral Act 1907 (WA)*  
Section 40 enables an appeal to the Electoral Commissioner against a decision of an enrolment officer to reject a claim for enrolment; and
  - c. *Health Act*
    - (i) Section 37 enables an appeal to the Executive Director, Public Health against an order or decision of a local government where section 36 does not apply, ie other than where the local government is empowered to recover any expenses incurred;
    - (ii) Section 187 enables an appeal to the Executive Director, Public Health against a decision of a local government to refuse consent to the establishment of an offensive trade; and
    - (iii) Section 192 enables an appeal to the Executive Director, Public Health against a decision of a local government to refuse to register or renew the registration of a house or premises used for an offensive trade.

19. The cost of discharging these various appellate functions of ministers and other public officials is met wholly from government funds.

## **DISCIPLINARY AND SUPERVISORY BOARDS**

20. A large number of boards currently have the primary function of regulating professional, occupational and business activities. Typically, these boards licence persons to work in a given profession, occupation or business and specify standards of conduct. Additionally, these boards investigate complaints of misconduct and hold judicial-like hearings into whether persons are guilty of misconduct which should result in disciplinary or other action (removal or suspension of the licence, imposition of fines, etc).
21. These boards include the following:
  - a. Architects' Board of Western Australia, established under the *Architects Act*;
  - b. Builders' Registration Board of Western Australia, established under the *Builders' Registration Act*;
  - c. The Dental Board of Western Australia, established under the *Dental Act*;
  - d. Electrical Licensing Board, established under the *Electricity (Licensing) Regulations*;
  - e. Finance Brokers Supervisory Board, established under the *Finance Brokers Control Act*;

- f. Hairdressers Registration Board of Western Australia, established under the *Hairdressers Registration Act*;
- g. Land Surveyors Licensing Board, established under the *Licensed Surveyors Act*;
- h. Land Valuers Licensing Board, established under the *Land Valuers Licensing Act*;
- i. Medical Board, established under the *Medical Act*;
- j. Motor Vehicle Dealers Licensing Board, established under the *Motor Vehicle Dealers Act*;
- k. Nurses Board of Western Australia, established under the *Nurses Act*;
- l. Occupational Therapists Registration Board of Western Australia, established under the *Occupational Therapists Registration Act*;
- m. The Optometrists Registration Board, established under the *Optometrists Act*;
- n. Osteopaths Registration Board, established under the *Osteopaths Act*;
- o. Painters' Registration Board, established under the *Painters' Registration Act*;
- p. Physiotherapists Registration Board, established under the *Physiotherapists Act*;

- q. Plumbers Licensing Board, established under the *Water Services Coordination Act*;
  - r. Podiatrists Registration Board, established under the *Podiatrists Registration Act*;
  - s. Psychologists Board of Western Australia, established under the *Psychologists Registration Act*;
  - t. Real Estate and Business Agents Supervisory Board, established under the *Real Estate and Business Agents Act*;
  - u. Settlement Agents Supervisory Board, established under the *Settlement Agents Act*;
  - v. Veterinary Surgeons' Board, established under the *Veterinary Surgeons Act*.
22. As noted (in paragraph 20 above), these boards have both regulatory and disciplinary functions. Some of those dealing with business regulation have recently been the subject of the Gunning Committee of Inquiry into Fair Trading Boards and Committees Gunning Inquiry and the Royal Commission into the Finance Broking Industry (Temby Royal Commission).
23. There is one board, not in this list, which has a regulatory function but not a disciplinary function. Although the Legal Practice Board has the function of regulating lawyers in Western Australia, it is the Legal Practitioners Complaints Committee that has the particular function of investigating complaints concerning the conduct of lawyers and referring them where appropriate to a separate Legal Practitioners Disciplinary Tribunal. The Legal Practitioners Complaints Committee may exercise a summary disciplinary function, if a legal

practitioner consents to this course of action, by imposing a fine not exceeding \$500, or by reprimanding and counselling a practitioner, but cannot suspend or cancel the right to practise. As a result, serious and contentious matters are heard by the Legal Practitioners Disciplinary Tribunal. This is one of the few instances in which the disciplinary power over matters in respect of a regulated occupation, profession or other calling has been separated by statute from other regulatory functions pertaining to that calling.

24. There is currently a proposal to effect a similar separation of the disciplinary functions of the Medical Board through the creation of a Medical Disciplinary Tribunal.
25. The boards that exercise disciplinary or supervisory functions, with the exception of the Electrical Licensing Board, Finance Brokers Supervisory Board, Land Valuers Licensing Board and Motor Vehicle Dealers Licensing Board, are effectively 'self-funding' bodies, in the sense that the cost of performing their various functions, including the disciplinary function, is primarily met out of registration or licensing fees or other fees paid by persons or entities registered or licensed to carry on the professions or occupations regulated by statute. In the case of the four exceptions, the funding of the board is wholly provided by government.
26. There is also the Child Care Services Board that performs functions specified in the *Community Services Act*. The power of the Director General to issue licences and permits related to the operation of child care businesses under the Act and also to suspend or remove licences in appropriate circumstances has been delegated to the Child Care Services Board. Whether the functions of the Director General or the Board in any of these or other respects should be transferred to the SAT is a matter this Report does not consider. We understand that a review of the



Act is under way. Recommendations flowing from that review may consider the SAT to be an appropriate external review forum.

### **‘ORIGINAL’ OR PRIMARY DECISION MAKING TRIBUNALS AND BOARDS**

27. A number of administrative tribunals are tribunals, boards and other entities that have been established by statute with the function of making ‘original’ or primary decisions which resolve matters or disputes of a civil, commercial or personal nature that occur between individuals and, sometimes, between a citizen and the State. These include:

- a. Assessor of Criminal Injuries Compensation who, under the *Criminal Injuries Compensation Act*, assesses claims for financial compensation made by victims of crime;
- b. Building Disputes Tribunal which, under the *Builders’ Registration Act*, determines disputes between consumers and builders about faulty building work and which determines other construction-related disputes under the *Home Building Contracts Act 1981 (WA)*;
- c. Commercial Tribunal which receives and decides upon applications of a commercial nature, principally under the *Consumer Credit (WA) Act 1996 (WA)*, *Credit (Administration) Act 1984 (WA)*, *Commercial Tenancy (Retail Shops) Agreements Act 1985 (WA)*, *Travel Agents Act*, *Fair Trading Act 1987 (WA)*, *Chattel Securities Act 1987 (WA)*, *Pawnbrokers and Second-Hand Dealers Act*, and which is also involved to some extent in the administration of the Competition Code under the *Competition Policy Reform (WA) Act 1996 (WA)*;

- d. Equal Opportunity Tribunal which, under the *Equal Opportunity Act*, determines remedial procedures in respect of conduct – whether of a public or private nature – amounting to discrimination;
- e. Guardianship and Administration Board which, under the *Guardianship and Administration Act*, determines applications for guardianship and administration and deals with related matters;
- f. Information Commissioner who investigates disputes concerning the entitlement of citizens to have access to government documents and, under the *Freedom of Information Act*, determines those disputes by reviewing access decisions made previously by public officials;
- g. Mental Health Review Board which, under the *Mental Health Act*, reviews the status and management of involuntary patients;
- h. Retirement Villages Dispute Tribunal which, under the *Retirement Villages Act*, investigates and resolves complaints by residents and administering bodies of retirement villages, and takes action by negotiation or prosecution of any offence;
- i. Small Claims Tribunal which, under the *Small Claims Tribunal Act*, resolves consumers/traders' disputes; and
- j. Strata Titles Referee who, under the *Strata Titles Act*, resolves disputes between residents and residents and between residents and bodies corporate.

28. Each of these bodies is wholly funded by government.

29. There is one anomalous circumstance in which an 'original decision' of an administrative nature is made by a court. The *Debt Collectors Licensing Act 1964 (WA)* contains provisions enabling an application to the Local Court for the granting of a debt collector's licence and for the cancellation of a licence. An appeal lies to the Supreme Court against the Local Court's decision.

### **ADMINISTRATIVE DECISIONS NOT SUBJECT TO OFFICIAL REVIEW**

30. There is currently no general right for citizens to appeal against a decision of an administrative character. The way the current system of administrative review and civil decision making works is that the Government and the Parliament have designated those decisions which should be subject to review or appeal and those administrative decisions which should be made by an administrative tribunal. The Taskforce does not believe that it is appropriate at this time to create any general right to appeal against administrative decisions, for the following reasons.
31. Under the current system, only specified administrative decisions may be made or reviewed by administrative tribunals. The system plainly operates on the understanding, which this Taskforce shares, that creating a general right of appeal against administrative decisions would render amenable to administrative review all manner of every day minor decision making as well as high-level political decisions. Such an outcome would place a significant burden on government in this State. Further, many decisions, because they entail policy or revenue implications that require consideration at the highest level of government, may not be suitable for administrative review.
32. What is apparent from the above analysis is that there are numerous administrative decisions made by public officials, including ministers and the Cabinet, that are not currently the subject of any statutory review or appeal.

33. Accordingly, whether or not the Government and the Parliament think that some areas of decision making that are not currently the subject of any right of review or appeal should be subject to such a right is a political decision, and not one that we have attempted to canvass in this Report. Currently under consideration, for example, is the question of whether a range of decisions made under legislation for which the Minister for Community Services has responsibility should be the subject of independent review. Other matters that have been mentioned to us, such as whether decisions regarding entitlements made by Homeswest or the Disabilities Services Commission should be subject to administrative review, require extensive policy consideration and debate and may be determined by the Government at an appropriate time.
34. The fact that a general right of review of various government decisions is not presently available does not mean that all avenues of review are foreclosed. In some cases, as a matter of administrative practice, ministers, public officials and government departments or agencies may be prepared to institute a scheme for internal review of decisions upon request.
35. In fact, some statutes explicitly provide that an affected person may request reconsideration of a decision by the primary decision maker. For example, under section 20 of the *Town Planning and Development Act*, an aggrieved applicant may seek reconsideration by the Western Australian Planning Commission of its decision refusing subdivision approval. Applicants who remain aggrieved by the decision following reconsideration may appeal to the Town Planning Appeals Tribunal (or, until such time as the *Planning Appeal Amendment Bill* passes, to the Minister for Planning). Section 39 of the *Freedom of Information Act* also makes provision for review by an agency of an access application decision.

36. Similarly, there is a scheme of internal review by way of objection process which must be exhausted prior to the making of an appeal to the Supreme Court or the Land Valuations Tribunals, as the case may be, under the following revenue legislation:

*Land Tax Assessment Act*

*Stamp Act*

*Pay-roll Tax Assessment Act*

*Debits Tax Assessment Act*

37. A formal process of internal review of initial administrative decisions has much merit. It can provide some administrative justice. It can also ensure that highly fact-specific or technical matters can be reviewed before more formal appeal mechanisms are undertaken. Later in this Report we emphasise the appropriateness of adopting such internal review or intermediate appeal mechanisms in relation to some categories of decision making before permitting an appeal to the SAT.

### **MULTIPLICITY OF APPEALS TRIBUNALS, COURTS, MINISTERIAL AND PUBLIC OFFICIAL APPEAL AVENUES, AND ORIGINAL DECISION MAKING BODIES**

38. It is evident from the above analysis that there is:

- a. a multiplicity of entities engaged in decision making;
- b. a considerable variety of means to review administrative decisions; and
- c. a large number of entities engaged in original administrative decision making.

39. Since the Law Reform Commission of Western Australia (WALRC) in 1982 identified defects in the then existing appellate arrangements, a number of official inquiries have confirmed defects in the administrative system and have recommended wide-ranging reforms. As will be discussed in the next chapter, the most recent of those reports, the 1999 WALRC Report, recommended the establishment of a Western Australian Civil and Administrative Tribunal (WACAT). The WACAT was proposed to be similar in design and function to the Victorian Civil and Administrative Tribunal (VCAT) established by the *Victorian Civil and Administrative Tribunal Act 1998 (Vic)*, to exercise these various functions in a more comprehensive, comprehensible, efficient and timely manner.
40. The terms of reference of this Taskforce set out above, require the Taskforce to develop a model of such a civil and administrative review tribunal. In doing so, the Taskforce has formulated recommendations that are designed to avoid the proliferation of tribunals and boards and various court and ministerial appeal avenues, to reverse the apparent lack of uniformity and the confusing variety of both procedures and appeal avenues, to ensure effective and timely decision making, and to provide the people of Western Australia with an administrative review and original decision making system which is independent and impartial and in which the people of the State may have the fullest confidence. The next chapter of this Report provides a brief account of how reform proposals concerning a system of administrative review in Western Australia have developed over the last two decades. This account helps to place in context the present Government's proposal for reform and the recommendations of this Taskforce.

## CHAPTER 2 - SUMMARY OF PREVIOUS REPORTS

### INTRODUCTION

1. There have been a number of reports and much discussion about the system of administrative tribunals in Western Australia. This chapter briefly summarises the relevant recommendations of the principal reports.

### **REPORT ON REVIEW OF ADMINISTRATIVE DECISIONS: APPEALS, PROJECT NO. 26 PART I, 1982, LAW REFORM COMMISSION OF WESTERN AUSTRALIA**

2. In 1982, the WALRC, in its Report on Review of Administrative Decisions: Appeals Project No. 26 – Part 1 (the 1982 WALRC Report), recommended that an administrative appeals system should be developed within Western Australia's existing court system.
3. The WALRC project arose out of a submission to the Government by the Law Society of Western Australia in which the Law Society expressed concern at what it regarded as a lack of co-ordination in the existing appellate arrangements in the administrative law area. As a consequence, the WALRC was asked to recommend the principles and procedures that should apply in Western Australia to the review of administrative decisions whether that review takes place by way of appeal or by way of the supervisory jurisdiction of the Supreme Court.
4. The WALRC concluded that the arrangements concerning administrative appeals in Western Australia were the result of ad hoc legislation over a long period of time without an overall plan. The WALRC noted that there were 257 administrative decisions subject to a statutory right of appeal to more than 43 appellate bodies.
5. The 1982 WALRC Report identified three main defects in the system as it existed in 1982 in Western Australia:

- a. there was no consistent provision for the ultimate determination of questions of law by the Supreme Court;
  - b. the arrangements incorporated inconsistencies and an unjustifiable variation in the rights of appeal from the decisions of bodies with similar responsibilities; and
  - c. there was no consistent or simple code of procedure for conducting appeals.
6. The WALRC considered that a coherent and rational administrative appeals system was required; it also believed, at that time, that such a system could be created within Western Australia's existing courts and without setting up a single general tribunal.
7. As a result, in the context of the State as it was in the early 1980s, the WALRC recommended that the administrative appeals system in Western Australia should consist of:
- a. the Full Court of the Supreme Court;
  - b. an Administrative Law Division of the Supreme Court;
  - c. an Administrative Law Division of the Local Court; and
  - d. a limited number of specialist appellate bodies.<sup>1</sup>

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<sup>1</sup> The specialist appellate bodies that the Commission considered should be retained were:

- (a) The Land Valuations Tribunals established under sections 5 and 6 of the *Land Valuations Tribunals Act*;
- (b) The Review Committees established under section 50 of the *Legal Aid Commission Act 1976*;
- (c) The Licensing Court acting as an appellate body under section 99 of the *Liquor Act 1970*;
- (d) The Quota Appeals Committee established under section 32 of the *Dairy Industry Act 1973*;
- (e) The Medical Board established under section 14 of the *Mine Workers Relief Act 1932*; and
- (f) The Town Planning Appeals Tribunal established under section 42 of the *Town Planning and Development Act*.



8. Importantly, the WALRC recognised the need for an administrative review system to:
  - a. exhibit the characteristics of flexibility, expertise and a consistent approach to a wide range of appeals;
  - b. employ lay members with special knowledge and skills to sit on the appeal panel;
  - c. function within a structure that would preclude the growth of conflicting systems of jurisprudence; and
  - d. impress itself upon the community as a body that is impartial and independent of executive government.<sup>2</sup>
9. A major factor behind the WALRC's reluctance in 1982 to recommend a new single administrative review tribunal was the State's small population which was considered likely to generate only a relatively small number of appeals.
10. The population of the State and the number of administrative tribunals and court, ministerial and other appeal avenues have grown considerably since 1982 and the calls for a 'rational and coherent' system of tribunal decision making have not abated.

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<sup>2</sup> Law Reform Commission Report, Report on Review of Administrative Decisions: Appeals, Project No. 26, Part 1, 1982, pp. 29-34.

## REPORT OF THE ROYAL COMMISSION INTO COMMERCIAL ACTIVITIES OF GOVERNMENT AND OTHER MATTERS (1992), PART 2

11. On 12 November 1992, the Royal Commission into Commercial Activities of Government and Other Matters reported to the Governor of Western Australia. (1992 Royal Commission Report). The Commission made a number of recommendations relating to 'Open Government', 'Accountability' and 'Integrity in Government'. As one means of pursuing those objectives, it specifically advocated that a State Administrative Appeals Tribunal should be established to meet the needs identified in the 1982 WALRC Report.
  
12. However, the 1992 Royal Commission Report expressed concern about an administrative appeals system located in the Supreme and Local Courts, stating:

*In essence, this would result in members of the judiciary engaging in a review of the merits of various administrative decisions made by public officials, including ministers... There is a danger in such a process that the constitutional values inherent in a separation of judicial and executive power could be compromised...In consequence, we invite consideration of the adoption of the separate structure for administration appeals.<sup>3</sup>*

13. This recommendation of the 1992 Royal Commission has been reiterated in the following reports: the Commission on Government Report No. 4 (July 1996), (COG Report) the 1996 Report of Tribunals Review to the Attorney General by Commissioner J Gotjamanos and Mr G Merton (1996 Review), and the WALRC's 1999 Review of the Criminal and Civil Justice System Recommendations, Final Report, Project 92 (1999 WALRC Report).

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<sup>3</sup> Report of the Royal Commission into Commercial Activities of Government and other Matters (1992), Part 2, para 3.5.

## COMMISSION ON GOVERNMENT REPORT NO. 4 (JULY 1996)

14. The COG Report stated:

*A system of administrative review is required because there is a considerable volume of legislation affecting the community which vests discretionary powers in public officials. Many powers and duties exercisable by public officials under legislation are beyond challenge under existing laws, and there is no readily available system for citizens to obtain redress. Where appeal procedures do exist, a proliferation of tribunals present many and varied rights of appeal, inconsistency in rights of appeal from decisions of similar bodies and no consistency in procedural arrangements.<sup>4</sup>*

15. The COG Report recommended the establishment of an Administrative Review Tribunal (SART) as a single tribunal consisting of a general division and two specialist divisions (State tax, and environment and planning control), instead of the:

*plethora of specialist tribunals that currently exist in Western Australia.<sup>5</sup>*

Under this proposal, existing tribunals reviewing public sector administrative decisions affecting individuals would be abolished as their functions became incorporated into the SART.

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<sup>4</sup> Commission on Government Report No. 4 (July, 1996), para 6.1.4, p. 117. In April 1994, between the date of the 1992 Royal Commission Report and the date of the COG Report, the Thirty-Sixth Report of the Legislative Council Committee on Government Agencies put forward a proposal that differed from the COG Proposal in that it envisaged a system linking both law-making review and administrative review, exercised through the judicial agency of the District Court, with a supplementation of independent agency review officers.

<sup>5</sup> Ibid, para 7.1.4, p. 151.

16. The COG Report rejected the approach of the 1982 WALRC Report which proposed a system of merits review within the existing courts system. It stated that it was essential to reinforce the principle of the separation of powers whilst endorsing the importance of administrative justice and achieving the correct and preferable decision. The COG Report argued that the establishment of the SART would increase the accountability of the executive and hence increase the confidence of the people in its system of government.<sup>6</sup> The COG Report stressed the importance of ensuring that the 'correct or preferable decision' be made on review by the SART.
  
17. The COG proposed that the SART should be the only body carrying out external review of public sector administrative decisions affecting individuals. It recommended that some decisions should not be reviewable by the SART. These were:
  - a. decisions involving the commencement of civil or criminal proceedings;
  - b. decisions relating to personnel management and dispute resolution procedures of the public sector, including procedures concerning industrial disputes;
  - c. decisions relating directly to industrial disputes;
  - d. decisions about the financial management of the public sector; and
  - e. such other matters as Parliament may determine.

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<sup>6</sup> Ibid, para 7.4.4, pp. 184-186.

18. The COG Report also recommended that the Commissioner for Public Sector Standards should monitor the decisions of the proposed SART and ensure that the principles of decision making established by the SART are applied across the public sector.
19. The COG Report recommendations, like others, are notable for the strong emphasis placed on discouraging legalism in the process.

**REPORT OF TRIBUNALS REVIEW TO THE ATTORNEY GENERAL, COMMISSIONER J GOTJAMANOS AND MR G MERTON, AUGUST 1996**

20. The 1996 Review identified, aside from tribunals and boards in industrial relations and WorkCover areas, 360 different appeal provisions to 54 appeal bodies, confirming the growth of both since the 1982 WALRC Report. More tribunals and boards have since been established. The 1996 Review noted that the system of administrative appeals in Western Australia, criticised by the 1982 WALRC Report for having developed in an ad hoc manner, had continued to the present day:

*...the existing tribunal and administrative appeal / review arrangements in Western Australia have developed in an 'ad hoc' manner over many decades. There is no consistent system or framework regarding administrative appeals in Western Australia nor is there any real consistency with respect to the procedures and practices which are utilised by the various decision making bodies.<sup>7</sup>*

21. The 1996 Review considered that rationalising the present arrangements and establishing a single administrative appeals jurisdiction and administrative appeals tribunal would achieve wider and long-term benefits such as:

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<sup>7</sup> Report of Tribunals Review to the Attorney General by Commissioner Gotjamanos and Mr G Merton, August 1996, p. 41.

- a. enabling citizens who were aggrieved by a decision of a government or statutory body to have access to a quick, low cost, simplified and informal adjudicative system;
  - b. readily accommodating increases in jurisdiction over time;
  - c. applying a consistent approach to tribunal practices and procedures;
  - d. enabling a consistent approach to review and appeal rights, thus overcoming the current problem of variation in the legislation creating those rights; and
  - e. developing and implementing consistent performance measures and consequently an increased level of accountability for government and community confidence regarding its operations.<sup>8</sup>
22. The 1996 Review recommended the rationalisation of the present situation by the creation of a State Administrative Appeals Tribunal (SAAT) whose presiding member should have the status of a District Court Judge.
23. The 1996 Review proposed that the SAAT's review jurisdiction should encompass a number of existing appeal or review tribunals and tribunal-like bodies which would, as a consequence, cease to exist in their own right; and that the SAAT should also hear appeals from decisions of ministers and officers exercising both regulatory and discretionary power under an enactment.

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<sup>8</sup> Ibid, pp. 41-43.

24. The 1996 Review also addressed ways of improving access to administrative tribunals. In order to achieve the desired level of reform in this area, the 1996 Review recommended a number of significant changes. These included the co-location of most tribunals in order to provide a single point of access, greater efficiency and the development of a common management information system. The 1996 Review also emphasised the importance of the use of inquisitorial techniques – that is, more direct questioning by the tribunal and less reliance on the questions of the parties in relation to matters in issue – as well as the importance of improving access for disabled people and those in country areas.<sup>9</sup>
25. The third main objective of reform recommended by the 1996 Review was that of ongoing scrutiny by Parliament, through its existing Parliamentary Committee system, with respect to the creation of new rights of review or appeal arising from statutory decision making power.<sup>10</sup>
26. The 1996 Review recommended that all then existing appeals or applications for review should go to the SAAT rather than to the courts. There were to be some exceptions, namely the 1996 Review recommended that the jurisdiction of the Equal Opportunity Tribunal, the Information Commissioner, the Guardianship and Administration Board and the Legal Practitioners Disciplinary Tribunal, should remain separate and independent. Additionally, the 1996 Review recommended that, in respect of appeals to ministers or their delegates that were administrative in character, there should exist a further right of appeal to the proposed SAAT.

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<sup>9</sup> Ibid, pp. 5-6.

<sup>10</sup> Ibid, pp. 6-7. See also Recommendation 36 at p. 191.

27. The 1996 Review also recommended that the proposed SAAT should be created along divisional lines, including a designated division in the SAAT for State Revenue Appeals.

**REVIEW OF THE CRIMINAL AND CIVIL JUSTICE SYSTEM RECOMMENDATIONS, FINAL REPORT, PROJECT 92, - LAW REFORM COMMISSION OF WESTERN AUSTRALIA, 1999, CHAPTER 33 ON BOARDS AND TRIBUNALS**

28. The 1999 WALRC Report stated that:

*Boards and tribunals have proliferated in recent years. However, this has occurred with a lack of uniformity and a confusing variety of both internal and operational procedures and appeal rights to the courts.<sup>11</sup>*

29. After considering the various reports referred to above, the WALRC adopted the 1996 Review recommendations that an administrative review body should be established in Western Australia amalgamating the review and appellate functions of existing tribunals and boards, apart from those in industrial relations and WorkCover areas.<sup>12</sup> However, the WALRC noted that developments in other States since the 1996 Review had seen the significant extension of the jurisdiction of administrative decision making bodies and, in light of these developments, recommended that a Western Australian Civil and Administrative Tribunal (WACAT) be established to amalgamate the adjudicative and review functions of existing tribunals and boards and other entities, except in industrial relations and WorkCover areas.<sup>13</sup>

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<sup>11</sup> Law Reform Commission of Western Australia, 1999 Review of the Criminal and Civil Justice System Recommendations, Project 92, Final Report, para 33.3, p. 291.

<sup>12</sup> Ibid, para 33.9, p. 293.

<sup>13</sup> Ibid, Recommendation 371, p. 293.



30. Thus, the 1999 WALRC Report in Recommendation 372 stated that the WACAT jurisdiction should extend beyond administrative review or appeals to include other, adjudicative functions currently determined by tribunals, boards, other entities and lower civil courts, including the Small Claims Tribunal, the Commercial Tribunal, the Residential Tenancies 'Tribunal' (intended to be a reference to the Residential Tenancies jurisdiction of the Local Court) and the Small Disputes Division of the Local Court.
31. The 1999 WALRC Report concluded that the establishment of a single tribunal would provide a rationalised procedure to be followed in cases of merit review of administrative decisions and permit abolition of the multiplicity of boards and tribunals whose functions are purely adjudicative.<sup>14</sup> It concluded that while professional and occupational boards and other bodies also should continue to undertake administrative functions and other non-adjudicative processes, the proposed WACAT should have jurisdiction, where relevant, to conduct reviews or appeals in their stead.
32. The 1999 WALRC Report disagreed with the 1996 Review's recommendations that certain tribunals and boards should not be absorbed into a broader administrative appeals tribunal. The WALRC took the view that if the WACAT was chaired by a member of equal standing to the person presiding over the nominated tribunals, the concerns of the 1996 Review would be resolved. Recommendation 373 therefore proposed that the jurisdiction of WACAT should include the adjudicative functions of the Equal Opportunity Tribunal, Information Commissioner, Guardianship and Administration Board and Legal Practitioners Disciplinary Tribunal, as well as the Assessor of Criminal Injuries Compensation. The WALRC also noted that the justifications for the 1996 Review Recommendation 35, concerning decisions under the *Freedom of Information Act*,

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<sup>14</sup> Ibid, p. 294.

were no longer relevant. The WALRC proposed, as did the 1996 Review, that in the event that all tribunals and boards adjudicative functions were not incorporated into the WACAT, the tribunals and boards should be co-located for administrative economy.

33. The 1999 WALRC Report Recommendation 376 proposed that the WACAT should comprise an Administrative Division and a Civil Division, consisting of various lists,<sup>15</sup> and that specialised members would be appointed to particular lists. As noted above (see Chapter 1, paragraph 39), the WALRC plainly was influenced by the example and experience of the VCAT in formulating its recommendation.

**REPORT OF INQUIRY INTO FAIR TRADING BOARDS AND COMMITTEES, 2000,  
THE GUNNING COMMITTEE, AND THE REPORT OF THE ROYAL COMMISSION  
INTO THE FINANCE BROKING INDUSTRY, 2001**

34. The Report of the Gunning Inquiry (the Gunning Report), as a result of finding failings with a number of business regulatory bodies, looked into the functioning of the Finance Brokers Supervisory Board, Land Valuers Licensing Board, Motor Vehicle Dealers Licensing Board, Settlement Agents Supervisory Board, Real Estate and Business Agents Supervisory Board, Painters' Registration Board, Builders' Registration Board and Building Disputes Committee (Consumer Affairs boards and committees).
35. The Gunning Report noted that each board is invested with a licensing and disciplinary function in respect of the industries which they currently regulate, and with a more general duty to supervise their respective industries. Appeals

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<sup>15</sup> The WALRC stated that the lists may include:

(a) Administrative Division - General List (including Freedom of Information reviews and other matters not currently subject to review), Taxation List, Planning List, Occupational and Business List and Land Valuation List; and  
(b) Civil Division: Anti-Discrimination List, Civil Claims List, Credit List, Domestic Building List, Guardianship List, Real Property List, Residential Tenancies List, Commercial Tenancies List and Legal Practitioners Complaints List.

against decisions of the various boards, as noted in Chapter 1 of this Report, currently lie to either the Local Court or the District Court.

36. The Gunning Report concluded that each of the boards had generally been effective and efficient in the execution of their licensing functions. However, the Gunning Report identified a number of systemic problems that detracted from the effectiveness and efficiency of all the boards in the execution of their supervisory roles. These problems involved resourcing issues, natural justice concerns arising when the boards exercised both compliance and disciplinary functions, the part-time nature of the boards, perceptions of bias resulting from the involvement of industry participants in the decision making process and confusion as to roles, responsibilities and accountability.<sup>16</sup>
37. The Gunning Report recommended that the disciplinary aspect of occupational regulation within the Fair Trading Portfolio should be separated from the licensing and compliance functions.<sup>17</sup> Recommendation 35 of the Gunning Report was the establishment of a new and adequately resourced full-time disciplinary tribunal to exercise the disciplinary functions presently exercised by Consumer Affairs boards and committees. This would ensure that the same procedural rules, rights of appeal and enforcement powers applied to all of the occupations and would avoid the problem of multiplicity of proceedings. Recommendation 47 stated that the disciplinary tribunal proposed would exercise both an original and a review jurisdiction.<sup>18</sup>
38. The exercise of such an original and review jurisdiction is consistent with the 1999 WALRC Report recommending the establishment of a WACAT.

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<sup>16</sup> Report of the Gunning Committee of Inquiry into Fair Trading Boards and Committees, 15 December 2000, pp. 412-417.

<sup>17</sup> Ibid, Recommendation 34, p. 452.

<sup>18</sup> Ibid, pp. 487-488.

39. Recommendation 36 of the Gunning Report proposed that the licensing and compliance functions of the various boards should be centralised and a new full time Public Sector agency called the Business Licensing Authority, headed by the Business Licensing Commissioner should be established to exercise those functions. That agency would grant and renew licences and certificates under the respective statutes, as well as investigate complaints against traders in the relevant occupations and initiate disciplinary proceedings in the tribunal.
  
40. These same concerns were also reflected in the final report of the Temby Royal Commission, which raised the question of whether these Consumer Affairs boards and committees should cease to exercise supervisory powers. As we have noted below, (Chapter 4, paragraph 57) an Issues Paper of the Department of Consumer and Employment Protection has proposed new means of regulation in this particular area of government.

## CHAPTER 3 - OVERVIEW OF OTHER AUSTRALIAN JURISDICTIONS

1. The Commonwealth has been the leading Australian jurisdiction in establishing a system for the review of the merits of administrative decisions. In the last three years, Victoria and New South Wales have established their own tribunal structures for similar purposes. South Australia has also effected reforms through a combination of mechanisms. Tasmania has also recently effected some reforms. Most recently, a high level inquiry in the United Kingdom headed by Sir Arthur Leggatt has recommended the establishment in that country of a unified administrative review system. In framing its recommendations that inquiry acknowledged the Australian Commonwealth's AAT as the leading tribunal, comparatively, in its field.
2. This chapter considers the essential features of the relevant Australian tribunal structures and examines the Administrative Review Tribunal (ART) proposed by the Administrative Review Council (ARC) to be established at Commonwealth level as a successor to the existing AAT.

### HISTORICAL ASPECTS OF COMMONWEALTH REGULATION OF ADMINISTRATIVE LAW

3. The initiative in setting up a general tribunal in Australia to engage in administrative review of governmental decisions was the establishment by the Commonwealth of the AAT in 1976.<sup>19</sup> The AAT has jurisdiction over a wide range of decisions made by Commonwealth ministers, officers and authorities. These include social security, veterans' entitlements, financial grants and rebates, workers' compensation, taxation and other matters. In each instance whether a particular government decision is reviewable depends on whether the statute under which the decision is made confers a right of appeal to the AAT.

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<sup>19</sup> Established by the *Administrative Appeals Tribunal Act 1975 (Cth)*.

4. The AAT was largely the product of the Report of the Commonwealth Administrative Review Committee chaired by Commonwealth judge the Honourable Mr Justice Kerr (the Kerr Report), in October 1971.
5. Prior to 1970, there were a few Commonwealth *ad hoc* tribunals providing merits review in matters such as taxation, Commonwealth employees' compensation and war pensions. There were also some appeal procedures under individual legislative schemes.
6. The system contained many gaps and anomalies, lacked a unifying structure, and was not well understood by the general community.
7. The Kerr Report identified a number of specific shortcomings in the then existing system of Commonwealth administrative review, including:
  - a. an inability to correct systemic administrative errors;
  - b. the *ad hoc* nature of administrative tribunals;
  - c. the fact that persons affected by administrative decisions had to rely mainly on the cumbersome and technical process of judicial review; and
  - d. access to review being often inhibited by factors such as cost, official secrecy and privative clauses.
8. The central theme of the Kerr Report was the need to develop a coherent and integrated system of administrative review that was:

- a. comprehensive;
  - b. accessible to the public;
  - c. inexpensive;
  - d. fully focussed on substantive rather than procedural issues; and
  - e. committed to ensuring adequate disclosure to applicants of relevant information and reasons for decisions.<sup>20</sup>
9. The Kerr Report recognised that some administrative decisions, because of their nature or because they involved high-level government policy, should not necessarily be subject to merits review.

## **NATURE OF KEY REFORMS CONSEQUENT UPON THE KERR REPORT**

10. The *Administrative Appeals Tribunal Act 1975 (Cth)* (*AAT Act*) implemented the proposals of the Kerr Report by establishing a single independent Commonwealth tribunal to deal with appeals against administrative decisions on as wide a basis as possible. This new general tribunal both replaced existing special tribunals and exercised jurisdiction over new matters where legislation conferred a right of administrative review. At the time of its enactment, the *AAT Act* provided for over 80 categories of reviewable decisions. By the late 1990s, those categories had expanded to more than 325 separate Commonwealth enactments.

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<sup>20</sup> The proposals recommended by the Kerr Committee were further developed in two further reports in 1973 – those of the Bland and Ellicott Committees, the latter dealing with proposals to make judicial review more effective.

11. The AAT is headed by a President who holds office as a Federal Court judge. Several other members of the federal judiciary have been appointed to it. For the most part Deputy Presidents (who are legally qualified) or Senior Members (most of whom also are so qualified) preside over hearings. Other members who sit on the AAT are drawn from a wide range of professions and occupations and so are able as experts and people of experience to have a significant input into the AAT's decision making process.
12. As a general proposition, under the Commonwealth system an administrative decision made under an enactment will normally be subject to merits review where the interests of a person are likely to be affected by the decision.
13. The original conception was that there should be a single tribunal so as to avoid a chaotic proliferation of mini-specialist tribunals. Nevertheless in the period of more than two decades that the AAT has been operating, a number of Commonwealth single jurisdiction tribunals have been created. These include the Social Security Appeals Tribunal, the Veterans Review Board, the Immigration Review Tribunal and the Refugees Review Tribunal. The first two named tribunals engage in informal first-tier review (hearing the initial application to review the relevant decision). A decision of the Social Security Appeals Tribunal or Veterans Review Board may be appealed further to the AAT.
14. To ensure that the merits review system was kept under ongoing scrutiny, the *AAT Act* provided for the establishment of ARC to conduct regular reviews of the Act's operation.



## **RECENT DEVELOPMENTS CONCERNING REVIEW OF COMMONWEALTH TRIBUNALS**

15. The breakdown in the notion of a single general tribunal was one of the factors that led to the Commonwealth instituting a major re-examination of the operations of the AAT, through the agency of the ARC, in 1995.

## **'BETTER DECISIONS' REPORT - RECOMMENDATION FOR A NEW ADMINISTRATIVE REVIEW TRIBUNAL**

16. In 1995 the ARC issued its Report, Better Decisions: Review of Commonwealth Merits Review Tribunal (Better Decisions Report). The Report reiterated that the principal objective of a merits review system should be to ensure that administrative decisions of government are correct or, if there is discretion, preferable. In pursuit of that objective the system should be:
  - a. fair;
  - b. accessible;
  - c. timely and informal; and
  - d. committed to ensuring that the effect of tribunal decisions are fed back into the government's decision making processes.
17. The ARC regarded the Commonwealth system as having gone a significant way towards meeting the principal objective of ensuring that administrative decisions of government were correct. It saw, however, a need for a statutory objective that all Commonwealth tribunals should provide mechanisms of review which were fair, just, economical, informal and quick.

18. The ARC also identified a number of specific subsidiary objectives, including the following:
  - a. individual applicants should obtain the correct and preferable decision in each case;
  - b. the 'normative effect' of decisions should flow on to government agencies when dealing with similar matters;
  - c. the system should be inexpensive, informal and quick, and be responsive to the needs of persons using the system; and
  - d. openness and accountability of government should be enhanced.
  
19. Addressing the growth of separate tribunals, the Better Decisions Report concluded that the various specialist review tribunals and the AAT itself ought to be united into a new, single tribunal, to be called the Administrative Review Tribunal (ART). It envisaged the ART as a single body comprised of a General Division and several other divisions dealing with specific subject matters. Each division would be able to prescribe its own procedures and processes (subject only to certain statutory minimum standards and to any guidelines issued by the ART President).
  
20. The Better Decisions Report made 102 recommendations concerning the operations, procedures, and membership of merits review tribunals, and the structure of the tribunal system as a whole. Besides incorporating the various specialist tribunals into a general Commonwealth tribunal (the ART), the Better Decisions report proposed:

- a. structuring the new ART to operate, where appropriate, as a two-tiered tribunal, hearing appeals from Commonwealth decision makers at first instance and, subject to leave being granted, on a further appeal by a Review Panel if an important issue of public importance or a complex question of law were involved;
  - b. enhancing the accessibility of the tribunal and the simplicity of its proceedings;
  - c. enabling applicants to appear on their own behalf wherever possible; and
  - d. promoting the resolution of applications through alternative dispute resolution processes.<sup>21</sup>
21. The ART would thus become once more a 'single-umbrella' merits review tribunal integrating the disparate single jurisdiction tribunals that had sprung up.
22. The Better Decisions Report saw the ART providing the following benefits:
- a. the proposed structure would more effectively ensure the independence (both actual and perceived) of the merits review system;
  - b. a unified tribunal would be able to provide a better program of public education about a citizen's rights of review;
  - c. since an application could only progress to a second tier review by leave, there would be a greater focus on achieving the correct and preferable decision at the earliest stage of review;

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<sup>21</sup> A summary of the recommendations in the Better Decisions Report can be found in P Johnston, "Recent Developments Concerning Tribunals in Australia" (1996) 24 Federal Law Review 323.

- d. the quality of decision making at first-tier review should improve because of the wider range of expertise available; and
- e. the tribunal could adapt its procedures to suit particular applicants with an emphasis on simplicity and informality.

## **COMMONWEALTH GOVERNMENT'S RESPONSE TO BETTER DECISIONS REPORT**

23. Purporting to act on the Better Decisions Report the Commonwealth Government introduced the *Administrative Decisions Tribunal Bill 2000 (Cth)* to establish the new body recommended by the ARC. It was apparent, however, that the Bill in many respects departed from the proposals in the Better Decisions Report. It failed, for example, to provide for incorporation of all the single jurisdiction tribunals into the ART, leaving the Veterans Review Board in operation. Further, it contained many features that gave rise to trenchant criticisms of its provisions. These included:

- a. Government ministers exercising undue influence over appointment of members, thus compromising the independence of the tribunal;
- b. compromising the independence of the tribunal by making its various divisions (taxation, social security, etc) financially dependent on the relevant decision making Commonwealth departments;
- c. downgrading the status of the President from judicial status and abolishing the requirement that the President be legally qualified;
- d. subjecting members to strict performance requirements under peril of removal, again potentially affecting their independence and impartiality;
- e. unduly restricting recourse to second tier review;

- f. unduly restricting access to legal representation; and
  - g. limiting first tier appeals in some instances to quick single member appeals on the papers to avoid expense.
24. Many of these criticisms were made to the Senate Committee on Legal and Constitutional Affairs. In a minority report appended to the Senate Committee's Report relating to the *Administrative Review Tribunal Bill*<sup>22</sup> the Labor and Democrat Members of the Committee accepted many of these objections. They were especially concerned that the proposed ART was not assured the requisite degree of independence from government influence and control, that its quality of decision making could be diminished, that disadvantaged community groups were likely to encounter considerable difficulties in pursuing applications, and that the procedures of the tribunal, particularly with respect to restrictions on legal representation and appeals, were unsatisfactory.
25. Given the opposition to the Bill by the Labor and Democrat Senators the Commonwealth Government was unable to proceed with it. Later in 2001, the Commonwealth Attorney General indicated that a revised version of the Bill would be reintroduced at some future stage. At the time of presenting this Report, this has not yet occurred.

### **THE TASKFORCE'S COMMENTS ON THE COMMONWEALTH'S REFORMS**

26. The Taskforce regards the ARC's Better Decisions Report in 1995 as generally in line with the principles that have guided it in recommending the development of the SAT. If the recommendations made in Chapter 5 of this Report are accepted,

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<sup>22</sup> Inquiry into the Provisions of the *Administrative Review Tribunal Bill 2000* and the *Administrative Review Tribunal Bill (Consequential and Transitional Provisions) Bill 2000* - Labor and Democrat Senators Minority Report (Senator Jim McKiernan, Senator Barney Cooney, Senator Joseph Ludwig, Senator Brian Greig, Senator Andrew Bartlett), 14 February 2001, Recommendation 1 and 2.

many of the features seen by the ARC to be desirable will be incorporated in the SAT.

## **THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL (VCAT)**

27. The VCAT was established by the *Victorian Civil and Administrative Tribunal Act 1998 (Vic)*. The VCAT involved the effective amalgamation of the existing Victorian Administrative Appeals Tribunal and several smaller, separate tribunals and bodies which operated in jurisdictions such as anti-discrimination, credit, domestic building, guardianship, property, land valuation, occupation and business regulation and taxation. The President of VCAT is a Judge of the Supreme Court of Victoria whose time is divided between VCAT and the Supreme Court.

### **OBJECTIVES OF THE LEGISLATION**

28. The VCAT was introduced with the stated purpose of providing the Victorian community with a tribunal system that is modern, accessible, efficient and cost-effective. It aims to improve the operation of the tribunal justice system in Victoria by streamlining administrative structures, increasing flexibility, and improving the operation of tribunals.

29. During the Second Reading Speech to the *Victorian Civil and Administrative Tribunal Bill*, the aims of VCAT were stated to be as follows:

- a. to provide access to justice for all Victorians including the business community;
- b. to 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;

- c. to complement measures to increase alternative dispute resolution programmes by providing a range of procedures including mediation and compulsory conferences to help parties reach agreement quickly;
- d. to streamline the administrative structures of tribunals, thereby improving their efficiency;
- e. to develop and maintain flexible cost-effective practices;
- f. to introduce common procedures for all matters, yet retain the flexibility to recognise the needs of parties in specialised jurisdictions; and
- g. to achieve administrative efficiencies through the centralisation of registry functions, improvement of information technology systems and more efficient use of tribunal resources.<sup>23</sup>

#### *JURISDICTION/STRUCTURE*

30. The VCAT comprises two divisions: Civil and Administrative. Each division has a number of 'lists' that specialise in particular types of cases. The Civil Division deals with disputes between citizens and primarily exercises the VCAT's original jurisdiction. The Civil Division consists of the following lists:

Anti-Discrimination List  
Guardianship List  
Civil Claims List  
Real Property List

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<sup>23</sup> Parliamentary Debates, Victorian Legislative Assembly, Ms Wade, 9 April 1998, p. 973 (Second Reading Speech). See also Jason Pizer, "The VCAT - The Dawn of a New Era for Victorian Tribunals," (1998) 6 Australian Journal of Administrative Law, 46-55.

Credit List  
Residential Tenancies List  
Domestic Building List  
Retail Tenancies List

31. The Administrative Division conducts merits reviews of administrative decision making and generally exercises the VCAT's review jurisdiction. It consists of the following:

General List  
Land Valuation List  
Occupational and Business Regulation List  
Planning List  
Taxation List

32. The VCAT therefore has two types of jurisdiction: original and review. Original jurisdiction is defined in the Act<sup>24</sup> as the jurisdiction of the VCAT *other than its review jurisdiction*. Review jurisdiction is defined as jurisdiction conferred on the VCAT *by or under an enabling enactment to review a decision made by a decision maker*.<sup>25</sup>

#### **HOW IS THE ORIGINAL JURISDICTION OF THE TRIBUNAL INVOKED?**

33. The original jurisdiction of the VCAT may be invoked by a person applying to the VCAT (if entitled to do so under an existing statute), by a matter being referred to the Tribunal under legislation, or in any other way permitted or provided for by legislation.<sup>26</sup>

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<sup>24</sup> s 41

<sup>25</sup> s 42(1)

<sup>26</sup> s43. Examples of enabling Acts include: *Equal Opportunity Act 1995 (Vic)*, *Fair Trading Act 1999 (Vic)*, s 45 *Motor Car Traders Act 1986 (Vic)*, ss 25 and 26 *Chattel Securities Act 1987 (Vic)*, *Credit Act 1984 (Vic)*, *House Contracts Guarantee Act 1987 (Vic)*, *Guardianship and Administration Act 1986 (Vic)*, s 86 *Mental Health Act 1986 (Vic)*, s 56B(1) *Estate Agents Act 1980 (Vic)* and *Residential Tenancies Act 1997 (Vic)*.



### ***HOW IS THE REVIEW JURISDICTION OF THE TRIBUNAL INVOKED?***

34. The review jurisdiction of the VCAT may be invoked by a person applying to the VCAT for a review of a decision made under the enabling legislation (if that person is entitled to do so under that legislation), by the decision-maker referring a decision made under an enabling Act for review, or in any other way permitted or provided for by the enabling Act.<sup>27</sup> If an Act provides that a person whose interests are affected by a decision may apply to the Tribunal for a review of a decision, *interests* means interests of any kind and is not limited to proprietary, economic or financial interests.<sup>28</sup> In such cases, according to section 5(b) of the Act, a person may apply for review, whether their interests are directly or indirectly affected by the decision. The functions of the Tribunal on review are set out in section 51 of the Act.

### ***EXPERTISE***

35. The members of VCAT have a broad range of specialised skills to hear and determine cases and are assigned to specific lists by the President according to their expertise and experience. However, if a member has appropriate qualifications, he or she may be assigned to hear cases in more than one list. This allows for the most efficient use of the member's time as well as flexible and appropriate use of members' expertise.

## **THE NEW SOUTH WALES ADMINISTRATIVE DECISIONS TRIBUNAL (ADT)**

### ***OBJECTIVES/INTENT OF LEGISLATION***

36. The ADT was established by the *Administrative Decision Tribunal Act (1997) NSW* to provide a central, cost-effective and convenient way for the people of New South Wales to obtain a review of administrative decisions; and to have certain general complaints such as discrimination and professional misconduct

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<sup>27</sup> s48

<sup>28</sup> s5(a)

resolved.<sup>29</sup> The ADT was stated to be part of the Government's commitment to delivering open, accessible and accountable government to the people of New South Wales.<sup>30</sup> It is headed by a President who has the status of a District Court Judge.

37. These objects of the legislation are evident from the objects clause of the *Administrative Decisions Tribunal Act* which includes the following:

- a. foster an atmosphere in which administrative review is viewed positively as a means of enhancing the delivery of services and programs; and
- b. to promote and effect compliance by administrators with legislation enacted by Parliament for the benefit of the citizens of New South Wales.

38. Another reason for the creation of the ADT was the desire to rationalise the proliferation of tribunals in New South Wales.<sup>31</sup> The ADT was intended to be a cost-saving exercise which would solve the problems associated with a proliferation of tribunals, namely inefficiency and variable standards. This rationale has also underpinned moves towards introducing tribunals in the Victorian and Commonwealth jurisdictions.

### *JURISDICTION/STRUCTURE*

39. Jurisdiction is conferred on the ADT by many Acts across a wide range of portfolios but is not as wide or comprehensive as that of the VCAT. The Tribunal is a two-tiered structure. The first tier, which carries the greatest volume of work, is divided into six divisions each of which is responsible for particular areas.

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<sup>29</sup> See the Administrative Decisions Tribunal website at: [http://www.actsofpassion.nsw.gov.au/adt.nsf/pages/adt\\_1](http://www.actsofpassion.nsw.gov.au/adt.nsf/pages/adt_1)

<sup>30</sup> See JW Shaw QC, MLC, "The Administrative Decisions Tribunal in New South Wales," (1996) 6 Australian Journal of Administrative Law, 155-157.

<sup>31</sup> Jill Anderson, "Something Old, Something New, Something Borrowed... The New South Wales Administrative Decisions Tribunal," (1998) 5 Australian Journal of Administrative Law 99.

These divisions are engaged in both primary or 'original' decision making and administrative review. The second tier is where the ADT is constituted by an appeal panel to hear internal appeals from a decision made at the divisional level.

40. The six divisions of the ADT are as follows:

General Division  
Community Services Division  
Revenue Division  
Equal Opportunity Division  
Retail Leases Division  
Legal Services Division

41. The structuring of the ADT into divisions was intended to maximise the potential for procedural flexibility. The General, Equal Opportunity and Legal Services Divisions commenced on 1 January 1999, the Retail Leases Division commenced on 1 March 1999 and the Revenue Division commenced on 2 July 2001.
42. The Parliament of New South Wales has also passed legislation to establish an Occupational Regulation Division, but a commencement date has not yet been announced.

#### *TYPES OF DECISIONS*

43. Under section 36 of the *Administrative Decisions Tribunal Act*, the Tribunal may:
- a. make original decisions; and
  - b. review reviewable decisions.

An original decision is a decision of the Tribunal made in relation to a matter over which it has jurisdiction under an enactment<sup>32</sup> to act as the primary decision maker.<sup>33</sup> A reviewable decision is defined<sup>34</sup> as *a decision of an administrator that the Tribunal has jurisdiction under an enactment to review*. Sections 37 and 38 of the *Administrative Decisions Tribunal Act* confer jurisdiction on the Tribunal to hear original and reviewable decisions.

#### **WHEN MAY A PERSON APPLY FOR AN ORIGINAL DECISION?**

44. A person may apply to the ADT for an original decision if they are an interested person and the application is made in the manner and within the time prescribed by the rules of the ADT (or prescribed by or under the enactment under which the application is made).<sup>35</sup> Section 4 of the *Administrative Decisions Tribunal Act* defines *interested person* to mean a person who is entitled under an enactment to make an application to the ADT for an original decision or a reviewable decision (as the case may be). This is a similar approach to that adopted by the VCAT.

#### **APPEAL PANEL**

45. The ADT also includes an appeal panel to hear internal appeals from a decision made at divisional level. Appeals may be made to the Appeal Panel against original decisions, where this is permitted by enabling legislation and against decisions of the Tribunal determining applications for review. It is also possible to appeal to an Appeal Panel against certain procedural decisions of the Tribunal.

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<sup>32</sup> An enactment is defined in section 5 of the *Administrative Decisions Tribunal Act* as follows:

"An enactment is:

(a) in relation to a reviewable decision - an Act (other than this Act) or a statutory rule (other than a statutory rule made under this Act), or  
(b) in any other case - an Act (other than this Act)."

<sup>33</sup> s7

<sup>34</sup> s8

<sup>35</sup> s42

Appeals may be made on any question of law but leave of an Appeal Panel is required for an appeal on the merits of a decision. If an appeal is made on a question of law only, an Appeal Panel may make a decision affirming, varying or setting aside the decision against which the appeal has been made. In relation to appeals on the merits of a decision, the Appeal Panel must make the correct and preferable decision on the basis of the material before it. In determining appeals on the merits, the Appeal Panel exercises, according to section 63, of the *Administrative Decisions Tribunal Act* all the powers that the Tribunal would exercise upon determining an application for review of a primary decision.

## **SOUTH AUSTRALIA**

46. South Australia has, since 1994, made provision for an Administrative and Disciplinary Division of its District Court – effectively an Administrative Appeals Court. By section 8(3) of the *District Court Act 1991 (SA)*, the Court may exercise in that Division any jurisdiction conferred on it by statute. Legislation conferring such a jurisdiction may provide that the court be constituted by a magistrate or that it may sit with assessors. The Court has an appeals jurisdiction over a range of matters as diverse as discipline of conveyancers under the *Conveyancers Act 1994 (SA)*, destruction orders under the *Dog and Cat Management Act 1995 (SA)* and appeals from the Guardianship Board under the *Guardianship Act 1993 (SA)*.
47. A major focus is on disciplinary appeals affecting various groups of occupational agents (land agents and valuers, plumbers, second hand vehicle dealers and investigation agents). The Court's Administrative Appeals Rules contemplate appeals in a number of additional matters such as accreditation under the *Meat Hygiene Act 1994 (SA)*, the *Local Government Act 1934 (SA)*, the *Residential Tenancies Act 1978 (SA)* and the *Freedom of Information Act 1991 (SA)*.

48. The Court is not bound in such matters by the rules of evidence and is required to act according to equity and the substantial merits of the case without regard to technicalities and legal forms. What therefore emerges is review within the traditional court setting, but modified to a degree by the addition of assessors and the relaxation of formalities.

## TASMANIA

49. The State of Tasmania has quite recently effected reforms to its administrative review system. The changes made reflect the approach recommended by the 1982 WALRC Report. That is to say, the Tasmanian Government and Parliament has found it appropriate to create an administrative appeals division largely within the current framework of the Magistrates Court in that State. The reason for so doing is the current size of the State – just under 500,000 people – and the correspondingly smaller workload in that State.

50. The reasons motivating the creation of an administrative appeals division in Tasmania reflect those that have driven the reforms in the Commonwealth, Victoria and New South Wales that we have referred to above. The creation of the administrative appeals division is intended to enable the development of a single, uniform set of rules and procedures for dealing with administrative appeals falling within its jurisdiction over a wide range of administrative decision making matters.

51. It is envisaged that once the system becomes operative other appeals will be included in the jurisdiction over time, particularly when new appeal rights are created by new statutes. The division will, however, only have jurisdiction where such a right is conferred by statute.

52. The Attorney General for Tasmania, Dr Peter Patmore, has explicitly recognised that, unlike the more populous States and those having greater economic activity, the choices facing Tasmania in the selection of an appropriate administrative review system are limited:

*The challenge for Tasmania is to deliver sufficient avenues of review or appeal for its citizens within the constraints of a small population and small budget allocation. Tasmania cannot count on the economies of scale of the more populous States – yet it cannot use this as an excuse for failing to deliver the services that support basic rights.<sup>36</sup>*

#### **THE UNITED KINGDOM PROPOSALS TO INSTITUTE AN ADMINISTRATIVE REVIEW TRIBUNAL (THE LEGGATT REPORT)**

53. In March 2001 Sir Arthur Leggatt presented his report, *Tribunals for Users: One System, One Service* (the Leggatt Report), to the British Government. It recommended that a wide range of existing tribunals in the UK be combined into a single system, to be headed by an English High Court Judge (that is, a person of a status similar to a Western Australian Supreme Court Judge). It proposed that the new system should review decisions at first instance and at appellate level.
54. The Leggatt Report stated that the fundamentals of the system proposed were that it should:
- a. have the requisite degree of independence from government;

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<sup>36</sup> Dr Peter Patmore, Attorney General for Tasmania “*Good Things in Small Packages*”, the Paper delivered to the Australian Institute of Administrative Law 2001 Administrative Law Forum, Canberra, 5–6 July 2001.

- b. provide flexible, less formal but fair procedures for the hearing and determination of appeals (including encouraging parties to make less use of lawyers);
  - c. maintain high standards of expertise in reviewing decisions; and
  - d. ensure public confidence in the proposed tribunal system as a crucial element.
55. The Leggatt Report particularly singled out the existing Commonwealth AAT as an excellent example of many of the elements it regarded as desirable for a general tribunal system for the United Kingdom.

#### **TASKFORCE'S COMMENT ON REFORMS ELSEWHERE**

56. The recent establishment of the VCAT in Victoria, the ADT in New South Wales and the Administrative Appeals Division in Tasmania, following the well-established Commonwealth AAT, together with the conclusions of the recent Leggatt Report in the United Kingdom, emphasise the constitutional and administrative importance of providing Western Australians with a well-structured, consolidated, flexible and accessible system of civil and administrative review of decision making.
57. The outline of the civil and administrative review system in Western Australia provided in Chapter 1, together with the overview of the developing systems in these other Australian States, as well as overseas, serves to emphasise the changing nature of the administrative state during the course of the 20<sup>th</sup> century and into the 21<sup>st</sup> century. Rapidly expanding populations and economic bases have required the introduction of complex and sophisticated administrative decision making processes. Government is no longer – if ever it was – carried on



simply at a Ministerial level. Good decision making involves a range of public officials. The need for a range of administrative decisions to be handled by persons or bodies independent from Government and having particular skills, has been a concomitant aspect of the growth of the modern state. Today, the growth in the regulation of economic activities is no less than it has ever been. For example, in this State electricity, gas, water and rail services are all the subject of relatively recent economic regulation. Each area of regulation has produced demands for primary decision making agencies and increasingly independent review mechanisms.

58. The establishment of a civil and administrative review tribunal enables civil and administrative review services to be provided in respect of all aspects of the State's current administrative system where the need for independent and impartial decision making is considered a necessary ingredient of modern commercial and civil activity.



## CHAPTER 4 - PROPOSAL FOR A STATE ADMINISTRATIVE TRIBUNAL (SAT)

### INTRODUCTION

1. As can be seen from the information and discussion contained in Chapters 2 and 3, reports on the state of the Western Australian civil and administrative review system have consistently supported a proposal that bodies engaged in these types of administrative activities should be brought together.
2. The experience and practice at the Commonwealth level, as well as the recent initiatives in Victoria and New South Wales, also strongly support the streamlining of the civil and administrative review processes through the establishment of a single overarching tribunal.
3. The most recent, authoritative report in Western Australia, the 1999 WALRC Report, advocated the establishment of a single tribunal structure that mirrors the reforms introduced in Victoria by the *Victorian Civil and Administrative Tribunals Act 1998 (Vic)*.
4. The Terms of Reference require the present Taskforce to develop the model of a civil and administrative review tribunal for consideration by the Government.

### PRIMARY RECOMMENDATIONS

5. The Taskforce recommends the establishment of a civil and administrative review tribunal to be called the State Administrative Tribunal (SAT). This title is sufficiently short and descriptive to enable citizens easily and readily to refer to and identify the tribunal. While lawyers may appreciate the finer distinctions between 'civil' and 'administrative review' functions, we doubt others generally will find such distinctions helpful. In the final analysis the body is an

administrative tribunal exercising administrative, not judicial, power and is best so described.

6. The SAT should:
  - a. assume the administrative review functions of the appeals tribunals and many of the court, ministerial and public officials appeals we have listed; and
  - b. exercise the original jurisdiction of most of the original decision making bodies referred to in this Report, including those of the disciplinary and supervisory boards.
7. The existing Guardianship and Administration Board and Mental Health Review Board should be co-located with the SAT. The President or a Deputy President of the SAT should Chair each of these Boards and the members of these Boards should also be members of the SAT.
8. The SAT should:
  - a. exist for the benefit of the people of the State and should be structured and operated so as to advance, at every turn, the interests of those who use it;
  - b. give people the right to be informed of reasons behind administrative decisions that affect them;
  - c. have the primary obligation to ensure consideration, without delay, of civil and administrative matters or review of administrative decisions so that the *correct or preferable decision* is made in every case; and

- d. have the primary objective to act fairly and according to the substantial merits of the case in all proceedings.
9. By reason of the range of functions it would exercise and the importance of those functions to individuals and to the commercial life of the State, the SAT should be headed by a President who is a Supreme Court Judge and two Deputy Presidents who are District Court Judges. These judicial members of the SAT should be designated as 'Presidential members'. The Presidential members should also include a Supreme Court judge who may be appointed, from time to time, by the Chief Justice of Western Australia and at the request of the SAT President, to exercise any of the functions or powers of a Presidential member. The other members of the SAT should be chosen by reason of their suitability to exercise one or more of the particular functions of the SAT.
10. The SAT should be organised by way of Lists dealing with particular areas of its decision making.
11. The detailed structure of the SAT is contained in Chapter 5 of this Report.

#### **PROBLEMS WITH THE EXISTING *AD HOC* PROCESSES**

12. Most existing administrative tribunals operate in a self-contained way, each quite separate and independent from the other, using different practices and applying different standards. Occasionally there is a sharing of a registrar or some administrative staff but not often. Each administrative tribunal thereby develops according to its own lights.
13. The current system is due to the historical creation and accretion of tribunals and boards to deal with particular regulatory issues or demands for administrative justice. While this might have been justified at the time, the current system largely relies upon tribunals and boards with a part-time professional,

occupational or commercial membership drawn from the fields that they seek to regulate or oversee. The quality and consistency of decisions made by these various bodies necessarily depends upon the composition of the particular tribunals and boards from time to time. Additionally, each must be separately funded and equipped. Rarely is it the case that individual bodies are exposed to the 'best practice' of other bodies. In the main, the opportunity to share resources and expertise does not exist.

14. The separate development of existing tribunals and boards in ways that help to overcome the deficiencies of the present 'system' not only would be costly, but also would not be guaranteed to succeed. Moreover, any such attempt would be likely to result in significant overlaps and unnecessary additional financial expenditure.
15. The current system also reflects an unsystematic assignment of administrative review functions to a variety of courts and ministers, many of which appear either anachronistic or otherwise inappropriate in a modern setting.

## **BENEFITS OF THE SAT**

16. As to the benefits that are considered likely to flow from the implementation from the proposal to establish the SAT, there is remarkable unanimity among commentators. While it is not always possible to demonstrate in some quantitative way that implementation of such a proposal will produce 'better decisions', the judgment of those experienced in the area and the preponderant view of the various inquiries we have referred to is that 'better decisions' will flow from an amalgamation of the current proliferation of civil and administrative review tribunals, and court and ministerial appeal processes, in Western Australia. This has been the considered judgment over many years in the Commonwealth jurisdiction, as well as the more recent judgment in Victoria

and New South Wales.<sup>37</sup> The Leggatt Report in the United Kingdom serves to confirm that judgment in a political and legal setting not unlike that which exists in Western Australia.

17. The Taskforce considers the development of the SAT in the manner proposed in this Report will address the structural deficiencies of the existing *ad hoc* system, promote better decision making and secure a number of significant benefits for citizens and public administration alike in this State. In particular:
  - a. citizens will gain access to a single, one-stop tribunal in place of a variety of existing tribunals;
  - b. as a result of access to a single tribunal, there will be an identifiable point of contact for all citizens in respect of most civil and administrative review decisions currently made by a plethora of boards, tribunals, courts, ministers and public officials;
  - c. more information will be provided to citizens about the making of applications, about hearings and about the reasons for decisions;
  - d. a more flexible and user-friendly system of decision making will be developed;
  - e. the SAT will have available to it a wide range of expert and experienced members (whether full-time, part-time or sessional) to serve on its various panels;

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<sup>37</sup> See Appendix 6: The Hon Justice Kellam, President of VCAT "Civil and Administrative Tribunals – Can Their Performance Be Improved?" (2001) 29 AIAL Forum 31

- f. the SAT will be able to keep the exercise of its operations under continuing review and will adopt 'best practice' in all of its functions;
- g. more effective and systematic recruitment and training of members of the SAT will be a feature of the new system;
- h. the SAT will have the capacity to keep abreast of innovation and developments in comparable tribunals throughout Australia;
- i. new and improved information technology will be made available for the efficient handling, without delay, of applications to the SAT;
- j. the existence of a single tribunal will ensure that original decision making and administrative review decision making is conducted on a more cost effective basis than at present;
- k. Government and the Parliament will be able to assign administrative review functions in respect of new and developing areas of government regulation directly to an existing and experienced tribunal rather than create one-off, *ad hoc* review bodies; and
- l. the SAT will have the appropriate leadership, expertise, experience and independence from the Government of the day to ensure the people of Western Australia can have the fullest confidence in the workings of the SAT.



## GENERAL OUTLINE OF PROPOSAL

18. It is important that standard and best practices be developed for all civil and administrative review decision making in this State. Implementation of our recommendations will significantly advance this goal.
19. The Taskforce does not believe that bringing the functions of the existing administrative tribunals within the one tribunal structure will result in the good practices of existing individual tribunals and boards being lost, abandoned or stultified. On the contrary, amalgamation will lead to development of better practice and better decisions across the board, drawing on the collective experience of existing agencies. This will benefit all aspects of the State's administrative system. What is good in the existing systems will cross-fertilise those areas where the system is presently underdeveloped.
20. As we have explained, all earlier inquiries have emphasised the good sense of bringing together the range of existing appeals tribunals in one tribunal structure. It can readily be appreciated that the administrative review functions of these different administrative tribunals are similar in nature, even though the particular subject matter may differ.
21. In some cases, existing tribunals deal with a common or related subject matter. For example, those concerned with town planning and land valuation matters. Economies of scale in the sharing of resources and personnel, at the very least, suggest the good sense in bringing together these existing specialist bodies.
22. Additionally, there are other decisions currently the subject of local government appeals either to a Local Court, a Court of Petty Sessions or the Minister for Local Government, which have a land use character and should be treated largely in the same way as the matters that are currently determined in the appeals tribunals.

23. Moreover, as we explain in more detail below, there is no sufficient reason why the Ministerial appeal system in relation to pollution control matters under Part V of the *Environmental Protection Act* should not be replaced by a tribunal experienced in land use planning appeals and comprised of persons with appropriate experience in the environmental sciences.
24. Once a generalist tribunal is set up to deal with administrative decisions, the need to provide appeal rights in respect of various administrative decisions to the courts ceases to be rational, at least where policy issues or the exercise of administrative discretions are involved. The court system is not the place for administrative decision making to be reviewed on its merits. Courts typically determine disputes between citizens, and between citizens and government, according to established rules of the general law and other rules laid down by statute. Courts are concerned with the declaration and enforcement of existing legal rights, not with formulation or application of government policy or the review of administrative decision making.
25. With the development of a generalist tribunal such as the SAT there can be very few compelling reasons why the existing array of administrative review appeals to courts should not be assumed by the SAT.
26. Similarly, a number of ministerial appeals in respect of administrative decisions should no longer be determined by the minister of the day. Such 'appeals' are often in the nature of internal reviews of departmental decision making and not truly independent and impartial appeals at all. Citizens today demand more of an appeal process than that. Many, though not all, of these appeals involve the assessment of technical matters or matters suited to determination by an independent and impartial tribunal review, rather than departmental or political review.

27. Nonetheless, the Taskforce recognises there is a range of government decision making involving ministerial appeals that require the exercise of political or policy judgment by the Government of the day or that are otherwise unsuited to determination by an independent and expert review tribunal.
28. Having regard to these considerations, the Taskforce has recommended that a number of existing ministerial appeal functions should be transferred to the SAT. However, we have also identified a range of existing ministerial appeals that we believe should remain within ministerial control. In nearly all cases, the division we have suggested has been supported by the relevant minister.
29. In relation to a range of ministerial appeals under the *Local Government (Miscellaneous Provisions) Act* in respect of building controls, the Taskforce has recommended that the existing appeal mechanisms permitting an appeal to the minister from decisions of local governments should be maintained, but only as an intermediate, or first-tier appeal mechanism.
30. The current position is that some 300 or more building control matters are handled within the Department of Local Government and Regional Development by departmental officers. These officers are responsible for investigating and making recommendations to the minister as to how the appeals should be determined. This system has a highly fact-specific and technical component to it and, in effect, provides a method of internal, or first-tier review of local government decision making. For this reason we are not inclined to adopt the submission the Minister for Local Government made to us that all such appeals should be dealt with by the SAT in the first instance. Rather, we believe that the existing building control appeal mechanism should be retained as a first-tier appeal with a right of second-tier appeal to the SAT.

31. However, the Taskforce also recommends that rather than the Minister for Local Government remaining responsible for the determination of the first-tier review, the function should be exercised by the Director General of the Department of Local Government and Regional Development. These appeals are currently considered in detail by officers within the Department in any event, whose recommendations go before the Minister for determination. It is inappropriate, not to say unnecessarily burdensome, for the Minister to have the day-to-day function of determining building control reviews. In the future the recommendations should go to the Director General who should formally make the decision. Alternatively, the Director General should be authorised to delegate this function to an appropriate officer within the Department.
  
32. Similarly, in relation to ministerial decisions under section 7 of the *Jetties Act 1926*, which are ordinarily delegated to the Chief Executive Officer with a further right of appeal to the minister, we recommend the primary decision making function be vested in the Director General of the Department of Transport, with a power to delegate, subject to a right to appeal to the SAT.
  
33. Once a generalist tribunal, such as the SAT, is developed to deal with this wide range of administrative review or appeal decision making, it becomes relevant to consider what might be done to improve the system whereby a range of disciplinary and supervisory boards operate in this State. As we have explained in Chapter 1, these types of boards have both regulatory and disciplinary functions. For example, they licence people to carry on activities in designated professional, occupational and business areas. Additionally, they receive complaints about misconduct. Finally, they hear and determine the complaints and impose disciplinary penalties.

34. In relation to matters of discipline going beyond mere regulation of persons in their calling, the disciplinary functions of these types of boards should be separated from their regulatory and investigatory functions.
35. The Gunning Inquiry has already suggested, and the findings of the Temby Royal Commission confirm, that the disciplinary or supervisory functions of the Consumer Affairs boards and committees associated with the finance brokers scandal should be removed and that those existing bodies, or some other unit within government, should have the separate responsibility to licence operators and receive and investigate complaints concerning misconduct. Applications to cancel or suspend existing licences or impose substantial fines would then be heard by a body, such as the SAT, which is separate from, and independent of, that other unit of government.
36. We consider a separation of regulatory functions from disciplinary/supervisory functions to be desirable in respect of all disciplinary boards. The work of the Gunning Inquiry and the Temby Royal Commission illustrates and emphasises the need for such a separation of functions. It is no less appropriate in relation to the wider range of disciplinary boards that currently deal with professional and occupational matters than it is in respect of the Consumer Affairs boards and committees.
37. The public today are entitled to expect that those responsible for investigating complaints of misconduct carry out their work with appropriate vigour and that those who have the responsibility to determine whether persons are guilty of misconduct are not predisposed in their decision making. Equally, those whose conduct is subject to a review which may result in the cancellation or suspension of their right to follow their calling or a substantial fine, are entitled to expect that the body which determines their guilt or innocence is not the same body as that which decided the review was necessary.

38. The inquiries into the finance brokers industry have also suggested that under the existing system of disciplinary and supervisory controls in this State, those responsible for discipline and supervision can be too close to those persons whose conduct they are required to review.
39. In short, we believe the public of Western Australia today are entitled to expect that decisions of a disciplinary and supervisory kind that may result in the cancellation or suspension of a professional, occupational or business licence or a substantial fine, are arrived at entirely independently and impartially and for the primary purpose of protecting the interests of the public.
40. These considerations have led the Taskforce to recommend that in principle the exercise of disciplinary or supervisory functions of all existing administrative tribunals and boards should be performed by the SAT.
41. The implementation of our proposal would result in the development of a separate disciplinary and supervisory list within the SAT. The members of the list would be persons who, like the members of the various existing boards, have special skills or experience which make them suited to the performance of those functions.
42. Once the major disciplinary/supervisory function of these types of boards is separated from the regulatory/investigatory function, the boards will remain responsible for complaint handling and investigation, a most important task. It will be open to the Government to determine whether the boards, in particular the Consumer Affairs boards and committees, should retain a separate existence.
43. Presently only the regulation and discipline of lawyers in this State follows this preferred model. The Legal Practice Board with its Legal Practitioners

Complaints Committee is responsible for licensing lawyers and investigating complaints of misconduct. The Legal Practitioners Complaints Committee considers complaints and refers those matters it believes have substance to the Legal Practitioners Disciplinary Tribunal for hearing and determination.

44. Where the Legal Practitioners Complaints Committee's preliminary investigation suggests, however, that a matter involves only a minor breach of discipline, it may, rather than refer the matter to the Legal Practitioners Disciplinary Tribunal, hear and determine the complaint summarily, but only if the legal practitioner concerned agrees to this course of conduct (section 28A of the *Legal Practitioners Act*). Where the Legal Practitioners Complaints Committee takes this course of action with the consent of the legal practitioner, it is limited to reprimanding or counselling the practitioner or imposing a fine not exceeding \$500.
45. This system of discipline under the *Legal Practitioners Act* means that the Legal Practitioners Complaints Committee is the primary statutory body responsible for the investigation of complaints of professional misconduct by lawyers. Where the Legal Practitioners Complaints Committee considers a complaint to have substance, it does not make the decision whether there has been professional misconduct, but refers the matter to the Legal Practitioners Disciplinary Tribunal which hears the evidence and makes the determination. If the charge of misconduct is proved, the Legal Practitioners Disciplinary Tribunal imposes penalties including those of suspension or cancellation of the right to practise law, a substantial fine and/or other appropriate penalties.
46. The ability of the Legal Practitioners Complaints Committee to exercise a summary disciplinary power by imposing a small fine etc, enables the Committee, with the consent of the practitioner, to deal with what might be termed minor breaches of discipline in an effective and timely manner. In many respects, a summary disciplinary power is an aspect of the power to regulate the

profession. The Legal Practitioners Complaints Committee is not required to deal with all minor matters and it may well decide that a matter, which appears minor at first blush, is something which should be referred to the Legal Practitioners Disciplinary Tribunal for detailed consideration. The summary disciplinary power created by section 28A of the *Legal Practitioners Act* is therefore an exceptional power to be used in cases where the imposition of a small fine, reprimand or further education and counselling appears to be sufficient to deal with the matter, and the legal practitioner concerned submits to the jurisdiction of the Legal Practitioners Complaints Committee.

47. We note that the system of referral of complaints to the Legal Practitioners Disciplinary Tribunal also permits an aggrieved complainant to refer a complaint to that Tribunal whenever it is decided that the matter should not be the subject of a disciplinary adjudication, whether under section 28A of the Act or by the Legal Practitioners Disciplinary Tribunal, provided the Legal Practitioners Complaints Committee has not ruled the complaint to be trivial, unreasonable, vexatious or frivolous etc, under section 28C(3) of the *Legal Practitioners Act*.
48. The Taskforce considers that, while the disciplinary powers of existing boards should generally be removed and vested in the SAT, it may be appropriate to permit boards and committees (or other relevant units of government) to deal with misconduct of a minor nature, with the consent of the person the subject of the complaint, according to the formula suggested by section 28A of the *Legal Practitioners Act*. Whether the proposed summary disciplinary power should be granted to every board or committee, apart from those which currently have such a power, will of course depend upon the nature, circumstances and resources of that particular board.



49. The Taskforce's recommendations in respect of disciplinary powers is in harmony with a current proposal developed following a review of the *Medical Act* to create a separate Medical Disciplinary Tribunal in this State. Such a development would see the regulatory/investigatory and disciplinary/supervisory functions of the existing Medical Board separated in a manner similar to that which operates under the *Legal Practitioners Act*. Under the proposal the existing Medical Board would retain a disciplinary function in respect of less serious matters whereas more serious matters would be referred to the Medical Disciplinary Tribunal. The test of seriousness proposed is whether a complaint, if substantiated, would cause consideration to be given to suspending or cancelling the practitioner's registration. In other words, in the case of less serious matters the Medical Board would continue to exercise a summary disciplinary power.
50. The Taskforce agrees with the general thrust of this proposal. However, the Taskforce believes that the disciplinary functions envisaged for the Medical Disciplinary Tribunal should be assumed by the SAT. Furthermore, the Taskforce does not consider a formal division between more serious and less serious matters to be the best means of determining those particular matters which should be resolved by the Medical Board or referred to the Medical Disciplinary Tribunal. Rather, as indicated above, the Taskforce believes that in the case of the Medical Board, the Board should have a power in terms of section 28A of the *Legal Practitioners Act* to deal with what amounts to minor breaches of discipline in appropriate cases, with the consent of the person who is the subject of a complaint. Further, as indicated above, other boards (or other relevant units of government) which currently do not have such a summary disciplinary power might be granted such a power, depending upon the nature, circumstances and resources of that particular board.

51. Where a complainant remains aggrieved by a decision of a board not to refer a matter to the SAT or exercise its summary disciplinary power, he or she should be able to refer the matter to the SAT, save where findings have been made by the board that the complaint is trivial, unreasonable etc., in the manner referred to in section 28C(3) of the *Legal Practitioners Act*.
52. In this way, boards, as is the case with the Legal Practitioners Complaints Committee, will not be required to make an assessment of whether the complaint, if proved, is more serious or less serious. Only where a complaint, if proved, would be considered to attract a fine not exceeding \$500 or discipline such as a reprimand, counselling, or further education or training, would the board be able to exercise its summary disciplinary power, and only then if the person who is the subject of the complaint consents to the exercise of the summary jurisdiction.
53. The expectation would be that a board (or relevant unit of government) would refer a complaint with substance to the SAT for hearing and determination, unless the section 28A power were considered relevant in a particular case.
54. The exercise of the summary disciplinary power by a board or committee should be subject to appeal to the SAT by the person affected by the disciplinary decision in any event. Complainants otherwise would have an ability to refer matters to the SAT, save where the complaint has been ruled as trivial, unreasonable etc. under a section 28C *Legal Practitioners Act* type provision. In this way, the SAT will retain full supervisory jurisdiction over disciplinary matters.
55. In order to ensure greater transparency in relation to disciplinary matters, all tribunals, boards and committees should be required to report each financial year to their responsible ministers on the number, nature and outcomes of disciplinary matters dealt with in the preceding year (including those dealt with by the SAT) together with a statement of any trends or special problems they have noted,

which report the minister should table in Parliament as soon as practicable after receipt.

56. The consequence of our recommendations in this area will be that existing boards will retain the following types of functions (not every board has exactly the same range of functions):

- a. the licensing power;
- b. the setting of regulations that govern conduct of licensed persons;
- c. the publication of guidelines to govern desirable conduct;
- d. encouragement of good education and training practices;
- e. complaint handling and investigation;
- f. the exercise of the power, where it exists under existing statutes, to suspend a licence in urgent circumstances;
- g. the exercise of conciliation powers, where it exists under existing statutes, in respect of complaints that result in no disciplinary action being required; and
- h. the exercise of a summary disciplinary power similar to that which exists under section 28A of the *Legal Practitioners Act*, in the circumstances we have described above.

The question of which of the above functions should be vested in a particular board and, in particular, whether a board should be granted the proposed summary disciplinary power, as mentioned earlier, would of course depend

upon the nature, circumstances and resources of that particular board. Our recommendation is that serious consideration should be given to the granting of summary disciplinary power along the lines of section 28A of the *Legal Practitioners Act* in all cases, but it may be that it is not appropriate in some of them.

57. In most cases, existing boards will continue to exercise these important functions. In some areas, it may be open to Government to consider the amalgamation of existing boards – because of the like nature of the subject areas of regulation – in a manner that will improve the performance and efficiency of existing bodies. For example, in the context of the Consumer Affairs boards and committees, the Gunning Report and the Temby Royal Commission have already reflected upon this issue; it is also the subject of the Issues Paper, February 2002, from the Review of Consumer Protection Boards and Committees, Department of Consumer and Employment Protection (WA). The Issues Paper acknowledges the likelihood of the SAT assuming the disciplinary functions of the Consumer Affairs boards and committees. The purpose of the review is to determine *how the residual functions of the Boards can best be performed*. The possible options for reform of current boards identified in section 6 of the Issues Paper include:
- a. the merging of boards in related industries;
  - b. the establishment of a new Business Licensing Authority to perform all but the disciplinary function of each board; and
  - c. the transfer of all functions currently performed by the boards to the Department of Consumer and Employment Protection, except for the disciplinary functions which would rest with the SAT.

The Taskforce recognises these options and makes no further comment on them.

58. Existing boards will remain free to develop their own guidelines and industry arrangements concerning what type of conduct will attract different types of disciplinary outcomes.
59. For example, we have been informed by the Acting Chief Executive of the Department of Land Administration (DOLA) that in 1995 an 'agreement' was concluded between DOLA and the Surveying Industry whereby the Land Surveyors Licensing Board would undertake the management of a disciplinary system by receiving from DOLA referrals and charges in respect of offences or breaches by surveyors of either regulations or practices. An accreditation system was then developed and presently operates such that errors made by surveyors on survey plans lodged at DOLA are assessed for their severity of error. The errors are graduated through a list from 'low severity' to 'high severity' and, depending on the level of severity, different consequences follow. High levels of severity are referred to the Board and in serious cases a charge can be made under the Act.
60. Under the approach recommended by the Taskforce, the accreditation system that is the subject of the agreement between DOLA and the surveying industry would not in any significant respect be put at risk, but might well be seen as providing something of a model for like industries. Where an alleged error, if proved, is of such severity – or there is other relevant misconduct which would, if proved, lead to the likelihood – that the licence of a licensed surveyor would be suspended or cancelled or a fine exceeding \$500 imposed, then the hearing and determination of that allegation would take place before the SAT, not the Land Surveyors Licensing Board. However, in other matters involving errors of lesser severity not likely to attract suspension or cancellation of licence or imposition of a higher fine, the Land Surveyors Licensing Board would be able to hear and

determine such matters, provided the licensed surveyor so affected consented to the Board's handling of the matter.

61. Similarly, as explained above, where an existing board, such as the Nurses Board, has a power to suspend a person in case of urgency, that power would be retained, but subject to a statutory requirement that the suspension will not operate beyond a period of, say, 30 days unless the SAT so orders. The board would be required to apply to the SAT to extend the suspension.
62. Additionally, appeals against minor disciplinary decisions made by boards would henceforth be to the SAT and not to a court as under existing legislation.
63. Once the SAT is developed in this way, only the position of the existing civil 'original' decision makers we identified in Chapter 1 remains to be considered.
64. The functions of the Building Disputes Tribunal, Commercial Tribunal, Equal Opportunity Tribunal, Retirement Villages Disputes Tribunal and Strata Titles Referee are all amenable to a non-court like setting. We can see no good reasons why they should not be exercised by the SAT. There is nothing about the nature of the jurisdictions involved that suggests any should remain separate.
65. The functions of the Building Disputes Tribunal, Commercial Tribunal and Equal Opportunity Tribunal are currently exercised by members who comprise senior judicial leadership and suitably skilled and experienced other persons. We see no reason why this approach will not be continued within the SAT. As we have said above in respect of other existing jurisdictions, it may be expected that the types of persons who are currently members of these tribunals will continue to perform like functions as full-time, part-time or sessional members of the SAT.

66. As in the case of the appeals tribunals to which we have referred, the establishment of the SAT provides an infrastructure for the delivery of all of these original adjudicative decision making functions and thus economies of scale as well as the other benefits we have listed above.
67. Equally, the functions of the existing Retirement Villages Dispute Tribunal and Strata Titles Referee, which have much in common, can be performed by an appropriately experienced and suitable person who is a member of the SAT. Again, all the benefits we have listed above follow from the merging of these functions into those of the single SAT organisation.
68. As to the Building Disputes Tribunal, the existing functions involving mediation, conciliation and negotiation carried out by the Builders' Registration Board or Registrar before a matter is referred to the Building Disputes Tribunal should remain with the Builders' Registration Board or Registrar.
69. The Taskforce does not believe that the existing functions of the Assessor of Criminal Injuries Compensation or the Information Commissioner should be altered. However, the majority of the Taskforce is of the view that the existing right of appeal on a question of law against a decision of the Information Commissioner should no longer be to the Supreme Court, but should be directly to the SAT. One member is of the view that the nature and extent of the existing review mechanisms within the *Freedom of Information Act*, and the nature of the issues raised by access applications under that Act, are such that the present system of appeals to the Supreme Court on questions of law should continue.
70. The further question arises whether the functions of the Guardianship and Administration Board should be exercised by the SAT, or whether that Board should operate independently of the SAT. A related, though materially different question arises in respect of the Mental Health Review Board.

71. The Guardianship and Administration Board exercises a jurisdiction conferred by statute which in earlier times was part of the inherent jurisdiction of the Supreme Court. The jurisdiction includes determinations regarding the capacity of a person to contract, to vote, to manage their affairs and to consent to medical treatment. Past Presidents of the Board were judges of the Supreme Court and the present President is the Principal Registrar of the Supreme Court. By section 6(1)(b) of the *Guardianship and Administration Act*, a person may only be appointed as President if he or she holds one of the judicial offices specified in section 6(2)(a) and has been recommended by the Chief Justice under section 6(2)(b). Thus there is a close link with the Supreme Court and, as a matter of practice, the Deputy President has always been the Principal Registrar or a Registrar of the Supreme Court.
  
72. The Mental Health Review Board exercises special functions under the *Mental Health Act* in reviewing people who are made involuntary patients under the Act, in order to determine whether the person should continue to be an involuntary patient. Unlike the position of the Guardianship and Administration Board, the Mental Health Review Board is not for practical purposes an arm or extension of the Supreme Court.
  
73. The Taskforce considers that there are considerable advantages to be gained, especially over the longer term, from an appropriate alignment of the Guardianship and Administration Board and the Mental Health Review Board with the SAT. To achieve these advantages, the Taskforce has recommended that the Chairperson of each Board should be a Presidential Member of the SAT and that the other members of each Board should also be members of the SAT. Additionally, the two Boards should physically be co-located with the SAT and SAT should provide the registry and staffing requirements of each Board.



74. In this way, the day-to-day functions of the two Boards will remain discrete. The special skills required to be exercised by each Board and the special hearing and practice requirements of each Board will remain unaffected.
75. At the same time, the common membership and the co-location of the two Boards and the SAT will ensure that the best practice required for all original decision making administrative tribunals and administrative review tribunals in this State is achieved in all areas of operation. This will also ensure that the economies of scale in relation to the appointment of members, the training of members, the development of best practice, and the provision of physical accommodation and information technologies are maximised.
76. The adoption of our recommendations will ensure that the valuable experience gained over the last number of years by the Guardianship and Administration Board and the Mental Health Review Board will be retained and built on. To the extent that members of these Boards have developed 'therapeutic' skills important in these areas of jurisdiction, these will be of great benefit to the SAT. In short, the overall tribunal structure has much to gain by the alignment of the functions of these Boards with the SAT.
77. As will be the case in some other areas of its operation, the Taskforce recognises that the SAT will need to meet the special accommodation requirements of some users. Thus, appropriate facilities will be required where guardianship and mental health proceedings are being conducted, given the sensitivities of the parties. The SAT proposals respond to this need.
78. In his submission to the Taskforce, the Hon The Chief Justice of Western Australia has indicated that he has *no objection in principle* to the co-location proposal. The Chief Justice has pointed out that when the Guardianship and Administration Board was established there was seen to be an immediate need

for it to be located in premises separate from the formal environment of a court complex and in a location which both facilitated ease of access and encouraged an informal atmosphere. The Taskforce notes that with the establishment of the SAT outside the court complex this need will be maintained and enhanced.

79. In his submission, the Chief Justice has indicated that he opposes a recommendation that the President of the SAT should automatically be the President of the Board or that a Deputy President of the SAT should automatically Chair the Board. His Honour has commented that the provision for appointment of the Chairman of the Board on the recommendation of the Chief Justice is of significance and is related to the administration of the Supreme Court and the most beneficial and efficient use of judicial resources. His Honour has observed that the jurisdiction requires particular talents and attributes.
80. The Taskforce fully accepts that the Chairman of the Guardianship and Administration Board requires particular talents and attributes. The appointment of persons as President and Deputy Presidents of the SAT will necessarily require the appointment of persons with such talents and attributes. Having carefully considered the observations of the Chief Justice, the Taskforce is of the view that the alignment of the Guardianship and Administration Board and the Mental Health Review Board with the SAT is appropriate. The Taskforce believes that the common membership of these Boards and the SAT will be to the lasting benefit of these administrative tribunals.
81. Moreover, we have recommended that the SAT should have judicial leadership, the President to be a judge of the Supreme Court. Through this mechanism it can be expected that the influence of the Supreme Court in the exercise of the guardianship jurisdiction will continue to be evident.

82. Finally, we are also influenced by the successful accommodation of the guardianship jurisdiction within the VCAT and believe the Victorian experience provides positive support for our recommendation.
83. Decisions of the Guardianship and Administration Board would continue to be the subject of the appeal provisions set out in section 19 of the *Guardianship and Administration Act* enabling direct appeal against decisions of the Board to the Supreme Court or the Full Court, depending on whether the Board included the President when the decision was made. Accordingly, the Taskforce does not recommend any change in that respect and agrees with the observation of the Chief Justice in his submission that there should not be any.
84. So far as the Mental Health Review Board is concerned, the Taskforce believes similar considerations apply. The Mental Health Review Board as set up by the *Mental Health Act*, section 126, does not require its members to be a judge of the Supreme Court or a person recommended for appointment by the Chief Justice. Rather, the members are to comprise at least one psychiatrist, one legal practitioner and one person who is neither a medical practitioner nor a legal practitioner.
85. The drawing together of these jurisdictions relating to persons who are vulnerable, whether from general incapacity or by reason of mental health considerations, has much to commend it. In some jurisdictions in Australia, as the President of the Mental Health Review Board has explained to us in a submission, there is a move to amalgamate these vulnerable-person jurisdictions. That would be a possibility in this State and, to an extent, our recommendations provide for such an amalgamation. However, in the view of the Taskforce, it is sufficient for the present for the Mental Health Review Board and the Guardianship and Administration Board to be aligned with the SAT in the manner we have recommended.

86. All the benefits we have listed above that are likely to flow from the establishment of the SAT are equally applicable in respect of the alignment of the Mental Health Review Board with the SAT. It ensures that best practice is applied in this area as in all other areas. The Board will not operate in isolation. Consistency of decision making is more likely to be achieved through the common experiences of these vulnerable-person jurisdictions. The flexible approaches required in the exercise of the Mental Health Review Board jurisdiction will be considerably advantaged by the experience of the Guardianship and Administration Board in its own area of jurisdiction.
87. In summary, the Taskforce accepts that each of the Guardianship and Administration Board and the Mental Health Review Board has a very special jurisdiction and exercises original decision making powers. By its recommendation the Taskforce does not propose that the substance of the *Guardianship and Administration Act* or the *Mental Health Act* be altered in any way. The protective jurisdictions of those two bodies are extremely important and each is the subject of relatively recent legislation in this State that reflects modern theory and practice in relation to these two areas.
88. What the Taskforce does believe to be necessary, however, is that in respect of adjudicative decisions involving the rights of citizens these two bodies should not operate in isolation from the SAT structure that we have recommended. There is much to be gained if persons engaged in guardianship and administration matters, and in mental health review matters, become part of the wider original administrative decision making and administrative review decision making procedures in this State both now and in the future.

89. By ensuring that all original and review decision making bodies function in the same administrative environment as other original decision makers and other review jurisdictions, the best practices to which we have referred above are most likely to be developed and applied consistently across all areas of decision making.
90. Accordingly, having carefully considered all aspects of our proposal and submissions made in respect of it, the Taskforce considers that the existing Guardianship and Administration Board and Mental Health Review Board should be maintained, but that the membership rules for each body should be altered to ensure that the President of the SAT or one of the Deputy Presidents of the SAT should be the head of each of these Boards and that the other members of each of these Boards should also be members of the SAT.
91. The Taskforce notes that the existing President of the Mental Health Review Board exercises day-to-day administrative functions on behalf of the Board and we contemplate that those same functions will continue to be performed by a Board member other than the President of the SAT in the future.
92. The two Boards should also be co-located with the SAT and the staff of the Tribunal should service the Boards.
93. Having regard to the matters discussed in this section, our specific recommendations are as follows.

## **APPEALS TRIBUNALS**

94. The Taskforce recommends that the functions of the following appeals tribunals (described in more detail in Chapter 1) should be assumed by the SAT:

Firearms Tribunal

Fisheries Objections Tribunal

Land Valuations Tribunals

Marine Appeals Authority

Racing Penalties Appeals Tribunal

Town Planning Appeals Tribunal

Water Resources Appeals Tribunal

Western Australian Gas Review Board established by the *Gas Pipelines Access (Western Australia) Act*, as to its functions under Division 8 of the *Energy Coordination Act*.

95. Upon the establishment of the SAT, the functions of existing appellate tribunals should be assumed by the SAT. Of these, the functions of the Land Valuations Tribunals and especially of the Town Planning Appeals Tribunal are likely to produce the largest workload for the SAT.
96. As we have mentioned earlier, the *Planning Appeals Amendment Bill* is currently before Parliament. If passed, this will effect significant changes to the current dual tribunal/ministerial appeal system. Henceforth, planning appeals will only be to the Town Planning Appeals Tribunal. We propose that planning appeals should form part of a list dealing with like matters within the SAT.
97. As the Taskforce understands it, it is likely that the new single Town Planning Appeals Tribunal will commence functioning during 2002. The expectation of the Taskforce is that upon the coming into operation of the SAT, the operations of the Town Planning Appeals Tribunal would effectively be transferred into the SAT.
98. For this reason, it would seem desirable to ensure that the new Town Planning Appeals Tribunal should not take up new premises, adopt information technologies or engage staff on terms that might conflict with the establishment of the SAT.

99. As in the case of the Town Planning Appeals Tribunal, the Taskforce recommends that the functions presently performed by the Land Valuation Tribunals should be assumed by the SAT. The land valuation functions have a number of common features with planning matters and might well form part of the same list as planning appeals, or might form a related list.
100. Additionally, the Taskforce recommends that the SAT should have a concurrent jurisdiction with other courts to act as a compensation court pursuant to the provisions of the *Land Administration Act*.
101. The Taskforce believes that the SAT should be set up to exercise not only the functions pertaining to land use planning and land valuation matters but also, as set out below, those relating to pollution controls. In this context, the SAT should also be able to determine compensation actions. Most compensation actions involve a familiarity with land use planning and environmental laws and practices. In this way, for many citizens and professionals operating in the field, the SAT would be a one-stop shop in respect of all land use planning, environmental and land valuation and compensation matters.
102. Presently, the *Land Administration Act* provides for compensation actions to be determined by a compensation court or by a single person. A compensation court, being either the Supreme Court, District Court or Local Court with assessors, is provided for by section 226 of the *Land Administration Act*. However, the claimant and an acquiring authority may agree in writing that a claim is to be heard and determined by any one person named in writing, pursuant to section 228 of the *Land Administration Act*. Where this happens the person so named is deemed to be the compensation court.

103. The Taskforce recommends that the *Land Administration Act* be amended to provide that all compensation actions should take place either in the SAT or in a compensation court presided over by a judge of the Supreme Court. In other words, the arrangements whereby a District Court judge or a Local Court magistrate hears compensation actions should be removed.
104. The result would be that compensation actions would henceforth be made either to the Supreme Court or to the SAT, without affecting the right of parties to appoint a single person to act as an arbitrator under section 228 of the *Land Administration Act*. Claimants would choose which compensation court they would prefer.
105. The Taskforce is aware of suggestions that a specialist court or tribunal, not dissimilar to the Land and Environment Court in New South Wales, be established in this State. If such a proposal were to be adopted, a number of planning appeals, pollution control matters and land valuation appeals and compensation actions might be concentrated in the one specialist court.
106. The Taskforce believes that the establishment of the SAT in the manner we have proposed will enable the SAT to perform the functions of a one-stop tribunal in respect of land use planning, environmental, land valuation and compensation matters.
107. This streamlining of functions in the SAT would largely obviate the need for a separate, specialised court dealing with such matters. In this regard, our proposal mirrors the present position in Victoria where planning, environment and valuation matters are part of the VCAT's functions.



108. It should be noted that currently the minister responsible for the administration of the *Fish Resources Management Act* can appoint a Fisheries Objections Tribunal from time to time in order to determine objections to certain proposed licensing decisions of the Executive Director Fisheries. This arrangement should cease and provision be made for such objections to be made to the SAT. Using the SAT would allow the development of consistent decision making, an element not readily achievable by a body comprising persons selected from time to time.
109. The minister responsible for the administration of the *Rights in Water and Irrigation Act* is authorised by Schedule 2 of that Act to establish a tribunal of persons with suitable expertise to hear appeals against licensing decisions. Once a general tribunal such as the SAT is established, it is difficult to see why such an *ad hoc* tribunal dealing with water licensing matters should continue. Consequently, the Taskforce has recommended that the functions of this tribunal should be assumed by the SAT.
110. It follows that persons with suitable experience to deal with water resource matters would be engaged as members of the SAT. Under the powers we propose the SAT should have, the tribunal will be able to ensure that all relevant information concerning water-resource decision making will be before it. Additionally, the Water and Rivers Commission which makes such original decisions would not be impeded from appearing or being represented on the hearing of appeals in the SAT.
111. This Western Australian Gas Review Board has review functions under Division 8 of the *Energy Coordination Act* in respect of decisions of the Coordinator of Energy on gas supply licensing matters. The Taskforce considers that there is no reason why the functions of the Board should not be assumed by the SAT, especially if it is considered that the review should be an independent one and

not merely what amounts to an internal review of the Coordinator's earlier decision.

112. In this respect, we have also recommended that other resource and economic review mechanisms that do not involve the exercise of higher-level policy or political judgment, such as functions of the Water Resources Appeals Tribunal and the existing right of appeal to the Minister under the *Water Services Coordination Act*, be transferred to the SAT. It appears to the Taskforce that these areas of resource and economic regulation have, in recent years, evolved and developed to the point that industry participants expect, and developing competition policy throughout Australia anticipates, the provision of more independent administrative review mechanisms.
113. The Taskforce has emphasised in its earlier recommendations that one of the benefits of the SAT will be that the State will have in place the infrastructure necessary to provide civil and administrative review processes for all manner of personal, civil and commercial decision making in this State. In other words, the existence of the SAT means Government is not obliged to 'reinvent the wheel' every time a new sectional interest needs to be accommodated with the provision of appropriate administrative review mechanisms.
114. From the understanding the Taskforce has gained in respect of developing economic regulation in this State, it may be that there are some areas of decision making and review or dispute resolution that are not suited to the functions of the SAT. For example, whether or not one corporation is entitled to have access to gas, electricity or rail services currently controlled or managed by another corporation would appear to involve issues not obviously amenable to the SAT jurisdiction. However, in respect of licensing decisions and other administrative decisions made in accordance with pre-determined criteria and established

policies, the SAT would appear a reasonably obvious choice to provide an independent and impartial review of a primary decision.

115. The Taskforce in considering these matters has benefited from a submission made by the Under Treasurer concerning policy developments in the area of economic regulation. That submission outlines a proposed Economic Regulation Authority. A key function anticipated for the Authority would be to issue industrial licences for service providers. Initially, this would be confined to water service providers. The framework foreshadows the transfer of current Ministerial responsibility for appeals against water licensing decisions to the SAT, and so the Under Treasurer has supported the proposal that the existing right of appeal to the Minister under the *Water Services Coordination Act* be transferred to the SAT.
116. The responsibility for gas licensing would be provided to the Economic Regulation Authority at a future date to be proclaimed by the Minister, which is likely to coincide with the commencement of full retail contestability in the gas industry.
117. An electricity industry licensing role for the Economic Regulation Authority is subject to the Government's consideration of the recommendations of the Electricity Reform Taskforce. Nevertheless, consideration of the issue will involve assessing the potential role of the SAT as an appropriate appeals body for industrial licensing decisions in the electricity industry. A potential outcome may be the establishment of an electricity licensing regime with appropriate appeals provisions. Should that be the case, it would be sensible, and the Under Treasurer agrees, to consider a potential role for the SAT as the body responsible for hearing appeals against electricity-industry licensing decisions.

118. In relation to gas industry licensing, responsibility for industrial licensing appeals in the gas industry could be further considered in the context of the Government's moves to consolidate similar licensing functions in the gas, water and electricity industries. As the Under Treasurer has suggested, while there do not appear to be obvious answers as to which is the most efficient and effective appeals mechanism, the main alternatives appear to be as follows:
- a. the SAT would be responsible for industrial licensing appeals for gas, as with water. This could be expanded to include electricity industry licensing appeals as suggested above; or
  - b. the Gas Review Board would be expanded to undertake water and possibly electricity industry licensing appeals in the future. The Under Treasurer has suggested that this is a realistic option given that gas industry licensing decisions are already reviewed independently of the Government.
119. While the Taskforce does not have a firm view as to the best outcomes in this area of economic regulation, it considers that once water appeals are determined by the SAT, it would seem sensible to include gas and electricity licensing reviews as well. There is no suggestion, however, that access questions should be resolved by the SAT.
120. As we have emphasised in relation to other jurisdictional areas, the SAT will have a flexible structure, appropriate full-time, part-time and sessional members and the general facilities to provide administrative review services to a wide range of sectional interests in this State, including in the area of economic regulation.

121. Similarly, there is nothing in the make up of the Firearms Tribunal to suggest its functions should not be exercised by the SAT. Suitable persons, including retired members of the Police Service, might be appointed sessional members of the SAT and sit when firearms appeals are heard.
122. There seems good reason to include the Marine Appeals Authority's function within the SAT. The appropriate members may be made sessional members of the SAT.
123. As in the case of the other appeals tribunals there is no reason why the functions of the Racing Penalties Appeals Tribunal should not be assumed by the SAT. Suitable members familiar with the racing industry might be made sessional members of the SAT and sit on these types of appeals. The flexible procedures to be adopted by the SAT are designed to meet the needs of this type of jurisdiction and the SAT will be able to meet any special needs for out-of-business hours sittings.
124. The *Superannuation (Resolution of Complaints) Act 1993 (Cth)* is Commonwealth legislation providing for the resolution of complaints relating to superannuation matters. State superannuation is specifically provided for, however, by the *State Superannuation Act* and it provides for appeals to the Supreme Court against decisions of the Government Employees Superannuation Board relating to a superannuation scheme continued by section 29(c) or (d) of that Act. We have in the next section of this Report recommended that such appeal should now be to the SAT.
125. However, it should also be noted that section 13(3)(b) of the State Act allows a person (including a Pension or Provident Scheme member) aggrieved by a decision of the Government Employees Superannuation Board on a review to refer the matter for independent review by a prescribed person or body.

Regulation 250 of the *State Superannuation Regulations* prescribes the Superannuation Complaints Tribunal set up under the Commonwealth Act, as the independent review body. By reason of the unusual constitutional relationship between the State law permitting and actually nominating the Commonwealth body as the independent review body, the Taskforce takes the view that this existing arrangement should be left undisturbed.

126. Indeed, the Hon Nick Griffiths LLB MLC, Minister for Racing and Gaming, Government Enterprises and Goldfields-Esperance has in his submission to us suggested that it may be appropriate for the Superannuation Complaints Tribunal of the Commonwealth to continue as the independent appeal tribunal for members of this State's superannuation schemes. We agree with this suggestion. Given the specialised nature of superannuation and the importance of State superannuation scheme members having access to an independent appeal mechanism, as well as the Commonwealth's considerable role in the prudential and administrative supervision of the superannuation industry, it would be counterproductive to vest the independent review function referred to in section 13(3)(b) of the State Act, in the SAT.

## **COURT APPEALS**

127. The Taskforce recommends that the current jurisdiction of the Supreme Court to hear the administrative appeals listed in Appendix 1 should be dealt with as follows :
- a. the rights of appeal to the Supreme Court under the following Acts should now be made rights of appeal to the SAT:

*Aboriginal Heritage Act 1972 (WA)*

*Chicken Meat Industry Act 1977 (WA)*

*Co-operative and Provident Societies Act 1903 (WA)*

*Fire Brigades Act 1942 (WA)*  
*Health Act 1911 (WA)*  
*Heritage of Western Australia Act 1990 (WA)*  
*Human Reproductive Technology Act 1991 (WA)*  
*Petroleum Act 1967 (WA)*  
*Petroleum Pipelines Act 1969 (WA)*  
*Petroleum (Submerged Lands) Act 1982 (WA)*  
*Radiation Safety Act 1975 (WA)*  
*State Superannuation Act 2000 (WA)*  
*Superannuation and Family Benefits Act 1938 (WA)*  
*Town Planning and Development Act 1928 (WA)*

- b. the Supreme Court and the SAT should have a concurrent jurisdiction, that is to say, it should be open to a person the subject of a revenue assessment to make an administrative appeal either to the Supreme Court or to the SAT, in respect of the revenue appeals identified in Chapter 1 and listed in Appendix 1 under the following Acts:

*Debits Tax Assessment Act 1990 (WA)*  
*Pay-roll Tax Assessment Act 1971 (WA)*  
*Petroleum (Registration Fees) Act 1967 (WA)*  
*Petroleum (Submerged Lands) (Registration Fees) Act 1982 (WA)*  
*Stamp Act 1921 (WA)*

The current system permits appeals only to the Supreme Court. There is a range of revenue decisions that are considered by those affected to be important, but not to justify the expense of a Supreme Court appeal. The Taskforce believes that it is appropriate to provide for an inexpensive means of administrative review of such revenue decisions in the SAT. Rather than remove the Supreme Court's jurisdiction in this area, which is appropriate in the case of major revenue decisions, there should be

concurrent rights of appeal to the Supreme Court and the SAT. In this way, an aggrieved party can decide whether they should seek review directly in the Supreme Court in the first instance or in the SAT. An appeal to the SAT will not ordinarily result in a costs order against an unsuccessful applicant and this will be welcomed by many who find the potential expense of a Supreme Court appeal a real obstacle to seeking revenue justice. The Commissioner of State Revenue has indicated his broad support for these changes. The Commissioner would like to see all revenue decisions made by the President of the SAT. If that suggestion were adopted, the Commissioner of State Revenue believes the current jurisdiction of the Supreme Court, at first instance, could be removed. Appeals from the SAT would then be to the Full Court of the Supreme Court.

The Taskforce considers the SAT revenue jurisdiction should be exercised by a Presidential member in all cases (whether sitting alone or with others), save where the President directs otherwise. This allows for the development of this jurisdiction and the possibility that, as the jurisdiction develops or in special cases, the President or a Deputy President may not need to determine all revenue appeals. Appeals against decisions of a Presidential member of the SAT should be made directly to the Full Court of the Supreme Court. The leave of the Full Court should not be required.

In this way, the right to appeal to the Full Court will mirror exactly the similar right to appeal against a single justice of the Supreme Court to the Full Court, without leave. The Supreme Court's concurrent jurisdiction therefore should be retained. The implementation of our recommendation will not involve the creation of any additional intermediate level of decision making, but can be expected to provide affected citizens with an appropriate means of administrative review of revenue decisions. As a



transitional measure, any person who has an appeal pending in the Supreme Court at the date of commencement of the SAT which has not been heard or partly heard, should be able to elect to transfer the appeal to the SAT;

- c. given the Taskforce's recommendation that the disciplinary functions of a number of professional, occupational and business boards should be exercised by the SAT, the current rights of appeal to the Supreme Court for a re-hearing under certain specific Acts should be removed. Affected parties will, however, have the right in future to appeal to the Supreme Court – on questions of law and with the leave of that Court – against decisions of the SAT. The specific Acts in question are:

*Dental Act 1939 (WA)*

*Legal Practitioners Act 1893 (WA) insofar as an appeal arises under s28A*

*Medical Act 1894 (WA)*

*Optometrists Act 1940 (WA)*

*Osteopaths Act 1997 (WA)*

*Pharmacy Act 1964 (WA)*

*Psychologists Registration Act 1976 (WA)*

- d. the current rights of appeal to the Full Court of the Supreme Court arising under sections 6(7) and 83 of the *Legal Practitioners Act* should remain unaffected by these recommendations;
- e. by reason of the further recommendation of the majority of the Taskforce (see paragraph 69 above) that administrative appeals against decisions of the Information Commissioner under the *Freedom of Information Act* should in the first instance be made to the SAT, the current right of appeal to the Supreme Court under the following Act should be removed:

*Freedom of Information Act 1992 (WA)*

- f. adoption of the further recommendation of the Taskforce that the functions of the Equal Opportunity Tribunal should be assumed by the SAT, means that the current rights of appeal to the Supreme Court against decisions of that body will be removed. Instead, and in respect of those functions, there will be a right of appeal – on questions of law – directly to the Supreme Court against decisions of the SAT. The relevant Act is:

*Equal Opportunity Act 1984 (WA)*

- g. the Taskforce has recommended that a number of ministerial appeal rights should be removed and the appeal function assumed by the SAT. In consequence, the appeal currently available to the Supreme Court under the following legislation should be removed:

*Waterways Conservation Act 1976 (WA)*

- h. as a result of the Taskforce's recommendations, the Supreme Court would maintain its jurisdiction, in respect of appeals against administrative decisions under the following legislation:

*Guardianship and Administration Act 1990 (WA)*

*Legal Practitioners Act 1893 (WA)*, insofar as an appeal arises under sections 6(7) and 83

*Mental Health Act 1996 (WA)*

- i. by reason of the recommendations of the Taskforce concerning the constitution of the Guardianship and Administration Board and the Mental Health Review Board, whereby the members of each would comprise a Presidential member and other members of the SAT, appeals to the Supreme Court in relation to decisions made by those bodies should be made directly to a judge of the Supreme Court or the Full Court of the Supreme Court with the leave of that Court as presently provided;
- j. further, as a result of the Taskforce's recommendations, the Supreme Court would have a concurrent jurisdiction with the SAT in respect of appeals against administrative decisions under the following legislation:

*Debits Tax Assessment Act 1990 (WA)*

*Pay-Roll Tax Assessment Act 1971 (WA)*

*Stamp Act 1921 (WA)*

- k. where any legislation concerning any profession, occupation or business currently provides for a supervisor or the like to be appointed by the Supreme Court in respect of a person's profession, occupation or other calling, henceforth the power to appoint a supervisor should be exercised by the SAT.
128. The Chief Justice of Western Australia has, in his submission to the Taskforce, supported the creation of the SAT and the proposed transfer of jurisdiction to the SAT, save in respect of the Guardianship and Administration Board and the Mental Health Review Board, as noted and discussed above (see paragraphs 70-92).

129. The Taskforce recommends that the current jurisdiction of the District Court to hear the administrative appeals listed in Appendix 2 be dealt with as follows:

- a. by reason of the recommendation of the Taskforce that the SAT should be responsible for hearing and determining applications for the suspension or cancellation of professional, occupational or business licences, that is to say, disciplinary and supervisory matters, the rights of appeal currently available to the District Court under the following Acts should be removed:

*Architects Act 1921 (WA)*

*Builders' Registration Act 1939 (WA)*

*Finance Brokers Control Act 1975 (WA)*

*Land Valuers Licensing Act 1978 (WA)*

*Licensed Surveyors Act 1909 (WA)*

*Medical Act 1894 (WA)*

*Real Estate and Business Agents Act 1978 (WA)*

*Securities Industry Act 1975 (WA)*

*Settlement Agents Act 1981 (WA)*

*Veterinary Surgeons Act 1960 (WA)*

Appeals concerning registration and other matters of regulation under the foregoing Acts should henceforth be made to the SAT;

- b. following adoption of the recommendation of the Taskforce that the functions of the Commercial Tribunal, the Retirement Villages Disputes Tribunal and the Strata Titles Referee should be assumed by the SAT, rights of appeal to the District Court under the following Acts should be removed:

*Commercial Tribunal Act 1984 (WA)*  
*Credit (Administration) Act 1984 (WA)*  
*Retirement Villages Act 1992 (WA)*  
*Strata Titles Act 1985 (WA)*  
*Travel Agents Act 1985 (WA)*

- c. the creation of a general tribunal to deal with appeals against administrative decisions should also mean that appeals to the District Court against administrative decisions made under the following legislation will be directed to the SAT:

*Adoption Regulations 1995 (WA)*  
*Housing Societies Act 1876 (WA)*  
*Rail Safety Act 1998 (WA)*

- d. if the recommendation of the Taskforce that a number of ministerial appeals should be removed and replaced by an appeal to the SAT is adopted (see paragraphs 137–152 below), the appeal to the District Court under the following legislation should be removed:

*Water Services Coordination Act 1995 (WA)*

- e. as a result of the Taskforce's recommendations, the District Court would maintain its jurisdiction in respect of appeals against administrative decisions under the following legislation:

*Censorship Act 1996 (WA)*  
*Criminal Injuries Compensation Act 1985 (WA)*

- f. where any legislation concerning any profession, occupation or business currently provides for a supervisor or the like to be appointed by the District Court in respect of a person's calling, henceforth the power to appoint a supervisor should be exercised by the SAT; and
  - g. similarly, legislation creating what are called 'Fidelity Schemes', such as the Compensation Scheme that operates under the *Travel Agents Act* and Regulations and Trust Deed set out in Schedule 1 of the Regulations to that Act, should henceforth be the subject of supervision by the SAT. Any right to apply currently to the District Court, or any other court, to determine matters arising under such Fidelity Schemes, should henceforth become a right to apply to the SAT.
130. The Chief Judge of the District Court has, in his submission to us, supported the creation of the SAT and the proposed transfer of jurisdiction from the District Court to the SAT without qualification.
131. The Taskforce recommends that the current administrative-appeals jurisdiction of the Local Court listed in Appendix 3 should be dealt with as follows:
- a. by reason of the recommendation of the Taskforce that the SAT should be responsible for hearing and determining applications for the suspension or cancellation of professional, occupational or business registration – that is to say, disciplinary and supervisory matters – the rights of appeal currently available through the Local Court under the following Acts should be removed, save to the extent that such Acts also afford a right of appeal against a right to be so registered in the first instance. The relevant Acts are:

*Chiropractors Act 1964 (WA)*  
*Community Services Act 1972 (WA)*  
*Dental Prosthetists Act 1985 (WA)*  
*Motor Vehicle Dealers Act 1973 (WA)*  
*Nurses Act 1992 (WA)*  
*Occupational Therapists Registration Act 1980 (WA)*  
*Painters' Registration Act 1961 (WA)*  
*Podiatrists Registration Act 1984 (WA)*

Rights to appeal, in relation to registration and other matters of regulation under the foregoing Acts, should henceforth exist through the SAT and all appeals concerning such matters be made to the SAT;

- b. further, having regard to the range of other administrative decisions that also are currently the subject of appeal to the Local Court, the Taskforce recommends that the jurisdiction of the Local Court to hear appeals under the following legislation should now be assumed by the SAT:

*Aboriginal Heritage Act 1972 (WA)*  
*Agriculture and Related Resources Protection Act 1976 (WA)*  
*Agricultural Produce Commission Act 1988 (WA)*  
*Boxing Control Act 1987 (WA)*  
*Bread Act 1982 (WA)*  
*Cemeteries Act 1986 (WA)*  
*Dog Act 1976 (WA)*, but only in respect of the appeal rights contained in sections 16A, 17 and 27<sup>38</sup>  
*Electricity (Licensing) Regulations 1991 (WA)*

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<sup>38</sup> The appeals contained in sections 33H, 33I and 36 should remain the responsibility of the Local Court, as they are associated with general enforcement provisions in respect of dogs and these provisions are exercised by the Local Court or a Court of Petty Sessions; such appeals will therefore fall within the jurisdiction of the proposed Magistrates Courts.

*Explosives and Dangerous Goods Act 1961 (WA)*  
*First Home Owners Grant Act 2000 (WA)*  
*Forest Management Regulations 1993 (WA)*  
*Forest Products Act 2000 (WA)*  
*Gas Standards Act 1972 (WA)*  
*Health Act 1911 (WA)*  
*Hire Purchase Act 1959 (WA)*  
*Hospitals and Health Services Act 1927 (WA)*  
*Local Government Act 1995 (WA)*  
*Mental Health (Transitional) Regulations 1997 (WA)*  
*Metropolitan Water Supply Sewerage and Drainage Act 1909 (WA)*  
*Plant Pests and Diseases (Eradication Funds) Act 1974 (WA)*  
*Taxi Act 1994 (WA)*  
*Transport Co-ordination Act 1966 (WA)*  
*Transport (Country Taxi-Car) Regulations 1982 (WA)*  
*Water Services Coordination (Plumbers Licensing) Regulations 2000 (WA)*

132. The Taskforce recommends that the administrative appeals currently available to the Courts of Petty Sessions and listed in Appendix 4 under the following legislation should now be vested in the SAT:

*Aerial Spraying Control Act 1966 (WA)*  
*Firearms Act 1973 (WA)*  
*Fire Brigades Act 1942 (WA)*  
*Hairdressers Registration Act 1946 (WA)*  
*Health Act 1911 (WA)*  
*Local Government (Qualification of Municipal Officers) Regulations 1984*  
*Pawnbrokers and Second-hand Dealers Act 1994 (WA)*



*Poisons Act 1964 (WA)*

*Radiation Safety Act 1975 (WA)*

*Security and Related Activities (Control) Act 1996 (WA)*

*Veterinary Preparations and Animal Feedstuffs Act 1976 (WA)*

133. The Chief Stipendiary Magistrate has supported the creation of the SAT and the proposed transfer of jurisdiction from the various Magistrates Courts to the SAT. His Worship suggested that the remaining *Dog Act* appeals should also be heard in the SAT. The Taskforce remains of the view that such appeals are best suited to the jurisdiction of the Magistrates Courts, as is currently the practice. His Worship also queried whether small claims and residential tenancy matters should be handled by the SAT – a matter discussed below (see paragraphs 189-196).
134. This report provides the opportunity for the Government to consider the amalgamation of an array of functions of existing tribunals and boards in a single overarching tribunal. It also provides the opportunity to identify and recognise the enormously wide range of administrative appeals available under legislation to all courts in the court system.
135. As illustrated in the section on court appeals provided in Chapter 1 (see paragraphs 6-13), there is an enormous number of administrative appeal rights under existing legislation in respect of administrative decisions, rights exercised through our courts from the lowest to the highest court in the judicial hierarchy of the State. In the absence of a general administrative review tribunal in this State, the Parliament has, from time to time, authorised one or other of our courts, depending on the nature of the matter and its perceived importance in civil, commercial, professional or business terms, to hear administrative appeals.

136. If the SAT is established, there can be no continued justification (save in a few cases) for courts in the existing judicial hierarchy to maintain a jurisdiction to conduct administrative appeals.

### **MINISTERIAL APPEALS**

137. Over the course of many years, administrative decisions made by public officials under legislation have also been made subject to statutory ministerial appeal processes. While at the time when such rights of appeal were created it may have seemed appropriate to make the minister the venue of the appeal, the Taskforce believes that, save in those areas involving issues that require the high level policy or political judgment of a minister or the Government of the day, it is no longer appropriate to provide for appeals to ministers against decisions of public officials. It is noted in this regard that the Government has moved for the enactment of the *Planning Appeals Amendment Bill* which will abolish the ministerial appeal right in town planning matters.

138. In many instances, the decisions that are the subject of appeals to ministers involve run of the mill administrative or technical matters upon which citizens today expect review by an independent and impartial tribunal. They do not want what amounts to an internal departmental review of the decision. The provision of an appeal to the minister against a decision of a public official, who is usually an official within a department for which the minister is responsible, smacks very much of an 'appeal unto Caesar against Caesar', that is to say, not a substantive appeal right at all.

139. In Chapter 1 (see paragraphs 14-17) and Appendix 5, the Taskforce sets out a range of existing ministerial appeal rights. The Taskforce recommends that the right of appeal to a minister should be effectively converted to a right of appeal to the SAT in respect of the administrative decisions made under the following

legislation, on the basis that such decisions are amenable to review by an independent and impartial tribunal such as the SAT:

*Aerial Spraying Control Act 1966 (WA)*

*Agricultural Produce (Chemical Residues) Act 1983 (WA)*

*Agriculture and Related Resources Protection (Property Quarantine) Regulations 1981*

*Associations Incorporation Act 1987 (WA)*

*Births Deaths and Marriages Registration Act 1998 (WA)*

*Caravan Parks and Camping Grounds Act 1995 (WA)*

*Chicken Meat Industry Act 1977 (WA)*

*Country Areas Water Supply Act 1947 (WA)*

*East Perth Redevelopment Act 1991 (WA)*

*Electricity Act 1945 (WA)*

*Electricity (Licensing) Regulations 1991*

*Environmental Protection Act 1986 (WA)*, save in respect of appeals against environmental-impact assessment decisions made under Part IV of the Act

*Fish Resources Management Act 1994 (WA)*

*Health (Meat Hygiene) Regulations 2001*

*Hope Valley-Wattleup Redevelopment Act 2000 (WA)*

*Jetties Act 1926 (WA)*

*Litter Act 1979 (WA)*

*Local Government Act 1995 (WA)*

*Local Government (Miscellaneous Provisions) Act 1960 (WA)*

*Marketing of Eggs Act 1945 (WA)*

*Marketing of Potatoes Act 1946 (WA)*

*Midland Redevelopment Act 1999 (WA)*

*Optical Dispensers Act 1966 (WA)*

*Pearling Act 1990 (WA)*

*Perth Parking Management Act 1999 (WA)*

*Petroleum Retailers Rights and Liabilities Act 1982 (WA)*

*Pig Industry Compensation Act 1942 (WA)*

*Plant Diseases Act 1914 (WA)*

*Royal Agricultural Society Act 1926 (WA)*

*Royal Agricultural Society Regulations 1942*

*Soil and Land Conservation Act 1945 (WA)*

*Strata Titles Act 1985 (WA)*

*Subiaco Redevelopment Act 1994 (WA)*

*Swan River Trust Act 1988 (WA)*

*Town Planning and Development Act 1928 (WA)*, save for section 7B(8)(b) – noting that the ministerial appeal right generally is proposed to be removed by the recently introduced *Planning Appeals Amendment Bill 2000 (WA)*

*Water Services Coordination Act 1995 (WA)*

*Waterways Conservation Act 1976 (WA)*

*Western Australian Meat Industry Authority Act 1975 (WA)*

140. Any appeals to the minister or to the courts under existing local government by-laws or local laws should now be to the SAT.
141. As explained above (see paragraphs 29-31), the Taskforce believes the existing ministerial appeal system under the *Local Government (Miscellaneous Provisions) Act* in respect of building controls should be converted to a right of appeal to the Director General of the Department of Local Government and Regional Development and maintained as an intermediate appeal mechanism. Decisions of the Director General should then be subject to appeal to the SAT.
142. The proposed transfer of these ministerial appeals to the SAT has been supported by all relevant ministers, save mainly in respect of certain current appeals to the Minister for Environment discussed in paragraphs 144–151 of this chapter.

143. The Taskforce recognises that a number of ministerial appeal rights should be retained because the subject matter of the appeal pertains to obvious matters of policy involving primary industry, commerce, major resource allocation or other matters that appear to the Taskforce to require the exercise of policy or political judgment. These include the ministerial appeal rights available under the following legislation:

*Building and Construction Industry Training Fund and Levy Collection Act 1990 (WA)*

*Child Welfare Act 1947 (WA)*

*Community Services Act 1972 (WA)*

*Disability Services Act 1993 (WA)*

*Education Service Providers (Full Fee Overseas Students) Registration Act 1991 (WA)*

*Environmental Protection Act 1986 (WA)*, specifically, the right to appeal against decisions made under Part IV of this Act and pertaining to environmental impact assessment

*Fire Brigades Act 1942 (WA)*

*Fuel Energy and Power Resources Act 1972 (WA)*

*Fuel Suppliers Licensing Act 1997 (WA)*

*Gaming Commission Act 1987 (WA)*

*Gas Standards Act 1972 (WA)*

*Grain Marketing Act 1975 (WA)*

*Hospitals and Health Services Act 1927 (WA)*

*Land Administration Act 1997 (WA)*

*Land Tax Assessment Act 1976 (WA)*

*Main Roads Act 1930 (WA)*

*Metropolitan Region Town Planning Scheme Act 1959 (WA)*

*Mines Safety and Inspection Act 1994 (WA)*

*Mining Act 1978 (WA)*

*Ports and Harbours Regulations (WA)*

*Retail Trading Hours Act 1987 (WA)*

*School Education Act 1999 (WA)*

*State Superannuation Regulations 2001 (WA)*

*War Service Land Settlement Scheme Act Regulations 1954 (WA)*

*Workers Compensation and Rehabilitation Act 1981 (WA)*

## **SUBMISSIONS THAT CERTAIN MINISTERIAL APPEALS BE RETAINED**

### ***APPEALS TO MINISTER FOR ENVIRONMENT UNDER FISH RESOURCES MANAGEMENT ACT***

144. It has been suggested by the Executive Director, Fisheries that the existing power of the Minister for Environment, under s255 of the *Fish Resources Management Act* to resolve an appeal against a notice issued by the Minister for Fisheries prohibiting a person from engaging in an activity polluting or likely to pollute the aquatic environment, should be retained by that minister and not transferred to the SAT. In the view of the Taskforce, it is not appropriate for the Minister for Environment to retain this appeal function, as it does not involve the making of an appeal decision that has economic, strategic or political significance. Matters of pollution are best resolved by an independent review agency such as the SAT.

### ***APPEALS TO MINISTER FOR ENVIRONMENT UNDER PART V OF ENVIRONMENTAL PROTECTION ACT***

145. It has also been suggested that all appeals under the *Environmental Protection Act*, including those under Part V of the Act, should be retained by the Minister for Environment. The Acting Chief Executive of the Department of Environmental Protection has indicated that on balance the Department does not support Part V appeals being heard by the SAT; it cites as problematical: the potential for issues of inconsistency and precedence to arise when Part IV and Part V matters are resolved by different mechanisms; the undesirability of having two appeal procedures under one statute; the risk that frivolous or vexatious appeals may be

lodged with the Tribunal. The Water Corporation has also submitted that the existing appeal structure under the *Environmental Protection Act* should be retained.

146. The question of the relationship between matters that we have recommended should remain with the Minister for Environment – matters of environmental assessment and conditions, and of appeals in relation thereto that arise under Part IV of the Act – and those arising in respect of pollution control under Part V, is at the heart of the concerns raised. There is said to be, in practice, a close link in many cases between the setting of conditions by way of environmental impact assessment under Part IV of the Act, and licences and pollution control that is effected under Part V of the Act. The proper concern of the Department of Environmental Protection is to ensure that the outcomes of appeals determined in respect of Part V matters conform with decisions earlier made in respect of Part IV matters.
147. The Taskforce remains of the opinion that it is appropriate for an independent and impartial review mechanism to be available in respect of Part V pollution control matters. So far as the question of harmony between Part V appeal decisions and Part IV environmental impact assessment conditions is concerned, the Taskforce believes that this can be achieved by providing in the *Environmental Protection Act* and the SAT legislation that, in determining an appeal of a Part V matter, the SAT must have due regard to the conditions which have been imposed on a proposal according to Part IV of the Act, in those cases where Part IV has been applied (which is not all cases by any means).
148. Concerns about frivolous or vexatious appeals have also been expressed. The SAT, as we have recommended below, will have the power to dismiss such appeals and this concern should not prevent the implementation of our recommendation.

149. A further concern raised relates to the question of administrative responsiveness to pollution appeals. The SAT, as recommended in Chapter 5, will have as one of its primary objectives the function of dealing with all appeals in a timely fashion and will emphasise alternative means of dispute resolution apart from formal determinations. Thus, mediation and negotiation will be employed in all appropriate cases. Once the SAT is operating, it can be expected to facilitate early mediated outcomes involving the representatives of the Department of Environmental Protection and affected parties in relation to Part V appeals. The SAT will therefore be able to provide an early and urgent response in all cases requiring such a response.
150. The Taskforce should add that none of its recommendations affect the existing power of the responsible Minister for the Environment to grant exemptions in relation to environmental emission standards under existing legislation and regulations. The ministerial exemption powers should remain intact.
151. Matters pertaining to environmental controls are always likely to induce a degree of public and industry debate about the desirability of ministerial control over land development and resource development decisions. However, pollution controls and appeals have now advanced to the point where the Taskforce considers an appeal system in respect of pollution matters should be established independent of ministerial control.

#### ***LOCAL GOVERNMENT BUILDING APPEALS***

152. As discussed earlier in this chapter (paragraph 30), the Taskforce has not been inclined to accept the suggestion of the Minister for Local Government that building appeals under the *Local Government (Miscellaneous Provisions) Act* be transferred to the SAT in the first instance.



## **ADMINISTRATIVE APPEALS TO OTHER PUBLIC OFFICIALS**

153. If the SAT is established, the appeals to other public officials identified in Chapter 1 above (see paragraphs 18 and 19) under the following legislation, should be transferred to the SAT:

*Cremation Act 1929 (WA)*

*Health Act 1911 (WA)*

154. As to the appeals arising under the *Health Act*, the Taskforce can see no reason why, upon the establishment of the SAT, decisions previously made by the Executive Director, Public Health should not now be made by an independent and impartial tribunal such as the SAT that will have expertise in other areas pertaining to local government, land use planning and environmental control. The same may be said of appeals arising under the *Cremation Act*.

155. The Taskforce believes that an appeal to the Electoral Commissioner from a decision of an Enrolment Officer to reject a claim for enrolment available under section 40 of the *Electoral Act* involves matters that should not be transferred to the SAT and should remain the province of the Electoral Commissioner.

## **DISCIPLINARY AND SUPERVISORY BOARDS**

156. The Taskforce recommends that the disciplinary or supervisory functions of the following tribunals and boards should be assumed by the SAT:

Architects' Board of Western Australia

Builders' Registration Board of Western Australia

Chiropractors' Registration Board

Dental Board of Western Australia

Electrical Licensing Board

Finance Brokers Supervisory Board

Hairdressers Registration Board of Western Australia  
Land Surveyors Licensing Board  
Land Valuers Licensing Board  
Legal Practitioners Disciplinary Tribunal  
Medical Board of Western Australia  
Motor Vehicle Dealers Licensing Board  
Nurses Board of Western Australia  
Occupational Therapists Registration Board of Western Australia  
Optometrists Registration Board  
Osteopaths Registration Board  
Painters' Registration Board  
Pharmaceutical Council of Western Australia  
Physiotherapists Registration Board  
Plumbers Licensing Board  
Podiatrists Registration Board  
Psychologists Board of Western Australia  
Real Estate and Business Agents Supervisory Board  
Settlement Agents Supervisory Board  
Veterinary Surgeons' Board

157. However, we recommend that these boards (or new units of government that may be set up in their place) should, subject always to the particular circumstances of the board concerned, have a summary disciplinary power, if the affected person – as in the case of section 28A of the *Legal Practitioners Act* – consents to the exercise of that summary jurisdiction, to:

- a. impose a fine not exceeding \$500;
- b. reprimand and counsel; and

- c. require supervision or further education or training.
158. We have discussed above (see paragraphs 43-54) in detail the policy reasons underlying our recommendations. As we have explained, a number of these boards have the regulatory function of granting licences to practice or work in a given field or area of business, removing or adding conditions to licences, and cancelling or suspending a licence and imposing substantial fines.
159. The Taskforce believes that boards with regulatory functions should continue to exercise the regulatory function of licensing persons within relevant fields or areas of business activity and otherwise to specify relevant standards of conduct as envisaged by existing legislation to investigate complaints and to exercise a summary disciplinary jurisdiction in respect of matters that may be minor in nature.
160. Appeals against decisions refusing licences and concerned with other regulatory matters, however, should be made to the SAT, rather than to a court (see paragraphs 127-136).
161. The existing boards (whether in their current form or in some rationalised form) should retain the function of receiving complaints about misconduct and deciding whether disciplinary or supervisory proceedings should be commenced. Where a body, such as the Legal Practitioners Complaints Committee, has an existing disciplinary power which may be exercised with the consent of an affected party, we consider that this power should be retained. Thus we do not propose that section 28A of the *Legal Practitioners Act* should be altered. Where boards do not currently have such a power to deal summarily with minor disciplinary matters, they should be given such a power. Section 28A of the *Legal Practitioners Act* provides the appropriate model.

162. A Board should also retain the power, if it currently has it, to change the terms of any existing licence, subject to appeal to the SAT.
163. The Taskforce also considers that where there currently exists a power to suspend a licence or other relevant permit or authority in an urgent or emergency circumstance, such as exists under the *Nurses Act*, the emergency power of suspension should not be affected by these recommendations. Rather, there should be a statutory requirement that the board concerned must apply to the SAT to extend the suspension order beyond a fixed period of, say, 30 days. In that way, urgent regulatory action by the primary public official can be taken, but the interests of affected parties cannot be removed permanently without a hearing and determination by the SAT.
164. The Taskforce proposes that a special list should be created as part of the SAT which would have the particular function of hearing and determining applications to do with professional, occupational and business misconduct.
165. Many of the persons who currently sit on disciplinary or supervisory hearings on existing boards, or persons with similar experience, should of course be engaged as part-time or sessional members of the SAT. In that way, the functions currently performed by the various disciplinary boards will continue to be exercised by the SAT, and persons with the appropriate qualifications and experience will continue to serve the people of the State by overseeing professional, occupational and business conduct.
166. A special comment is required in relation to the composition of the SAT that would deal with legal disciplinary matters. Because the Supreme Court exercises a general supervisory jurisdiction over persons who are admitted to the Supreme Court to practise law, the *Legal Practitioners Act* currently provides that membership of the Legal Practitioners Disciplinary Tribunal should comprise,

amongst others, a judge of the Supreme Court or a retired judge of the Supreme Court. The Taskforce believes the same policy should be carried through to the SAT. This policy would be effected by the President presiding over all legal disciplinary matters.

167. It would also be appropriate, and we recommend, that the SAT membership might include a judge of the Supreme Court who may be appointed, from time to time, at the request of the President of the SAT by the Chief Justice of the Supreme Court.
168. It should also be added that the manner in which various disciplinary boards conduct disciplinary hearings is not standard and depends very much on the practice each board has developed over time. The bringing together of the disciplinary and supervisory functions of the various boards within the SAT will ensure the standardisation of procedures and practices and ensure best practice is achieved in like cases. Where the legislation governing the conduct of disciplinary hearings of particular tribunals or boards currently specifies particular rules governing such matters as public or private hearings, confidentiality and the like, these rules should continue to apply in the SAT.
169. Additionally, the Taskforce believes the separation of the functions of receiving, investigating and prosecuting complaints, as well as hearing and determining them will produce positive supervisory outcomes. It will mean that the continuing regulatory bodies will be better able to focus on their primary functions of investigation and prosecution. For example, having regard to the recommendations of the Gunning Report and matters raised in the report issued recently by the Temby Royal Commission, the supervisory or disciplinary functions of the Consumer Affairs boards and committees would be assumed by the SAT. The existing boards (or some other entity or public officials appointed in their place) would then have the dedicated function of investigating complaints

and dealing with some minor disciplinary matters (subject to appeal to the SAT). Such a separation of functions should ensure better supervision of professional, occupational and business affairs.

170. As recommended earlier in this chapter (see paragraph 35), existing boards (or new units of government) with summary disciplinary power should be obliged to report to their Minister each year on the performance of this function.
171. In Chapter 1 we identified the existence of the Electrical Licensing Board, which licences and disciplines persons for the purposes of the *Electricity Act* and *Electricity (Licensing) Regulations*.
172. We pointed out in Chapter 1 that gas fitters are dealt with differently in that there is no relevant Board. Rather, the Director of Energy Safety has the functions of licensing and disciplining gas fitters and also has the power to delegate the disciplinary function to a person or body of persons appointed by the Director under the *Gas Standards (Gas Fitting and Consumer Gas Installations) Regulations*.
173. The Director of Energy Safety, as a matter of administration, has important functions relating to the licensing, performance and supervision of both: electricians under the *Electricity Act and Regulations*, and gas fitters under the *Gas Standards Act and Regulations*.
174. The question arises whether the functions of the Director in disciplining electricians and gas fitters should henceforth be performed by the SAT, or should remain effectively as they are.
175. In dealing with this matter it does seem strange as a matter of administration that electricians and gas fitters should be treated differently in that there is a separate board to deal with the former and the Director of Energy Safety has the function

of dealing with the latter, although the Director also has important administrative powers in respect of the activities of the Electrical Licensing Board.

176. The unusual administrative division of regulation and discipline between the Electrical Licensing Board and the Director of Energy Safety should be reconsidered. In the circumstances it would seem sensible from a policy and administrative point of view either to have one board dealing with electrical and gas-fitting matters, or to charge the Director of Energy Safety with licensing and disciplinary functions in respect of both electricians and gas fitters.
177. Considering the nature of the regulatory function in respect of electricity and gas energy operations, the Taskforce finds it appropriate to recommend that the existing licensing, regulatory and minor disciplinary functions governing electricians and gas fitters be vested in one entity.
178. The Taskforce has not considered it necessary to deal with a range of appeals concerning police, fire brigade, prison officers and marine matters. Those appeal rights primarily concern industrial and organisational matters that should not be determined by the SAT. The appeals falling in this class are created by the following Acts and regulations:

*Fire Brigades Regulations 1943*

*Government Railways Act 1904 (WA)*

*Police Act 1892 (WA)*

*Prisons Act 1981 (WA)*

*Western Australian Marine Act 1982 (WA)*

## **ORIGINAL DECISION MAKING BOARDS AND TRIBUNALS**

179. The Taskforce recommends that the original decision making jurisdiction of the following Boards and Tribunals should be assumed by the SAT:

Building Disputes Tribunal

Commercial Tribunal

Equal Opportunity Tribunal

Retirement Villages Disputes Tribunal

Strata Titles Referee

180. The Taskforce recommends that the Building Disputes Tribunal should continue to operate as a first-tier review body with an appeal against its decisions being available to the SAT.

## ***THE GUARDIANSHIP AND ADMINISTRATION BOARD AND THE MENTAL HEALTH REVIEW BOARD***

181. We recommend that these Boards be aligned with the SAT. We have set out above our detailed consideration of the reasons for this recommendation. In that consideration, the Taskforce has largely been in agreement with the recommendations in the 1999 WALRC Report concerning the appropriateness of aligning the functions of the Guardianship and Administration Board with the SAT.<sup>39</sup> Accordingly, the Taskforce has not accepted the earlier contrary recommendation of the 1996 Review that the Board should not be so aligned

182. As we have explained earlier in this chapter (see paragraphs 70-92), what the Taskforce believes is appropriate in the case of both the Guardianship and Administration Board and the Mental Health Review Board is that rather than the existing Boards being disbanded and absorbed into the SAT, the two Boards

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<sup>39</sup> WALRC Recommendation 33.14



should be aligned with the operation of the SAT. This can best be achieved by providing in the governing legislation of each Board that the Chairperson of each Board should be a Presidential member of the SAT and that the other members of the Board should also be members of the SAT.

183. Additionally, the Guardianship and Administration Board and the Mental Health Review Board should physically be co-located with the SAT and the SAT should provide the registry and staffing requirements of each Board.

184. While physical co-location of both Boards, especially the Guardianship and Administration Board, with the SAT may not be possible immediately, it should be achieved as soon as practicable.

*ASSESSOR OF CRIMINAL INJURIES COMPENSATION, INFORMATION COMMISSIONER, SMALL CLAIMS TRIBUNAL AND SMALL DEBTS DIVISION AND RESIDENTIAL TENANCIES JURISDICTION OF LOCAL COURT*

185. We have decided to recommend that certain existing original and other decision making bodies, namely the Assessor of Criminal Injuries Compensation, Information Commissioner and the Small Claims Tribunal, should not, at least initially, be included in the SAT. Similarly, we have decided that the Small Debts Division and Residential Tenancies jurisdiction of the Local Court should remain in the Local Court. In these respects, the Taskforce does not adopt the recommendations of the 1999 WALRC Report.

*ASSESSOR OF CRIMINAL INJURIES COMPENSATION*

186. The 1999 WALRC Report recommended that decisions of the Assessor of Criminal Injuries Compensation should be subject to the appellate jurisdiction of a body like the SAT, rather than of the District Court as is currently the case. Given the subject matter of such appeals and the District Court's long experience in handling related issues, the Taskforce believes that this appellate jurisdiction

should not be initially transferred to the SAT. Nor should the original jurisdiction be made part of the SAT. It would be anomalous to have the primary decision made by the SAT with a right of appeal to the District Court. Thus, the *status quo* should be maintained. However, Government should review this decision after the SAT has been operating for two years. .

#### ***INFORMATION COMMISSIONER***

187. The 1999 WALRC Report proposed that the adjudicative functions of the Information Commissioner under the *Freedom of Information Act* should be incorporated into a body like the SAT. However, the Taskforce believes the administration of the *Freedom of Information Act* is best left to the Information Commissioner. Moreover, the majority of the Taskforce is of the view that the SAT ought properly be charged with the review of decisions of the Information Commissioner on appeal, in place of the Supreme Court.

188. Currently, a decision of the Information Commissioner may be the subject of an appeal to a judge of the Supreme Court. Given the primary function of the SAT to deal with administrative decision making in this State, the majority of the Taskforce recommends that the existing right of appeal in the *Freedom of Information Act* against decisions of the Information Commissioner should be to the SAT in the first instance. Decisions of the SAT might then be the subject of appeal on questions of law to the Supreme Court of Western Australia, with leave of the Court. As the SAT should review the Information Commissioner's decision on appeal it is appropriate the Commissioner should not be incorporated into the SAT and should continue to operate independently.

#### ***SMALL CLAIMS TRIBUNAL***

189. The 1999 WALRC Report proposed the transfer of the functions of the Small Claims Tribunal to the SAT. On balance, the Taskforce considers that recent policy developments within government suggest this recommendation should

not be adopted. The Small Claims Tribunal was originally established in 1974 expressly to enable consumer/trader disputes to be resolved in a setting more informal than that available in the Local Court. The Taskforce understands that the Government is now considering a proposal to establish a Magistrates Court (which would essentially involve an amalgamation of the existing Local Court and Courts of Petty Sessions); such a Magistrates Court would include a Small Debts Division.

190. Assuming that the Small Debts Division of a new Magistrates Court will adopt alternative means of dispute resolution and adapt them to traditional court processes, and will be able flexibly to dispose of consumer/trader disputes, there is good reason to transfer the current jurisdiction of the Small Claims Tribunal to the proposed Small Debts Division of the Magistrates Court rather than to the SAT. Small Claims occur throughout the State and the ready availability of Local Courts in country and regional areas for resolving such disputes lends support to this recommendation. Moreover, the synergies between the proposed jurisdiction of the Magistrates Court and the Small Claims Tribunal suggest that this is a sensible outcome. The proposed Magistrates Court would thereby maintain a common civil jurisdiction for the resolution of like disputes. Again, the Government should review this decision after the SAT has been operating for two years.

#### *SMALL DEBTS AND RESIDENTIAL TENANCIES MATTERS*

191. Similarly, and contrary to the recommendation contained in the 1999 WALRC Report, we do not recommend that the Small Debts and Residential Tenancies jurisdictions of the Local Court should be transferred to the SAT. The argument in favour of that recommendation was not developed in any detailed way in the 1999 WALRC Report and would appear to derive from the fact that the VCAT has that jurisdiction.

192. It is possible to see how Small Debts and Residential Tenancies dispute resolution, like that of Small Claims, might be characterised as amenable to a tribunal-like setting rather than to a court-like setting. However, in our view, unlike the other tribunals and tribunals whose functions we consider are appropriate for inclusion in the SAT, Small Debts, Residential Tenancies and Small Claims disputes are better dealt with in a court-like setting – though a modified one – because they involve the enforcement of existing rights.
193. Additionally, Small Debts and Residential Tenancy disputes are currently dealt with in a division of the Local Court which has gained considerable experience in resolving them and which utilises informal means of dispute resolution.
194. Moreover, Small Debts and Residential Tenancies disputes, like Small Claims, require reasonably frequent resolution in the country and regional parts of the large State of Western Australia where Local Court Magistrates are already resident.
195. As in the case of the Small Claims Tribunal, our recommendation assumes that with the creation of a new Magistrates Court that Court will engage in alternative means of dispute resolution and will flexibly dispose of Small Debts and Residential Tenancies disputes.
196. The submission of the Chief Stipendiary Magistrate suggesting that Small Debts and Residential Tenancy matters – and the functions of the Small Claims Tribunal – might be transferred to the SAT has been considered. However, for the various reasons set out above, we consider it appropriate to recommend that the Small Debts and Residential Tenancies jurisdictions of the Local Court remain with the Local Court. We are confident that upon the coming into operation of the new Magistrates Court the practices and procedures adopted by the Court will deal appropriately and consistently throughout the State with these jurisdictions.

## OTHER COURTS, COMMISSIONS AND SYSTEMS

### *LICENSING OF DEBT COLLECTORS*

197. The Taskforce is of the view that it is inappropriate for the Local Court to continue to be the original decision maker in respect of applications for debt collectors' licences or their cancellation. Our recommendation is that this original decision making be vested in an entity such as the Commissioner of Police or his nominee, perhaps along the lines of the licensing system in the *Pawnbrokers and Second-hand Dealers Act* or the *Security and Related Activities (Control) Act*. Appeals would then lie to the SAT, with the ordinary right of appeal from the SAT to the Supreme Court on questions of law. The Task Force does not believe it appropriate, while the Local Court continues to be the licensing authority, for there to be a right of appeal from that Court to the SAT.

### *OTHER MATTERS*

198. As indicated elsewhere in this Report, the Taskforce adopts the view of the 1999 WALRC Report and of the 1996 Review that it is inappropriate, on the grounds of the subject matter and policy areas involved, for existing areas of regulation affected by the functions of the Licensing Court, the Western Australian Industrial Relations Commission or the workers compensation system in the State to be the subject of the jurisdiction of the SAT.



## **CHAPTER 5 - THE STRUCTURE, COMPOSITION AND OPERATION OF THE SAT**

### **INTRODUCTION**

1. Administrative tribunals exist for the benefit of the people of the State and should be structured and operated so as to advance, at every turn, the interests of those who use them. Administrative tribunals are intended to be user-friendly organisations which permit citizens to obtain a timely consideration of civil and administrative matters or review of administrative decisions so that the correct or preferable decision is made. It follows that the SAT should be designed to achieve a flexible, timely, fair and sensible disposition of applications coming before it.
2. Administrative tribunals are not intended to be courts. Courts typically determine issues affecting the relationship between citizen and citizen or citizen and government, according to common law or statutory requirements. Tribunals also determine issues affecting these same relationships but, while still applying legal principles, they are freer to do so in less formal ways than courts. Hearings need not be conducted strictly in accordance with the rules of evidence that govern court proceedings and the usual trappings of a court and its formalities may often be dispensed with according to the circumstances and the kind of matter dealt with. In a simple matter where an applicant may not have legal representation a less court-like procedure can assist in the matter being determined in a fair, yet inexpensive and expeditious way.

### **RECOMMENDATIONS**

3. The Taskforce recommends that the SAT should reflect the characteristics referred to above, all of which have been suggested by previous inquiries. In particular, the SAT should:

- a. make the correct or preferable decision in relation to civil and administrative matters, so long as this decision remains consistent with the law;
- b. comprise members from a range of professions, occupations and experiences suited to the nature of its functions;
- c. be flexible in the way it conducts its business and, where appropriate, use an inquisitorial approach (as described in paragraph 7 below) and informal procedures;
- d. not be strictly bound by the rules of evidence, legal technicalities or form, and be able to inform itself as it thinks fit and according to equity, good conscience and the substantial merits of each case;
- e. seek to resolve disputes, where appropriate, through conciliation, mediation and other methods with a view to settling a matter prior to hearing;
- f. ensure accessibility by travelling outside the Perth metropolitan area on circuit and, where required, permit evidence to be taken by telephone and video-conference link; and
- g. seek to minimise the cost to users.

#### **PRINCIPAL OBJECTIVES**

- 4. It follows from these recommendations that the SAT, while not a court, must always act fairly and according to the substantial merits of the case. This, and the following objectives, should be clearly stated in the SAT's governing Act.



5. Additionally, the SAT should:

- a. be bound by the rules of natural justice and procedural fairness;
- b. be unfettered by the rules of evidence or any practices or procedures applicable to courts of record, only adopting such rules, practices or procedures in individual cases when the SAT sees fit to do so;
- c. inform itself on any matter as it sees fit;
- d. conduct and determine each proceeding with as little formality and technicality, and with as much promptness and alacrity, as the requirements of the SAT legislation, any other relevant legislation and a proper consideration of the matters before it will permit;
- e. be able to admit into evidence the contents of any document despite non-compliance with any time limit or other requirement specified in the rules in relation to that document or service of it; and
- f. be able to regulate its own procedure.

#### **ADOPTION OF FLEXIBLE PROCEDURES**

6. Although it is intended that the SAT should conduct its proceedings with as little formality as possible and that it should not be strictly bound by the rules of evidence, this does not mean that the SAT should consider itself free to dispense arbitrarily with legal forms and disregard normal evidentiary standards. Rather, the intention is that the SAT should be free to vary and adjust its procedures according to the circumstances of the case. On one hand, in a taxation, major town-planning, or disciplinary proceeding, for example, where the factual and legal issues are complex and each party is legally represented, normal court-like

processes may well be appropriate. In such instances the normal rules of evidence, developed over time and founded on common sense, will usually provide the best way to determine the central issues. On the other hand, where a party is unrepresented, and the issues are not complex, a fair outcome might require the relaxation of formal procedures and rules. In those cases an important consideration is that a party should feel confident and comfortable in putting his or her side and not feel frustrated by being entangled in legal forms. In short, the SAT should not adopt a one size fits all approach to decision making, but rather do what fairness requires in each case.

7. This is particularly important where a party might experience difficulty in defining and presenting its case in a relevant way, such as where the applicant is under a disability. In such instances the SAT should be able to take the initiative and assist the person to define the issues, and further, where appropriate, it should assist the person by asking relevant questions or seeking relevant documents and information on its own initiative. This is essentially what is meant when it is said that the SAT should adopt an inquisitorial approach.<sup>40</sup>
8. There has been a tendency in some past reviews to think such an approach is appropriate in all circumstances. The Taskforce, however, sees pursuit of the correct or preferable decision as the main consideration that should inform the SAT's proceedings. This will entail in some cases a more inquisitorial approach where the SAT of its own initiative decides to be more flexible and interventionist in its conduct of the inquiry. However, it should always be within the discretion of the SAT as to how far it relaxes the traditional court-like processes. In other words, the SAT should cut its cloth to fit the occasion in ascertaining the facts

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<sup>40</sup> T Thawley, "Adversarial and Inquisitorial Procedures in the Administrative Appeals Tribunal" (1997) 4 Australian Journal of Administrative Law 61, 62-64 J Dwyer, "Fair Play the Inquisitorial Way" (1997) 5 Australian Journal of Administrative Law 5, 7-10.

while always seeking, in accordance with the rules of natural justice, to secure a fair outcome.<sup>41</sup>

## **GOVERNMENT POLICY**

9. The majority of the Taskforce is of the view that in the conduct of its functions and in determining the correct or preferable decision in any case, the SAT should take into account Government policy, but only policy that has been certified in writing by the Minister or Chief Executive Officer of a relevant department as having been in existence at the time the decision under review was made. One member, however, was of the view that as the intention is always to achieve the correct or preferable outcome, government policy subsequent to the original decision (indeed perhaps because of that decision) ought to be taken into account by the SAT.
  
10. It may be expected that the SAT will develop principles regarding the application of Government policy similar to those adopted by the AAT. Thus, where high-level policy is entailed, such as that laid down in statute or formulated by Cabinet or a minister, the SAT would normally apply it in all but an exceptional case.<sup>42</sup> However, where the policy or practice is at the departmental level the SAT, while taking it into account, would have greater latitude to question whether it was appropriate in a particular case.

## **THE COMPOSITION OF THE SAT**

### ***PRESIDENTIAL MEMBERS***

11. The SAT should be headed by a President and two Deputy Presidents. Together, the President and the Deputy Presidents should be classified as Presidential Members.

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<sup>41</sup> Guidance as to the circumstances in which that can be done is provided in *Bushell v Repatriation Commission* (1992) 175 CLR 408 (High Court); *Perpetual Trustee Co (Canberra) Ltd v Commissioner for ACT Revenue* (1994) 50 FCR 405, 418-419 (Full Federal Court).

<sup>42</sup> *Drake v Minister for Immigration* (1979) 46 FLR 409.

12. As in the case of the VCAT, it is appropriate to provide that the President should be a Judge of the Supreme Court who is appointed by the Governor on the recommendation of the Attorney General after consultation with the Chief Justice. The person appointed may already be a judge or become one on appointment. The President should be appointed for a period of between five and seven years in the first instance, although he or she may be re-appointed at the expiration of that term. The appointment of a judge of the Supreme Court should not affect the tenure, office or status of that person as a judge nor his/her other allowances, rights or privileges as a judge.
13. There should be two Deputy Presidents of the SAT. Each should be either a judge of the District Court or become one on appointment. As in the case of the President, appointment of a judge of the District Court as a Deputy President should not affect his/her tenure of office or status as a judge, nor other rights and privileges as a judge.
14. A Deputy President should be appointed for periods of between five and seven years and should be capable of re-appointment for a further term.
15. There should also be a power for an existing Supreme Court judge to act as a Presidential member. Such an appointment should be made by the Chief Justice of Western Australia at the request of the President of the SAT. There may be circumstances in which, by reason of the unavailability of the President or a Deputy President or the particular nature of a matter, a Supreme Court judge should be made available to hear and determine a particular matter.

#### *THE IMPORTANCE OF JUDICIAL LEADERSHIP*

16. There are several reasons for recommending that the Presidential members be judges. First, the head of the SAT should have the requisite status and respect to

deal with the Government, Parliament and other bodies on matters affecting the SAT in a way that ensures the independence of the SAT.

17. Secondly, it is of the utmost importance that persons of high legal calibre and with the skills appropriate to the functions of the SAT, including administrative skills, be attracted to the positions. Permanency of appointment is a critical issue in this regard.
18. Thirdly, the SAT will have a significant jurisdiction in many important fields of administrative decision making in the State and, at times, will have to determine difficult questions of law and fact. The availability of Presidential members of high judicial competence will go a considerable way to reducing the prospects of further appeals on issues of law.
19. Additionally, having a President of Supreme Court status will assist in maintaining respect and harmonious relations between the SAT and the Supreme, District and Magistrates Courts.
20. The experience in both Victoria and New South Wales, as well as that of the AAT, is that judicial leadership ensures public confidence in the integrity, independence and impartiality of such a tribunal. Such appointments demonstrably remove the potential for government influence over the SAT and ensure that the SAT is possessed of the highest levels of administrative and legal expertise.
21. The Chief Justice of Western Australia in his submission agrees that it is *highly desirable that the President should be a judge of the Supreme Court*, although His Honour would *prefer* that the President be appointed on the recommendation of the Chief Justice after consultation with the Attorney General.

22. However, the Taskforce is of the view that the recommendation we have made concerning the manner of appointment is appropriate. The form of appointment we have suggested is the same as that which operates in Victoria in relation to the appointment of the President of the VCAT, who is also a judge of the Supreme Court of Victoria. An appointment process of the type we have recommended recognises the important, separate status the SAT has as a civil and administrative review agency that significantly is not a part of the Supreme Court and is not to be viewed as such.
23. The Chief Justice of Western Australia has also indicated that he is *totally opposed* to appointments in the form that simply gives the President or Deputy Presidents the status and privileges of a judge of the Court without actually appointing them to that Court. The Taskforce respectfully agrees with this submission which accords with our recommendations above.
24. In his submission, the Chief Justice of Western Australia also agrees that the Deputy Presidents should be judges of the District Court appointed for a term and that it would be appropriate for such appointments to be made from the ranks of the District Court judges. Again, the Chief Justice has suggested that the appointment should be made on the recommendation of the Chief Justice after consultation with the Attorney General and the Chief Judge of the District Court. However, for the reasons we have set out above in relation to the manner of appointment of the President, the Taskforce considers that the mode of appointment we have suggested, namely, appointment by the Governor on the recommendation of the Attorney General after consultation with the Chief Justice of Western Australia and the Chief Judge of the District Court, is the most appropriate.

25. As to the appointment of the two Deputy Presidents for a term of five to seven years, the Taskforce recognises that, depending on the development of the jurisdiction of the SAT, it may be unnecessary for the two Deputy Presidents to be engaged in the work of the Tribunal on a full-time basis. In such an event, the Deputy Presidents, or one of them, may be expected to serve the District Court in a full-time or part-time capacity, as the President of the SAT and the Chief Judge of the District Court may agree between them.

#### *MEMBERS*

26. The SAT should otherwise be constituted by as many senior members and members as are required, from time to time, for the proper functioning of the SAT. They should be appointed by the Attorney General for a term of five years, following consultation with the President, on the basis of their particular qualifications, knowledge or experience in relation to any of the kinds of matters dealt with by the SAT. Appointment should be either on a full-time, part-time or sessional basis.
27. The appointment process should be the subject of a protocol formulated by the President and designed to ensure public confidence in the process. Applicants should be assessed against publicly available selection criteria, with assessments conducted by a broad-based panel.
28. Members may be appointed to serve on more than one list.

#### *TRAINING*

29. The enabling Act for the SAT should provide that the Presidential members of the SAT have a statutory obligation for the training, education and professional development of all members of the SAT, including themselves. In order to meet the objectives of the SAT set out above, training, education and professional

development of all members is essential. There is today in Australia a growing realisation that, in the operation of tribunals, members require special training and skills. The growth of national institutes concerning tribunal development emphasises this trend. Adequate provision must be made in funding for the SAT to ensure that professional training is achieved at the outset and continues.

30. The SAT will comprise not only full-time members but a number of part-time and sessional members and it is necessary to ensure that the part-time and sessional members are also well acquainted with the objectives and required decision making procedures of the SAT.

#### *DISCIPLINARY AND SUPERVISORY MATTERS*

31. Before appointing members (whether full-time, part-time or sessional) to sit on matters in the Professional and Occupational List, the Business Regulation List or the Domestic Building List (see paragraph 38 below), the Attorney General should consult with the head of any relevant board or committee that may refer matters to the SAT.
32. In the hearing of applications that fall within the Professional and Occupational List and the Business Regulation List, the Taskforce recommends that wherever possible the SAT should comprise three members, one of whom should be either the President or one of the two Deputy Presidents of the SAT. If the President is of the opinion that special circumstances warrant it, the President may direct that the SAT consist of five members.
33. In the case of disciplinary or supervisory proceedings instituted before the SAT by the Legal Practice Board or the Legal Practitioners Complaints Committee (that is, in a matter currently heard by the Legal Practitioners Disciplinary Tribunal) it may also be appropriate for the Attorney General to ensure that at least one retired judge of the Supreme Court or Federal Court or person with



equivalent experience is appointed to the SAT to preside over such proceedings in the absence of the President.

#### ***ALL OTHER HEARINGS***

34. In all other matters the SAT should be constituted by the number of members that the President or, in the absence of a direction from the President, a Deputy President designates.
35. The President or the Deputy President responsible must ensure that each application is heard by a tribunal that includes at least one member who, in the opinion of the President or the Deputy President, has relevant knowledge or experience.

#### ***STAFF***

36. An Executive Officer, Principal Registrar and other appropriate staff should be appointed to the SAT to permit the proper exercise of its functions. The numbers required should be appointed under the *Public Sector Management Act 1994 (WA)*.

#### **STRUCTURE OF THE SAT**

37. The SAT should be divided into lists. Each of the Deputy Presidents should be responsible to the President, who should generally be responsible for the operation of the SAT.
38. Without being prescriptive, the Taskforce suggests that the lists might be organised in respect of the jurisdictions currently exercised by various tribunals and boards as follows:

##### ***DOMESTIC BUILDING LIST***

Building Disputes Tribunal

**COMMERCIAL LIST**

Commercial Tribunal

**ANTI-DISCRIMINATION LIST**

Equal Opportunity Tribunal

**STRATA LIST**

Retirement Villages Disputes Tribunal

Strata Titles Referee

**PLANNING, ENVIRONMENT AND VALUATION LIST**

Town Planning appeals

Pollution control appeals

Local Government appeals

Land Valuations Tribunals

Compensation actions pursuant to the *Land Administration Act*

**REVENUE LIST**

*Debts Tax Assessment Act* appeals

*Land Tax Assessment Act* appeals

*Pay-Roll Tax Assessment Act* appeals

*Stamp Act* appeals

*Petroleum (Registration Fees) Act* appeals

*Petroleum (Submerged Lands) Registration Fees Act* appeals

**PROFESSIONAL AND OCCUPATIONAL LIST**

Architects' Board of Western Australia

Builders' Registration Board of Western Australia

Chiropractors Registration Board

Dental Board of Western Australia

Electrical Licensing Board  
Hairdressers Registration Board of Western Australia  
Land Surveyors Licensing Board  
Land Valuers Licensing Board  
Legal Practitioners Disciplinary Tribunal  
Medical Board of Western Australia  
Nurses Board of Western Australia  
Occupational Therapists Registration Board of Western Australia  
Optometrists Registration Board  
Osteopaths Registration Board  
Painters' Registration Board  
Pharmaceutical Council of Western Australia  
Physiotherapists Registration Board  
Plumbers Licensing Board  
Podiatrists Registration Board  
Psychologists Board of Western Australia  
Veterinary Surgeons' Board  
Appeals against licence and registration refusals

***BUSINESS REGULATION LIST***

Finance Brokers Supervisory Board  
Motor Vehicle Dealers Licensing Board  
Racing Penalties Appeals Tribunal  
Real Estate and Business Agents Supervisory Board  
Settlement Agents Supervisory Board

***ECONOMIC REGULATION LIST***

Fisheries Objections Tribunal  
Water Resources Appeals Tribunal  
Western Australian Gas Review Board

### *GENERAL LIST*

Other appeals or matters currently the subject of other court determination or board, ministerial and public officials appeals not listed above.

39. The President, after consultation with the Deputy Presidents, should have the power to determine from time to time what lists should be maintained.

## **OPERATION OF THE SAT**

### *FUNCTIONS*

40. The review function of the SAT should be consistent with the Taskforce's earlier recommendations and include the present appellate or review functions of the following administrative tribunals or courts:

Firearms Tribunal

Fisheries Objections Tribunal

Land Valuations Tribunals

Racing Penalties Appeals Tribunal

Town Planning Appeals Tribunal

Water Resources Appeals Tribunal

Western Australian Gas Review Board

The appeals currently heard by courts that are the subject of the recommendations in Chapter 4

The ministerial appeals that are the subject of the recommendations in Chapter 4

The public official appeals that are the subject of recommendations in Chapter 4

41. The SAT should exercise a disciplinary jurisdiction in respect of serious matters currently dealt with by the following boards:

Architects' Board of Western Australia  
Builders' Registration Board of Western Australia  
Chiropractors' Registration Board  
Dental Board of Western Australia  
Electrical Licensing Board  
Finance Brokers Supervisory Board  
Hairdressers Registration Board of Western Australia  
Land Surveyors Licensing Board  
Land Valuers Licensing Board  
Legal Practitioners Disciplinary Tribunal  
Medical Board Western Australia  
Motor Vehicle Dealers Licensing Board  
Nurses Board of Western Australia (Professional Standards Committee)  
Occupational Therapists Registration Board of Western Australia  
Optometrists Registration Board  
Osteopaths Registration Board of Western Australia  
Painters' Registration Board  
Pharmaceutical Council of Western Australia  
Physiotherapists Registration Board  
Plumbers Licensing Board  
Podiatrists Registration Board  
Psychologists Board of Western Australia  
Real Estate and Business Agents Supervisory Board  
Settlement Agents Supervisory Board  
Veterinary Surgeons' Board

42. Additionally, the dispute resolution functions of the following bodies should be exercised by the SAT:

Building Disputes Tribunal  
Commercial Tribunal  
Equal Opportunity Tribunal  
Retirement Villages Disputes Tribunal  
Strata Titles Referee

43. As discussed in Chapter 4, the jurisdiction of the SAT should also include compensation actions under the *Land Administration Act*.

#### ***NATURE OF THE APPEAL RIGHT***

44. Contrary to the recommendation of the COG Report, the Taskforce does not recommend that at the initial stage of the SAT's operation there should be a general right for citizens to appeal every administrative decision made by a public official or authority. Such a general appeal right would place conceivably every government or public official's decision in jeopardy of review by the SAT and so significantly disrupt the ordinary processes of government. Rather, the view of the Taskforce is that, at the outset, only the specific existing functions concerning original decisions, appeals and review identified in this Report should be assumed by the SAT.
45. So far as other existing administrative decisions are concerned, once the SAT is established the Government and the Parliament may decide on a case by case basis what further particular governmental decisions should be the subject of review by the SAT.
46. Further, whenever in the future new administrative decision making powers are conferred by statute on a body, the Government and the Parliament should consider whether a right to apply for review of that decision should be created at the outset.

47. The expectation will be that whenever new rights of review or appeal are created, the SAT will be charged with the responsibility of conducting the review or hearing the appeal. In this way, the proliferation of administrative tribunals which these SAT recommendations seek to remedy, will not be repeated.

#### *OBTAINING REASONS FOR DECISION*

48. Fundamental to any proposal for administrative review is that an applicant should know the basis of the decision sought to be reviewed. The Taskforce therefore recommends that persons who are entitled to apply to the SAT for review of a decision have a right to request the decision maker, where the decision maker has not already furnished reasons, to give them a written statement of reasons for the decision. The request for reasons should be made in writing within 28 days after the day on which the decision was made. The decision maker should give a written statement of reasons for the decision to the person as soon as practical, and in any event within 28 days after receiving the written request from the person. Where a decision maker has not complied, or has provided inadequate reasons, a person affected by the decision should be entitled to apply to the SAT for a direction that reasons be provided.
49. The statement of reasons should:
- a. include the findings on material questions of fact that led to the decision;
  - b. refer to the evidence or other material on which those findings were based;  
and
  - c. set out the reasons for the decision.

50. The statement of reasons should not have to be given if the decision maker has already given the person a written statement containing the matters referred to.
51. If, in the course of dealing with any application properly made to the SAT, the SAT considers that a proper statement of reasons has not been given, the SAT may order, on the application of an applicant, that a statement of reasons be given that satisfies the above requirement.<sup>43</sup>

### **JURISDICTION OF THE SAT**

52. The SAT should have the same powers to make interim and final decisions in respect of a matter as has the original decision making body, or current tribunal or court whose jurisdiction is transferred to the SAT.
53. In relation to the exercise of its review or appeal jurisdiction, the SAT should be obliged to make the correct or preferable decision on all the materials before it at the time it hears the application.
54. In the exercise of its review jurisdiction, the SAT should be able to:
  - a. affirm the decision under review or appeal;
  - b. vary the decision under review or appeal;
  - c. set aside the decision under review or appeal and make a new decision in substitution for it; or
  - d. set aside the decision under review or appeal and remit the matter for reconsideration by the original decision maker in accordance with any directions or recommendations of the SAT.

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<sup>43</sup> As held in *Re Palmer and Minister for the Australian Capital Territory* (1987) 1 ALD 183.



## GENERAL PROCEDURAL MATTERS

### *PARTIES*

55. The parties to proceedings before the SAT should be:
- a. the applicant;
  - b. in the case of a disciplinary or other inquiry, the person who is the subject of the inquiry;
  - c. the decision maker who made the decision in question;
  - d. any person with a relevant or sufficient interest in the matter who is joined as a party to the proceedings by the SAT;
  - e. any other person specified by or under a relevant statute as a party to such proceedings; and
  - f. in an appropriate case, the Attorney General.
56. The SAT may order that a person be joined as a party to proceedings before the SAT, if the SAT considers that:
- a. the person ought to be bound by, or have the benefit of, an order of the SAT in the proceedings;
  - b. the person's interests are sufficiently affected by the proceedings; or
  - c. for any other reason it is desirable that the person be joined as a party.

The SAT may make the order on the application of any party or person with sufficient interest in the proceedings, or on its own initiative if satisfied that joinder is necessary.

57. An unincorporated association should not be permitted to be a party to proceedings before the SAT unless a Presidential member of the SAT is satisfied that there are exceptional circumstances in which case an officer of the association may be joined as its representative. A person who is a member of such an association ought to be able to be made a party to proceedings.
58. The Attorney General of the State may intervene in proceedings before the SAT at any time. If the SAT is of the opinion that an application involves a matter of general public importance to the State or otherwise ought to be brought to the attention of the Attorney General, it may at any time give notice to the Attorney General accordingly. Where existing legislation gives a minister the right to make submissions to a tribunal or decision making body, that right should also be reflected in the SAT legislation. For example, under the *Planning Appeals Amendment Bill*, section 54, the minister responsible for planning can make a submission to the Town Planning Appeals Tribunal or that Tribunal can invite the minister to make a submission. That entitlement should continue.
59. A party or person appearing in proceedings before the SAT:
  - a. may appear personally (including with a 'friend' if the SAT agrees);
  - b. may appear by a legal practitioner; or
  - c. where legislation permits, may appear by an agent (e.g. in the case of the Town Planning Appeals Tribunal).

The only exceptions will be where the relevant statute currently restricts the right of representation. Where one party appears in person and the other is represented by a legal practitioner or equivalent, the SAT may give such directions as it sees fit concerning the conduct of the proceedings if it is of the opinion that the unrepresented party is disadvantaged in putting its case.

#### *MULTI-MEMBER TRIBUNALS*

60. The SAT may be constituted by any number of 1, 2, 3, 4 or, in special circumstances, 5 members, as the President or a Deputy President of the SAT directs, depending on the circumstances of the application.
61. The President, or a Deputy President who has been requested to do so by the President, should determine how the SAT is to be constituted for the purposes of each proceeding.
62. If the SAT is constituted by more than one member, the most senior member will preside. The President will of course preside over the hearing of any application where he or she is a member. In other cases, if one of the members is a Deputy President, that person shall preside. If two Deputy Presidents are members, the President shall determine who shall preside.
63. If the SAT is constituted by 2 members and those members are equally divided on a question, the question will be decided according to the opinion of the presiding member.

#### *APPLICATIONS AND FEES*

64. All proceedings in the SAT should be commenced by application with appropriate particulars as provided for by the Rules to be made by the President after consultation with the Deputy Presidents.

65. The applicant should ordinarily, subject to the next paragraph, pay a prescribed fee. In the case of review applications, in particular, the fee should be calculated so as not to make access to administrative justice by citizens prohibitive.
66. In the event that an applicant is successful, the SAT should have a discretion, where it is of opinion that there are justifying circumstances, to remit the fee.
67. Provision should be made for the waiver or reduction of a fee in circumstances provided for by regulations, which regulations should have regard to the capacity of certain classes or categories of applicants to afford a fee.
68. Unless the SAT directs otherwise, an applicant must serve a copy of an application on all other parties and on any other person that the SAT directs should be given notice of the proceedings, as soon as possible, in accordance with regulations made under the SAT legislation.
69. If the parties consent or if the SAT gives leave, an applicant may, upon notice to all other parties, withdraw an application before it is determined by the SAT.
70. The SAT should, either of its own motion or upon the application of a party, have the power to summarily dismiss or strike out all or any part of a proceeding that it considers:
  - a. frivolous, vexatious, misconceived or lacking in substance; or
  - b. otherwise an abuse of process;

and if it does so it may, at its discretion where it considers there is an element of fault on the part of the applicant, order the applicant to pay the other party an amount to compensate that party for any costs, expenses, loss, inconvenience and embarrassment resulting from the proceeding.

71. The SAT may also summarily dismiss, strike out or limit the scope of all or any part of a proceeding for want of prosecution or because it considers the subject matter of the proceeding should be more appropriately dealt with by a court or by some person or body other than the SAT.
72. The SAT may also set time limits for the parties to comply with any direction it gives and may order that proceedings be dismissed or struck out, or determine the proceedings and make appropriate orders, if a party, including the applicant:
  - a. causes the other party disadvantage through failure to comply with orders or directions of the SAT;
  - b. fails to comply with the SAT legislation, regulations or rules or other directions; or
  - c. otherwise unfairly delays proceedings, deceives another party, vexatiously conducts the proceedings, or fails to attend a mediation hearing or other procedure required to achieve the resolution of a matter.

#### *CONFERENCES AND MEDIATION*

73. The SAT may give directions at any time in a proceeding and do whatever is necessary for the expeditious or fair hearing and determination of a proceeding.

74. In particular, the SAT may require parties to attend compulsory conferences, mediation and settlement discussions.
75. Compulsory conferences, mediation conferences and settlement discussions may be presided over by a member of the SAT or the Principal Registrar or other person with the appropriate experience, appointed by the President of the SAT for such purpose. If a member presides over such a conference, mediation or discussion, the member shall not sit on any subsequent hearing of the matter.
76. If a mediator has attempted unsuccessfully to settle a proceeding by mediation, the mediator must notify the Principal Registrar that the mediation has been unsuccessful.
77. Evidence of anything said or done in the course of mediation should not be admissible in any hearing before the SAT in the proceedings, or any other proceedings, unless all parties agree to the production of that evidence.
78. If parties agree to settle a proceeding at any time, the SAT may, if it is satisfied that the settlement is consistent with the law, make any orders necessary to give effect to the settlement. Where necessary the SAT may vary the terms of any consent order so long as it conforms to the intentions of the parties.
79. The SAT may call in the assistance of an expert to advise it in respect of any matter arising in a proceeding and the parties will be responsible for any cost of the expert and shall pay those costs in such proportions (if any) as are determined by the SAT.

### *FLEXIBLE HEARING PROCEDURES*

80. The SAT should be empowered to conduct all or part of a proceeding by means of a conference conducted using telephones, video-links or other means of communication.
81. The SAT may conduct all or part of a proceeding entirely on the basis of documents, without any physical appearance by the parties or their representatives or witnesses, if the parties agree to proceed in that way.
82. Ordinarily, all proceedings of the SAT should be held in public.
83. However, the SAT may, of its own initiative or on the application of a party, direct that a hearing or any part of it be held in private.

### *CONFIDENTIALITY POWERS*

84. The SAT should be able to order that any particular evidence or documents should, for good reason, not be made available to the other parties or the public.
85. In particular, the SAT should consider protecting the confidentiality of information or material:
  - a. that might endanger the national security or international security of Australia;
  - b. that might prejudice the investigation of crime or the administration of justice;
  - c. that might endanger the physical safety of any person;
  - d. that might offend public decency or morality;

- e. in respect of which public interest immunity applies; or
- f. for any other reason in the interests of justice.

*ISSUES, EVIDENCE AND SUBMISSIONS*

86. The SAT should be directed by its Act to allow the parties a reasonable opportunity to do the following:
- a. to define, subject to the satisfaction of the SAT, the issues raised by the application as they see fit;
  - b. to call or give evidence, including any documentary materials or information that is rationally probative;<sup>44</sup>
  - c. to examine, cross-examine and re-examine witnesses; and
  - d. to make submissions to the SAT.

However, the SAT may refuse to allow a party to call evidence on a matter if the SAT considers that the evidence is irrelevant or would not assist the SAT, or that there is already sufficient evidence on that matter and the calling of further evidence would cause an unnecessary delay in the disposition of the proceedings.

87. In discharge of its inquisitorial function, the SAT, if it thinks fit, may itself call a witness or commission an expert report, after consulting the parties, if it is satisfied that it needs to do so in order to arrive at the correct or preferable decision.

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<sup>44</sup> See *Minister for Immigration v Pochi* (1980) 44 FCR 41.



#### *WITNESSES*

88. The Principal Registrar may, and if directed by the SAT should, issue a summons requiring any person to attend the SAT to give evidence and/or to produce documents referred to in a summons. Failure to comply without reasonable excuse should be an offence.
  
89. A person should not be excused from answering a question or producing a document in a proceeding on the ground that the answer or document might tend to incriminate the person. If the person claims, before answering a question or producing a document, that the answer or document might tend to incriminate them, the answer or document is not admissible in evidence in criminal proceedings, other than in proceedings in respect of a falsity of the answer.

#### *QUESTIONS OF LAW*

90. Discrete questions of law arising in a proceeding must be decided by a Presidential member, if one is presiding, or a member who has a legal qualification in any other case. If a question is of some difficulty or novelty, the SAT may refer it to a Presidential member for determination.

#### *RECONSTITUTION OF THE SAT IN CERTAIN CASES*

91. In any proceeding, at any time during the hearing of the proceeding, a party may apply to the SAT requesting that it be reconstituted for the purposes of the proceeding. At any time during the hearing of a proceeding, the President or a member of the SAT may give notice to the parties that the President or member seeks to reconstitute the SAT for the purposes of the proceeding. In this way, the SAT should have the flexibility, where a matter which originally did not appear to require it, to reconstitute so that a one, two or three member panel might be increased, and increased by having the President or Deputy President included in the panel. In this way, any matter which, for example, raises an important issue

of law part way through a proceeding, might be determined by a Presidential member.

#### ***COSTS ORDERS***

92. Normally, in relation to an administrative review matter, each party should bear its own costs in the proceeding.
  
93. However, the SAT should be able to order that a party pay all or a part of the costs of another party in a proceeding, as in the following cases:
  - a. if the SAT is satisfied that it is fair to do so, having regard to the way the party conducted the proceeding, the SAT could order a party to pay costs if that party has unnecessarily disadvantaged another party, has prolonged unreasonably the time taken to complete the proceeding or has made claims, whether of law or fact, that had no tenable basis in law or fact. In an appropriate case the SAT may order that the representative of a party pay the costs;
  
  - b. if the Attorney General intervenes in a proceeding, the SAT may order that the State pay an amount specified to a party as compensation for all or part of the costs reasonably incurred by the party as a result of the intervention; and
  
  - c. where, under existing legislation governing the activities of a disciplinary or supervisory board, costs may be awarded against a person who is the subject of an inquiry and who is found guilty of misconduct.
  
94. Where legislation currently provides for a costs order to be made in the exercise of a particular jurisdiction or function, that power to order costs should be retained – for example, in disciplinary matters.

95. However, the Taskforce notes that there appear to be differing powers to order costs in disciplinary matters under the different legislation governing the disciplinary and supervisory boards we have listed above. The power to order costs should be made standard so that there is one rule to govern all such matters. In this respect, we note the decision of the Local Court at Perth in *Marsh v The Podiatrists Registration Board*, an appeal against the order of the Podiatrists Registration Board pursuant to section 33 of the relevant Act, in Plaintiff No 42073 of 1999, a case in which Mr I G Brown SM drew attention to inconsistencies in existing powers to order costs in such situations.
96. The Taskforce believes that it would be appropriate in respect of costs orders, for costs to be assessed or settled by the Registrar of the SAT.

#### ***INJUNCTION POWER***

97. The Taskforce also recommends that the SAT may, through a Presidential member, grant an order, either interim or final, restraining a party in any proceeding if it is just and convenient to do so. Additionally, the SAT should be able to make a declaration concerning any matter in the proceeding instead of any orders it could make, or in addition to any orders it makes, in the proceeding. The power to make a declaration should be exercisable only by a Presidential member.

#### ***POWER TO MAKE RECOMMENDATIONS***

98. Further, the Taskforce recommends that the SAT should have the power to give an advisory opinion or make a recommendation or the like, on any matter or question referred to it where such provision is made in legislation governing the jurisdiction of the SAT for such a function.

### ***GENERAL POWERS***

99. The SAT should have a general power where it is satisfied that circumstances warrant to extend or abridge time or grant waiver in the case of non-compliance.
100. Further, the SAT (that is, its members) should have the following powers:
  - a. to enter and inspect any land or building either in the presence of or without parties;
  - b. to authorise a member of staff of the SAT or other person to enter and inspect any land or building for the purpose of preparing a report for the SAT; and
  - c. to order an occupier of land or buildings relevant to the proceedings to give a person who is to give evidence in the proceedings reasonable access to the land or buildings.

### ***CONTEMPT POWER***

101. The legislation should provide the SAT with the power to deal with the conduct of persons who disrupt, challenge or otherwise act in a manner calculated to interfere with the proper functioning of the SAT.

### ***APPEALS AGAINST THE SAT***

102. The Taskforce recommends that any party to proceedings in the SAT may appeal, on a question of law, against an order of the SAT:
  - a. to the Full Court of the Supreme Court of Western Australia, if the SAT was constituted for the purpose of making the order by the President or a Deputy President, whether with or without others; or

- b. to a judge of the Supreme Court in any other case.

This is provided that the Full Court or the Supreme Court, as the case may be, grant leave to appeal.

- 103. The requirement for leave to appeal is designed to ensure that appeals that do not raise points of importance are not unnecessarily maintained.
- 104. The Full Court or the Supreme Court, as the case may be, may make any of the following orders on an appeal:
  - a. an order affirming, varying or setting aside the order of the SAT;
  - b. an order that the SAT could have made in the proceeding;
  - c. an order remitting the proceeding to be heard and decided again, either with or without the hearing of further evidence, by the SAT in accordance with the order of the court; or
  - d. any other order the court thinks appropriate.
- 105. A party to a proceeding that falls within the existing jurisdiction of the Commercial Tribunal, that involves a claim not exceeding in value \$3,000 (or such other sum set by regulation from time to time), should not be able to apply for leave to appeal unless that party agrees to indemnify the reasonable legal costs of the other parties in the proceeding.

## **RULES AND REGULATIONS OF THE SAT**

106. The President, after consultation with the Deputy Presidents and after such other consultation with users of the SAT as may be considered appropriate, may publish rules of practice and procedure and practice directions or notes for the SAT.
107. The Governor should be able to make regulations for or with respect to:
- a. fees payable in respect of proceedings;
  - b. fees for inspection and obtaining copies of the Register of proceedings and files; and
  - c. any matter or thing required or permitted by the legislation setting up the SAT.

## **EXEMPT DOCUMENTS**

108. In relation to documents that are exempt from supply under the *Freedom of Information Act*, the Taskforce recommends that nothing in the SAT legislation should require or authorise any person or body to disclose any exempt document to another person or body, and the provisions of the *Freedom of Information Act* should continue to apply to the disclosure of exempt documents to any person or body other than the SAT, as if the SAT Act had not been enacted.
109. However, if a provision of the SAT legislation requires or authorises any person or body to disclose any document to the SAT in relation to any proceedings before it and that document is an exempt document, then:

- a. the *Freedom of Information Act* should not prevent the disclosure of the document to the SAT; and
  - b. the SAT should do all things necessary to ensure that the document is not disclosed to any person other than a member of the SAT as constituted for the purpose of the proceedings, unless the person or body disclosing the document to the SAT consents to further disclosure.
110. The Taskforce recommends that the Director General of the Department of the Premier and Cabinet may certify in writing that a document is an exempt document because it is a Cabinet document. Any such certificate should:
- a. be conclusive of that fact; and
  - b. authorise any person who would otherwise be required to lodge the document concerned with the SAT (or to disclose it) to refuse to do so.

A Cabinet document should be defined as a document the disclosure of which would be contrary to the public interest because it would involve the disclosure of deliberations of the Cabinet or a committee of Cabinet.

111. The Taskforce also recommends that nothing in the SAT legislation should require the disclosure of a document if the SAT or the President is satisfied that evidence of the document could not be adduced in proceedings before a Western Australian Court by reason of the document attracting privilege.

#### **EXEMPT UNDER *FREEDOM OF INFORMATION ACT***

112. The SAT should be an “exempt agency” under the *Freedom of Information Act*.

## CO-APPOINTMENT OF MAGISTRATES AND OTHER PUBLIC OFFICIALS

113. The Taskforce recommends that in appropriate cases, existing magistrates who attend on circuits be appointed to serve as members of the SAT. Such appointments would enable the SAT, particularly during its formative stages, to ensure the adequate provision of its services to citizens in outlying and remote parts of Western Australia.

## TRANSITIONAL MATTERS

114. It will be necessary for the SAT legislation to provide for transitional matters. We have not endeavoured to address transitional matters in this Report. However, some matters have been drawn to our attention by the Information Commissioner in relation to appeals that are currently dealt with by the Supreme Court under the *Freedom of Information Act*. If the recommendations of the Taskforce are adopted, such appeals will henceforth be to the SAT. Some transitional rules and permanent changes would appear then to be in order.

115. For example, under the *Freedom of Information Act* sections 85, 86 and 93 the rights of parties to an appeal are by reference to those under the Rules of the Supreme Court. Transitional provisions adopting and applying the Supreme Court Rules as rules governing the conduct of appeals proceeding before the SAT may be necessary until such time as the SAT determines its own procedures and/or rules for the conduct of appeal proceedings of this or related types.

116. Section 93 of the *Freedom of Information Act* provides that, to the extent it is not prescribed by that Act or by the Rules of the Supreme Court, the Western Australian Supreme Court may determine the procedure on review proceedings before it. The Information Commissioner has suggested, and it seems sensible to do so, that the SAT should be given the same power in relation to all appeal proceedings, not merely those under the *Freedom of Information Act*.



117. Appeals on questions of law to the SAT under the *Freedom of Information Act* may potentially involve documents containing sensitive personal information, including health and mental health matters, or child abuse matters, and such hearings should not normally be held in public. The Information Commissioner has sensibly suggested that the SAT should have power to give directions to ensure that proceedings are conducted in camera, where necessary.
118. Under the *Freedom of Information Act*, no fees are required to be paid by a person seeking external review by the Information Commissioner. In contrast, it costs \$400 to lodge an appeal with the Supreme Court against the decision of the Information Commissioner. That filing fee may of itself be sufficient to deter an ordinary citizen from pursuing an appeal to the Supreme Court.
119. Currently, if an agency is the respondent to an appeal to the Supreme Court and the appeal is unsuccessful, the appellant is potentially liable for costs. Only when an agency is the appellant, does the *Freedom of Information Act* provide that the agency be responsible for its own costs in the appeal proceedings (section 89(2)). The Information Commissioner has suggested that Parliament could not have intended that ordinary citizens who initiate an appeal to the Supreme Court (or in the future to the SAT) in accordance with their rights under the *Freedom of Information Act*, should face the risk of an award of costs against them if their appeal is unsuccessful. The Taskforce agrees. Any amendment to the *Freedom of Information Act* and the SAT legislation should reflect this view.
120. The Information Commissioner must avoid the disclosure of exempt matter and must not include exempt matter in a decision (section 74 of the *Freedom of Information Act*). Section 90 of the *Freedom of Information Act* imposes identical restrictions on the Supreme Court. For example, in *Manly v Ministry of Premier and Cabinet* (1995) 14 WAR 550 at 556-557 and in *Clements v Graylands Hospital* (11 March 1996, unreported, Lib No 960189), Owen J referred to the restrictions

imposed upon the Supreme Court by section 90 and, in *Manly's case*, concluded that the court had no discretion to allow counsel for the appellant to examine exempt documents. His Honour discussed the difficulties faced by an appellant or counsel representing an appellant in making meaningful submissions to the court on a contested issue and expressed the view that the court should have discretion in such matters. In the opinion of the Information Commissioner there should be such discretion and the Taskforce agrees. Either the *Freedom of Information Act* and/or the SAT legislation should provide that the SAT has a discretion to allow a qualified legal practitioner (but not the actual party seeking access) to examine documents claimed to be exempt under certain conditions and with any necessary undertakings given in order to protect exempt matter.

#### **LOCATION, PREMISES AND ESTABLISHMENT REQUIREMENTS OF THE SAT**

121. The SAT should, as far as possible, involve the co-location of all members and staff required to perform the functions of the SAT in one appropriate, central Perth, CBD location.
122. The Taskforce recognises that, in the SAT's early stages of development, the immediate co-location of all members and persons involved in providing the SAT services or affected by our recommendations may prove difficult. For example, it may be that, for a period, the Guardianship and Administration Board should remain in its current premises by reason of existing tenancy arrangements or the like.
123. It is desirable, however, that premises be identified to accommodate the SAT in a location that, as in the case of the Supreme and District Courts, provides users with easy access from the main public transport drop off points in the Perth CBD. Indeed, if the Government intends proceeding with a proposal to construct a new central CBD Courts Complex, it would be sensible to provide for the accommodation of the SAT in a discrete part of that building.

124. The premises need to be fitted out with designs of hearing, mediation and meeting rooms that provide for the mix of proceedings that the SAT will undertake. While some hearing rooms may be larger and have some of the formal design arrangements to be found in modern tribunals and courts, there should be a range of hearing rooms and meeting rooms that are designed to foster good inter-personal relations and the cooperative resolution of matters to be determined by the SAT.
125. Steps should be taken expeditiously to co-ordinate the setting up of the proposed new Town Planning appeals system with the SAT to avoid any subsequent duplication of planning and expenditure.
126. The Taskforce recommends that from its inception the SAT should acquire and utilise information technology that will enable the efficient receipt and processing of all applications to it, relating to all functions of the SAT. The information technology should permit up-to-date monitoring and reporting on the general and financial responsibilities of the SAT.

#### **MINISTERIAL RESPONSIBILITY**

127. The Taskforce believes the SAT should fall within the responsibility of the Attorney General and the Department of Justice.



## **APPENDIX 1 : THE SUPREME COURT APPEALS JURISDICTION IN RESPECT OF ADMINISTRATIVE DECISIONS**

### ***ABORIGINAL HERITAGE ACT 1972***

Section 18 enables an appeal to the Supreme Court by an owner of land against a decision of the Minister, following a recommendation by the Aboriginal Cultural Material Committee, to consent to the use of land for a purpose which might otherwise breach section 17 of the Act.

### ***CHICKEN MEAT INDUSTRY ACT 1977***

Section 18 enables an appeal to the Supreme Court against a determination by the Chicken Meat Industry Committee of a dispute between a grower and a processor.

### ***CO-OPERATIVE AND PROVIDENT SOCIETIES ACT 1903***

Section 6 enables an appeal to the Supreme Court against a decision by the Registrar to refuse to register a society or to register any rules or amendment of rules.

Section 8 enables an appeal to the Supreme Court against a decision of the Registrar (made with the approval of the Minister) to cancel the registry of a society and against any renewal, after three months, of the suspension of a registry.

### ***DEBITS TAX ASSESSMENT ACT 1990***

Section 23 enables a person dissatisfied with a decision of the Commissioner of State Revenue, concerning an objection to an assessment, to appeal to the Supreme Court.

### ***DENTAL ACT 1939***

Section 33 enables an appeal against a decision by the Dental Board of Western Australia to refuse registration, to strike a person's name off the Register, to refuse to re-enter a name on the Register, to suspend a registered person or to impose a penalty or any costs order in disciplinary proceedings.

### ***EQUAL OPPORTUNITY ACT 1984***

Section 134 enables an appeal on a question of law from a decision or order made by the Equal Opportunity Tribunal under sections 125, 126, 127 or 128(2) of the Act.

### ***FIRE BRIGADES ACT 1942***

Section 25A enables an appeal to the Supreme Court or to a Court of Petty Sessions against a direction by the Fire and Emergency Services Authority that an owner or occupier of premises install specified fire fighting appliances.

### ***FREEDOM OF INFORMATION ACT 1992***

Section 85 allows an appeal to the Supreme Court on any question of law arising out of any decision of the Information Commissioner.

### ***GUARDIANSHIP AND ADMINISTRATION ACT 1990***

An appeal against a determination of the Guardianship and Administration Board lies, by leave, to the Supreme Court.

### ***HEALTH ACT 1911***

Section 244 enables an appeal to a judge of the Supreme Court against a decision of the Executive Director, Public Health, refusing to grant or renew a licence or suspending or revoking a licence of premises for the manufacture of therapeutic substances.

### ***HERITAGE OF WESTERN AUSTRALIA ACT 1990***

Section 42 enables an application to the Supreme Court to set aside an order under section 38 which is said to have been invalidly made.

### ***HUMAN REPRODUCTIVE TECHNOLOGY ACT 1991***

Section 42 enables an appeal to the Supreme Court against a decision by a licensing authority to refuse an application for the grant, variation or renewal of a licence, to decline an exemption under section 28 or an authorisation under section 30, to impose or vary a condition in respect of a licence or exemption, or to suspend the operation of a licence or exemption, and against any disciplinary decision by the Commissioner of Health.

### ***LAND VALUATION TRIBUNALS ACT 1978***

Section 35 enables an appeal to the Supreme Court against any direction, determination or order of a Land Valuations Tribunals where a question of law is involved.

### ***LEGAL PRACTITIONERS ACT 1893***

Sections 6(7) and 83 enable an appeal to the Full Court of the Supreme Court against a refusal by the Legal Practice Board to issue a practice or other certificate.

Section 28A enables an appeal to the Supreme Court against any disciplinary finding or order by the Legal Practitioners Complaints Committee.

Section 29B enables an appeal to the Full Court of the Supreme Court against any finding or order of the Legal Practitioners Disciplinary Tribunal.

### ***MEDICAL ACT 1894***

Section 13(8) enables an appeal to the Supreme Court from any disciplinary decision of the Medical Board of Western Australia.

### ***MENTAL HEALTH ACT 1996***

Section 149 enables an appeal to the Supreme Court from a decision or order of the Mental Health Review Board.

### ***OPTOMETRISTS ACT 1940***

Section 31 enables an appeal to the Supreme Court against a decision by the Optometrists Registration Board to refuse to register a person as an optometrist, to suspend or refuse to annul the suspension of an optometrist, to remove a person's name from the Register, or to refuse to re-enter a name on the Register.

### ***OSTEOPATHS ACT 1997***

Section 89 enables an appeal to the Supreme Court against an activity cessation or restriction order of the Osteopaths Registration Board under section 54, against a decision or order of the Board under sections 70, 71, 72 or 74, against a refusal of registration or deregistration or against the imposition of a restriction or condition.

### ***PAY-ROLL TAX ASSESSMENT ACT 1971***

Section 33 enables a person dissatisfied with a decision of the Commissioner of State Revenue concerning an objection to an assessment to appeal to the Supreme Court.

***PETROLEUM ACT 1967***

Section 82 enables an appeal to the Supreme Court against a decision by the minister in relation to the registration of titles and special prospecting authorities granted by the minister.

Section 85 enables an appeal to the Supreme Court against a fee determination by the minister under the *Petroleum (Registration Fees) Act 1967*.

***PETROLEUM PIPELINES ACT 1969***

Section 54 enables an appeal to the Supreme Court in relation to the registration by the minister of licences granted under the Act.

***PETROLEUM (REGISTRATION FEES) ACT 1967***

Fee determinations by the Minister are subject to appeal to the Supreme Court under section 85 of the *Petroleum Act 1967*.

***PETROLEUM (SUBMERGED LANDS) ACT 1982***

Section 88 enables an appeal to the Supreme Court in relation to a decision by the minister to register titles and special prospecting authorities granted by the minister.

Section 92 enables an appeal to the Supreme Court against a fee determination by the minister under the *Petroleum (Submerged Lands)(Registration Fees) Act 1982*.

***PETROLEUM (SUBMERGED LANDS) (REGISTRATION FEES) ACT 1982***

Fee determinations by the minister are subject to appeal to the Supreme Court under section 92 of the *Petroleum (Submerged Lands) Act 1982*.

***PHARMACY ACT 1964***

Section 22 enables an appeal to the Supreme Court against a refusal by the Pharmaceutical Council of Western Australia to register a person as a pharmaceutical chemist.

Section 23 enables an appeal to the Supreme Court against a decision by the Council to refuse to register a pharmacy or to withhold registration until prescribed conditions are complied with.

Section 26 enables an appeal to the Supreme Court against a decision by the Council to refuse to grant a licence or to grant a licence subject to conditions.



Section 32B enables an appeal to the Supreme Court against a determination of the Council under section 32 and against the suspension of a licence or registration under section 32A.

***PSYCHOLOGISTS REGISTRATION ACT 1976***

Section 44 enables an appeal to the Supreme Court against an order of the Psychologists Board of Western Australia, against the refusal of an application for registration or restoration to the Register, and against a limitation, restriction or condition imposed on registration.

***RADIATION SAFETY ACT 1975***

Section 12 enables an appeal to the Supreme Court against the refusal by the Radiological Council of an application for a licence or for registration, against the revocation or suspension of a licence or exemption, against the imposition of conditions, restrictions or limitations on a licence exemption or registration, and against any order or direction under the Act.

***STATE SUPERANNUATION ACT 2000***

Section 13 enables an appeal to the Supreme Court against any decision of the Government Employees Superannuation Board relating to a superannuation scheme continued by section 29(c) or (d) of the Act.

***SUPERANNUATION AND FAMILY BENEFITS ACT 1938***

Section 85 enables an appeal to a Judge of the Supreme Court sitting in chambers against any decision of the Government Employees Superannuation Board.

***STAMP ACT 1921***

Section 33 enables a person dissatisfied with a decision of the Commissioner of State Revenue concerning an objection to an assessment to appeal to the Supreme Court.

***TOWN PLANNING AND DEVELOPMENT ACT 1928***

Section 17 enables an appeal to the Supreme Court against an order of the minister apportioning expenses incurred under the Act to local governments.

Section 54B enables an appeal to the Supreme Court against any direction, determination or order of the Town Planning Appeal Tribunal where a question of law is involved.

***TRAVEL AGENTS ACT 1985***

Section 25 enables an appeal to the Supreme Court against an order or decision of the District Court on a question of law.

***WATERWAYS CONSERVATION ACT 1976***

Section 46 enables an appeal to the Supreme Court against a decision of the minister to refuse, upon an appeal against a decision of the Water and Rivers Commission, to grant or renew a licence, to revoke or suspend a licence, or to impose a condition in relation to a licence.

## **APPENDIX 2 : THE DISTRICT COURT APPEALS JURISDICTION IN RESPECT OF ADMINISTRATIVE DECISIONS**

### ***ADOPTION REGULATIONS 1995***

Regulation 17 enables an appeal to the District Court against a decision of the minister in relation to licences for private adoption agencies.

Regulation 23M enables an appeal to the District Court against a decision in relation to accreditation made by the minister as the person appointed to the State Central Authority for the purposes of Article 6.2 of The Hague Convention.

Regulation 77 enables an appeal to the District Court against a decision of the minister in relation to licences for private contact and mediation agencies.

### ***ARCHITECTS ACT 1921***

Section 14B enables an appeal to the District Court against a proposed suspension or cancellation by the Architects' Board of Western Australia of the registration of a practising corporation.

Section 14D enables an appeal to the District Court against a proposed suspension or cancellation by the Board of the registration of a practising firm.

Section 16 enables an appeal to the District Court against a decision of the Board in relation to registration as an architect.

Section 22A(8) enables an appeal to the District Court against any disciplinary decision of the Board.

### ***BUILDERS' REGISTRATION ACT 1939***

Section 14 enables an appeal to the District Court against a decision of the Builders' Registration Board of Western Australia refusing, cancelling or suspending registration, refusing registration or annulment of the cancellation or suspension of registration, making a declaration under section 13, or imposing a fine under section 13A.

Section 41 enables an appeal to the District Court, by leave of the Disputes Committee or of the District Court, against a decision of the Disputes Committee.

***CENSORSHIP ACT 1996***

Section 19 enables an appeal to the District Court against the minister's classification of a publication.

***COMMERCIAL TRIBUNAL ACT 1984***

Section 20 enables an appeal to the District Court against a decision or order of the Commercial Tribunal where a question of law is involved or, otherwise, with the leave of the Tribunal or of the District Court.

***CREDIT (ADMINISTRATION) ACT 1984***

Section 24 enables an appeal to the District Court against a decision of the Commercial Tribunal to refuse to grant a licence, to cancel or suspend a licence, to impose a condition or restriction on the licence, or to impose a disqualification.

***CRIMINAL INJURIES COMPENSATION ACT 1985***

Section 41 enables an appeal to the District Court against an order of the Chief Assessor.

***ENERGY COORDINATION ACT 1994***

Section 22 enables an appeal to a Judge of the District Court sitting in chambers against a decision by the minister to exempt an objector, or grant a partial exemption upon application for exemption, from compliance with a request under section 21 on the ground that compliance would disclose a trade secret.

***FINANCE BROKERS CONTROL ACT 1975***

Section 23 enables an appeal to the District Court against a decision or order of the Finance Brokers Supervisory Board.

***HOUSING SOCIETIES ACT 1976***

Section 87 enables an appeal to the District Court against any decision by the Registrar under the Act.

***LAND VALUERS LICENSING ACT 1978***

Section 16 enables an appeal to the District Court against a decision or order of the Land Valuers Licensing Board.

#### ***LICENSED SURVEYORS ACT 1909***

Section 22A enables an appeal to the District Court from a decision of the Land Surveyors Licensing Board under sections 21 or 22 of the Act.

#### ***MEDICAL ACT 1894***

Section 21CA(8) enables an appeal to the District Court against a decision of the Medical Board of Western Australia not to issue a certificate of approval or to impose any condition, restriction or prohibition on an approval given under section 21CA.

Section 21CD enables an appeal to the District Court against the Medical Board's cancellation or suspension of a certificate of approval given under section 21CA.

#### ***RAIL SAFETY ACT 1998***

Section 20 enables an appeal to the District Court where an application for accreditation has been refused, against the imposition of conditions on accreditation imposed by the Director General, and against a decision of the Director General under Division 2 of Part 2 of the Act.

#### ***REAL ESTATE AND BUSINESS AGENTS ACT 1978***

Section 23 enables an appeal to the District Court against a decision or order of the Real Estate and Business Agents Supervisory Board.

Section 76 provides for review of the Board's decisions under Part VI of the Act.

#### ***RETIREMENT VILLAGES ACT 1992***

Section 51 enables an appeal to the District Court against a decision of the Retirement Villages Disputes Tribunal involving a question of the Tribunal's jurisdiction or, with leave of the District Court, where a question of law is involved.

#### ***SECURITIES INDUSTRY ACT 1975***

Section 62(8) enables an appeal to the District Court against the refusal of consent by the Commissioner for Corporate Affairs to the removal or resignation of an auditor of a dealer.

Section 118 enables an appeal to the District Court against any act or decision of the Commissioner, including a decision to refuse to grant a licence or to revoke a licence.

### ***SETTLEMENT AGENTS ACT 1981***

Section 23 enables an appeal to the District Court against a decision or order of the Settlement Agents Supervisory Board.

### ***STRATA TITLES ACT 1985***

Section 105 enables an appeal to the District Court against an order by a Strata Titles Referee under Part VI of the Act.

### ***TRAVEL AGENTS ACT 1985***

Section 23 enables an appeal to the District Court against:

- a. a decision by the Commercial Tribunal to refuse to grant an application for or to cancel or suspend a licence or to impose a condition on that licence or to impose a disqualification; and
- b. a refusal to allow an applicant to participate in the Compensation Scheme.

There lies in turn an appeal to the Supreme Court against an order or decision of the District Court on a question of law.

### ***VETERINARY SURGEONS ACT 1960***

Section 22 enables an appeal to the District Court against a refusal by the Veterinary Surgeons' Board to register a person as a veterinary surgeon or as a specialist (other than on the ground of the absence of the required qualifications or pre-requisites).

Section 23(12) enables an appeal to the District Court against a registration or disciplinary decision of the Board.

Section 24B enables an appeal to the District Court against a decision by the Board to refuse to grant or renew the registration of any veterinary clinic or veterinary hospital or to cancel any such registration.

Section 26E enables an appeal to the District Court against a refusal by the Board to approve a person carrying out the duties of a veterinary nurse (other than on the ground that the person has not completed the necessary study and training).

### ***WATER SERVICES COORDINATION ACT 1995***

Section 57 enables an appeal to a Judge of the District Court sitting in chambers against a decision by the Minister to exempt an objector, or to grant only a partial objection upon application for exemption, from compliance with a request under section 56 on the ground that compliance would disclose a trade secret.

## **APPENDIX 3 : THE LOCAL COURT APPEALS JURISDICTION IN RESPECT OF ADMINISTRATIVE DECISIONS**

### ***ABORIGINAL HERITAGE ACT 1972***

Section 46 enables an appeal to the Local Court against a notice vesting Aboriginal cultural material in the minister on behalf of the Crown.

### ***AGRICULTURE AND RELATED RESOURCES PROTECTION ACT 1976***

Section 54 enables an appeal to the Local Court against a decision of the Agriculture Protection Board apportioning the expense of controlling declared plants or animals as between the owner and occupier or successive owners and occupiers of land.

### ***AGRICULTURAL PRODUCE COMMISSION ACT 1988***

Section 16 enables an appeal to the Local Court against the inclusion or omission of the name of a producer of agricultural produce compiled for the purpose of conducting a poll under the Act.

### ***BOXING CONTROL ACT 1987***

Section 34 enables an appeal to the Local Court against a decision by the Western Australian Boxing Commission or the minister or against a condition or restriction imposed by the Commission under Parts III or IV of the Act.

### ***BREAD ACT 1982***

Section 7 enables an appeal to the Local Court against a refusal by the responsible department's chief executive officer to grant, renew or transfer a licence and against the cancellation of a licence.

### ***CEMETERIES ACT 1986***

Section 19 enables an appeal to the Local Court against a Cemetery Board's refusal of an application for a licence or cancellation or suspension of a licence.

### ***CHIROPRACTORS ACT 1964***

Section 20A enables appeals to the Local Court against a decision by the Chiropractors Registration Board to refuse applications for registration, approval, permission or consent, against a condition imposed by the Board in relation to a consent, and against a decision in the exercise of the Board's disciplinary powers.

### ***COMMUNITY SERVICES ACT 1972***

Section 17C enables appeals to the Local Court from decisions by the Director General (including by the Child Care Services Board under delegated authority) in relation to child care licences or permits.

### ***DENTAL PROSTHETISTS ACT 1985***

Section 22 enables an appeal to the Local Court against a decision by the Commissioner of Health to refuse to issue a licence, to suspend or revoke a licence, or to refuse to restore a licence.

### ***DOG ACT 1976***

Section 16A enables an appeal to the Local Court against a decision of a local government relating to the ownership of a dog as recorded in a Register.

Section 17 enables an appeal to the Local Court against a local government's decision to refuse to register, or to cancel the registration of, a dog.

Section 27 enables an appeal to the Local Court against a refusal by a local government to grant a licence and against notice of intention to cancel the licence of an approved kennel establishment.

Section 33H enables an appeal to the Local Court against a dismissal by a local government of an application for revocation of a notice declaring a dog to be a dangerous dog or that a dog be destroyed.

Section 33I enables an appeal to the Local Court against specified proposals or decisions by a local government in relation to dangerous dogs.

Section 36 enables an appeal to the Local Court against a decision by a local government to destroy a dog considered to be a danger to health.

### ***ELECTRICITY (LICENSING) REGULATIONS 1991***

Regulation 18 enables an appeal against an order of the Electrical Licensing Board under regulation 17 to the minister where no question of law is involved and otherwise to the Local Court.



***EXPLOSIVES AND DANGEROUS GOODS ACT 1961***

Section 52 enables an appeal to the Local Court against a decision of the Chief Inspector relating to the grant, issue, amendment, renewal, suspension or cancellation of a licence or permit.

***FIRST HOME OWNERS GRANT ACT 2000***

Section 31 enables an appeal to the Local Court against a decision by the Commissioner of State Revenue on an objection.

***FOREST PRODUCTS ACT 2000 AND FOREST MANAGEMENT REGULATIONS 1993***

Regulation 152 enables an appeal to the Local Court against a decision of the Executive Director under regulations 9(2), 17 or 26. The Regulations exist as if made under the *Forest Products Act*: see *Conservation and Land Management Amendment Act 2000*, Sch 1, cl 10.

***GAS STANDARDS ACT 1972***

Section 13B allows appeals to the minister against orders in relation to a certificate of competency, permit or authorisation, with an appeal on a question of law then lying to the Local Court.

***HEALTH ACT 1911***

Section 246ZG enables an application to be made to the Local Court for an order directing the release of an article seized by an environmental health officer under section 246ZB.

Section 246Y enables an appeal to the Local Court against a refusal by an environmental health officer to grant a certificate that food premises are in a clean and sanitary condition.

***HIRE-PURCHASE ACT 1959***

Section 12A enables an application to the Local Court for an order declaring unreasonable a refusal by the Commissioner to give consent under section 12A(1) to the taking possession of goods comprised in a hire-purchase agreement.

***HOSPITALS AND HEALTH SERVICES ACT 1927***

Section 26H enables an appeal to the Local Court against a cancellation or non-renewal by the Commissioner of Health of a private hospital licence and against an endorsement cancellation.

### ***LOCAL GOVERNMENT ACT 1995***

Sections 9.1 and 9.8 enable appeals to the Local Court or to the minister as the appellant elects in relation to the grant, renewal, variation or cancellation of an authorisation under Part 3, against a notice under section 3.25, or against a decision under a local law or regulation giving a right of appeal, provided that the decision adversely affects the appellant's business or livelihood.

### ***MENTAL HEALTH (TRANSITIONAL) REGULATIONS 1997***

Regulation 5 enables an appeal to the Local Court against the cancellation of a licence to conduct a private psychiatric hostel.

### ***METROPOLITAN WATER SUPPLY SEWERAGE AND DRAINAGE ACT 1909***

Section 57D enables an appeal to the Local Court against a refusal by the Water and Rivers Commission to grant a dispensation from observance of any by-law or against the terms and conditions imposed in relation to a dispensation.

### ***MOTOR VEHICLE DEALERS ACT 1973***

Section 22 enables an appeal to the Local Court from a decision by the Motor Vehicle Dealers Licensing Board to refuse a licence, to disqualify a person from holding a licence, to refuse a certificate under sections 21 or 21B or to refuse to approve a change under section 23.

Section 37B enables an appeal to the Local Court from a determination or order of the Commissioner for Fair Trading under section 37 in the circumstances specified.

### ***NURSES ACT 1992***

Section 78 enables an appeal to the Local Court from an order or registration decision of the Nurses Board of Western Australia.

### ***OCCUPATIONAL THERAPISTS REGISTRATION ACT 1980***

Section 33 enables an appeal to the Local Court against an order of the Occupational Therapists Registration Board of Western Australia against the refusal of an application to the Board for registration or restoration to the Register, and against any limitation, restriction or condition imposed.

***PAINTERS' REGISTRATION ACT 1961***

Section 18 enables an appeal to the Local Court from a decision of the Painters' Registration Board to refuse, cancel or suspend registration, or to refuse to re-register or annul the suspension of registration, and against an order of the Board under sections 16D or 16E.

***PLANT PESTS AND DISEASES (ERADICATION FUNDS) ACT 1974***

Section 13 enables an appeal to a Local Court against the valuation of a crop or bag destroyed under a power conferred by the *Agriculture and Related Resources Protection Act 1976* or the *Plant Diseases Act 1914*.

***PODIATRISTS REGISTRATION ACT 1984***

Section 33 enables an appeal to the Local Court against an order of the Podiatrists Registration Board, against the refusal of an application to the Board for registration or restoration to the Register, and against any limitation, restriction or condition imposed.

***TAXI ACT 1994***

Section 20(4) enables an appeal to the Local Court against a decision of the Director General to impose a condition on the operation of a taxi using taxi plates.

Section 22 enables an appeal to the Local Court against a decision by the Director General to vary, revoke or add to conditions imposed under section 20(1).

Section 23 enables an appeal to the Local Court against a requirement by the Director General that a person divest himself of an interest in the ownership of taxi plates.

Section 30 enables an appeal to the Local Court against a foreshadowed decision by the Director General to cancel the registration of a person as a provider of a taxi dispatch service.

Section 37 enables appeals to the Local Court against a refusal by the Director General to issue taxi plates, to approve the transfer of taxi plates, or to register a person as a provider of a taxi dispatch service.

***TRANSPORT CO-ORDINATION ACT 1966***

Section 47ZF authorises regulations providing for an appeal to a Local Court from a decision of the Minister suspending, cancelling or refusing to renew a licence.

***TRANSPORT (COUNTRY TAXI-CAR) REGULATIONS 1982***

Regulation 46 enables an appeal to the Local Court against a decision by the minister under regulation 44 cancelling, suspending or refusing to renew a taxi car licence.

***WATER SERVICES COORDINATION (PLUMBERS LICENSING) REGULATIONS 2000***

Regulation 41 enables an appeal to the Local Court against a decision of the Plumbers Licensing Board to refuse to issue a licence, to impose a conditional licence, to change, remove or add a condition, or to take action against a person under regulation 34(1).

## **APPENDIX 4 : THE COURT OF PETTY SESSIONS APPEALS JURISDICTION IN RESPECT OF ADMINISTRATIVE DECISIONS**

### ***AERIAL SPRAYING CONTROL ACT 1966***

Section 8 enables an appeal to a Court of Petty Sessions against a decision by the Director of Agriculture to refuse to grant or renew a certificate or to vary, suspend or cancel a certificate.

### ***CONTROL OF VEHICLES (OFF-ROAD AREAS) ACT 1978***

Section 33 enables an appeal to a Court of Petty Sessions against a refusal to grant, renew or transfer registration and against the suspension of registration.

### ***FIREARMS ACT 1973***

Section 22 enables an appeal either to a Firearms Appeals Tribunal or to a stipendiary magistrate sitting as a Court of Petty Sessions against a decision made by or on behalf of the Commissioner of Police.

### ***FIRE BRIGADES ACT 1942***

Section 25A enables an appeal to a Court of Petty Sessions or to the Supreme Court against a direction by the Fire and Emergency Services Authority that an owner or occupier of premises install specified firefighting appliances.

Section 33 enables an appeal to a Court of Petty Sessions against a requisition by the Chief Officer or any authorised officer.

### ***HAIRDRESSERS REGISTRATION ACT 1946***

Section 16 enables an appeal to a stipendiary magistrate against a refusal by the Hairdressers Registration Board of Western Australia to register a person and a decision to cancel or suspend a registration.

### ***HEALTH ACT 1911***

Section 36 enables an appeal to a Court of Petty Sessions against any order or decision of a local government in any case in which the local government is empowered to recover any expenses incurred by it.

#### ***LOCAL GOVERNMENT (QUALIFICATION OF MUNICIPAL OFFICERS) REGULATIONS 1984***

Regulation 30 enables an appeal to a stipendiary magistrate sitting in a Court of Petty Sessions where a Municipal Building Surveyors Qualifications Committee cancels, or declines to issue a further, certificate of qualification.

#### ***MOTOR VEHICLE DRIVERS INSTRUCTORS ACT 1963***

Section 10 enables an appeal to a Court of Petty Sessions against a decision of the Director General to refuse, cancel or suspend a licence, to issue a licence subject to conditions or to revoke, vary or attach new conditions to a licence.

#### ***PAWNBROKERS AND SECOND-HAND DEALERS ACT 1994***

Section 30, in conjunction with the *Pawnbrokers and Second-hand Dealers Regulations 1996*, enables an appeal to a Court of Petty Sessions against the decision of a licensing officer to refuse to issue or renew a licence, as to the period for which a licence is issued or renewed, as to a condition or restriction of the licence, as to the premises to which the licence is to apply, and as to the suspension or the revocation of a licence.

#### ***POISONS ACT 1964***

Section 29 enables an appeal to a stipendiary magistrate sitting as a court of summary jurisdiction against a decision by the Commissioner of Health to refuse to grant or refuse a licence or permit or to cancel, suspend or revoke a licence or permit.

#### ***RADIATION SAFETY ACT 1975***

Section 54 enables an appeal to a Court of Petty Sessions against the seizure or detention by an authorised officer of any radioactive substance, irradiating apparatus or electronic product.

#### ***ROAD TRAFFIC ACT 1974***

Section 25 enables an appeal to a Court of Petty Sessions where a vehicle licence or a transfer of vehicle licence is refused.

#### ***SECURITY AND RELATED ACTIVITIES (CONTROL) ACT 1996***

Section 72 enables an appeal to a Court of Petty Sessions against a decision by a licensing officer to issue or renew a licence, to refuse to grant an indorsement, as to the period for which a licence is issued or renewed, as to a condition or restriction attached to a licence or indorsement, to revoke a licence or to cancel an indorsement.

*TRANSPORT CO-ORDINATION ACT 1966*

Section 57 enables an appeal to a stipendiary magistrate against a decision of the Minister revoking or suspending a licence (other than a licence under Part IIIB).

*VETERINARY PREPARATIONS AND ANIMAL FEEDING STUFFS ACT 1976*

Section 40 enables an appeal to a stipendiary magistrate sitting as a court of summary jurisdiction against the seizure or detention by an inspector of things described in section 40(1).





## **APPENDIX 5 : MINISTERIAL APPEALS – APPEALS JURISDICTION IN RESPECT OF ADMINISTRATIVE DECISIONS**

### ***AERIAL SPRAYING CONTROL ACT 1966***

Section 13A(8) enables an appeal to the minister against an order by an inspector pursuant to s13A(7) prohibiting or restricting the use of an aircraft, apparatus, etc.

The appeal procedure is set out in regulation 10A of the *Aircraft Spraying Control Regulations 1971*.

### ***AGRICULTURAL PRODUCE (CHEMICAL RESIDUES) ACT 1983***

Section 20 allows appeals to the minister against various directions, seizures and approval refusals under the Act.

### ***AGRICULTURE AND RELATED RESOURCES PROTECTION (PROPERTY QUARANTINE) REGULATIONS 1981***

Regulation 11 enables an appeal to the minister against any decision under the regulations relating to a property quarantine notice.

### ***ASSOCIATIONS INCORPORATION ACT 1987***

Sections 7(2) and 9(2) enable the minister to review a decision by the Commissioner of Fair Trading to refuse to incorporate an association.

Section 8(2) enables the minister to review a decision by the Commissioner to refuse to incorporate an association under a particular name.

### ***BIRTHS DEATHS AND MARRIAGES REGISTRATION ACT 1998***

Section 67 enables the Minister to review any decision of the Registrar under the Act.

### ***BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND AND LEVY COLLECTION ACT 1990***

Section 25C enables an appeal to the minister by a project owner against a determination of the Building and Construction Industry Training Board of an application by the project owner for a reduction in or exemption from the levy payable.

***CARAVAN PARKS AND CAMPING GROUNDS ACT 1995***

Section 27 enables appeals to the Minister against decisions by a local government under sections 7, 10, 12 or 21 of the Act.

***CHICKEN MEAT INDUSTRY ACT 1977***

Section 19A of the Act enables an appeal to the minister against a refusal by the Chicken Meat Industry Committee to approve chicken growing premises or to revoke an approval.

***CHILD WELFARE ACT 1947***

Section 112 enables an appeal to the minister against a decision of the Director General to cancel a foster parent's licence.

***COMMUNITY SERVICES ACT 1972***

Section 17 enables an appeal to the minister against a decision to exercise a power under sections 13 (a power of access to disadvantaged individuals in employment) or 14 (a power to manage the property of disadvantaged individuals) and as to the exercise of such a power.

***COUNTRY AREAS WATER SUPPLY ACT 1947***

Section 12D enables an appeal to the minister against a decision by the Water and Rivers Commission to refuse to grant or transfer a clearing licence, against the extent of the grant, against a suspension or revocation of the licence, or against a condition imposed on the licence.

***DISABILITY SERVICES ACT 1993***

Section 23 enables the minister to review a decision by the Disability Services Commission relating to the grant of financial assistance.

***DOG ACT 1976***

Section 26 enables an appeal to the minister against a refusal or a revocation by a local government of an exemption, or against the conditions imposed in relation to an exemption, from the provisions of a local law limiting the number of dogs that may be kept on premises.

***EAST PERTH REDEVELOPMENT ACT 1991***

Section 47 enables an appeal to the minister against a direction by the East Perth Redevelopment Authority to a person to cease development work contravening section 40 or to remove or modify such development.

***EDUCATION SERVICE PROVIDERS (FULL FEE OVERSEAS STUDENTS) REGISTRATION ACT 1991***

Section 38 enables an appeal to the minister against any decision of the chief executive officer under this Act.

***ELECTRICITY ACT 1945***

Section 32 authorises regulations providing for appeals to the minister (or to the Local Court) in relation to systems of inspection, inquiry and supervision, the hearing of disciplinary proceedings and the imposition of disciplinary penalties.

***ELECTRICITY (LICENSING) REGULATIONS 1991***

Regulation 18 enables an appeal to the minister, where no question of law is involved (appeals are to a Local Court where a question of law is involved), against an order of the Electrical Licensing Board under regulation 17.

***ENVIRONMENTAL PROTECTION ACT 1986***

Part VII contains detailed provisions establishing rights of appeal to the minister in respect of levels of assessment and reports relating to proposals and conditions, works approvals and licences, pollution abatement notices, and requirements under sections 96 and 97 of the Act.

***FIRE BRIGADES ACT 1942***

Section 27 enables an appeal by a local government to the minister against any action of the Fire and Emergency Services Authority in relation to classes of brigade, methods of fire protection and hazardous material incident control and the local rescue service.

***FISH RESOURCES MANAGEMENT ACT 1994***

Under section 255 a person may appeal to the Minister for the Environment against a notice by the Minister of Fisheries prohibiting a person from engaging in an activity polluting or likely to pollute the aquatic environment.

### ***FUEL ENERGY AND POWER RESOURCES ACT 1972***

Section 58 enables an appeal to the minister against any act, decision, order or direction given under the emergency provisions in Part III of the Act.

### ***FUEL SUPPLIERS LICENSING ACT 1997***

There is provision in section 60 for review by the minister of various decisions under the Act by the chief executive officer of the department administering the Act.

### ***GAMING COMMISSION ACT 1987***

Sections 62 and 104D enable appeals to the minister against determinations of the Gaming Commission revoking, refusing to renew or amending an approval, permit or certificate or cancelling or refusing a further licence.

### ***GAS STANDARDS ACT 1972***

Section 13B enables an appeal to the minister from an order in relation to a certificate of competency, a permit or an authorisation.

### ***GRAIN MARKETING ACT 1975***

Section 37A enables appeals to the minister against the refusal of an application under section 22A for a permit to purchase or receive from a person other than the grain pool as prescribed growing for export; against a term or condition attached to such a permit; against the refusal of the grain pool to sell lupins for the purpose of export; and against the price charged by the grain pool for lupins intended for export.

### ***HEALTH (MEAT HYGIENE) REGULATIONS 2001***

Regulation 22 enables an appeal to the minister from a decision of the Executive Director Public Health under Division 2 of Part 4 of the Regulations (which relates to the registration of premises used in game meat production).

### ***HOPE VALLEY-WATTLEUP REDEVELOPMENT ACT 2000***

Section 31 enables an appeal to the minister against a direction by the Western Australian Planning Commission to a person to cease development work contravening section 25 or to remove or modify such development.

### ***HOSPITALS AND HEALTH SERVICES ACT 1927***

Under s26D an appeal may be made to the minister against a decision by the Commissioner of Health to refuse a private hospital licence.

### ***JETTIES ACT 1926***

Section 7A enables appeals to the minister against the refusal by the chief executive officer of a jetty licence or against a term or condition imposed on that licence.

### ***LAND ADMINISTRATION ACT 1997***

Section 35 enables an appeal to the minister against a proposed forfeiture of an interest in Crown land or in freehold land transferred under section 75, by reason of a breach of a condition or covenant.

Section 133 enables an appeal to the minister against the minister authorising the Pastoral Lands Board to assume temporary control of an abandoned pastoral lease.

Section 145 enables an appeal to the minister against a proposed cancellation by the minister of an easement.

Section 191 enables an appeal to the minister against a decision of a holding authority not to grant an option to purchase land no longer required for a public work, ordering the priorities of options, or settling the purchase price or other terms and conditions.

Section 272 enables an appeal to the minister directing the removal or destruction of unauthorised structures on Crown land.

Each of the above appeals to the minister is determined by the Governor.

### ***LAND TAX ASSESSMENT ACT 1976***

Section 22 enables an appeal to the minister against a decision of the Commissioner of State Revenue not to grant an exemption or concession under that section.

### ***LITTER ACT 1979***

Section 25 enables an appeal to the minister against a direction by a public authority requiring a person owning or controlling an area of land to provide a specified number of litter receptacles and as to where those receptacles are to be placed.

### ***LOCAL GOVERNMENT ACT 1995***

Sections 9.1 and 9.8 enable appeals to the Local Court or to the minister as the appellant elects in relation to the grant, renewal, variation or cancellation of an authorisation under Part 3, against a notice under section 3.25, or against a decision under a local law or regulation giving a right of appeal, provided that the decision adversely affects the appellant's business or livelihood.

Appeals against decisions that do not adversely affect the appellant's business or livelihood are to the minister.

### ***LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1960***

Section 295 enables a person to appeal to the Minister for Local Government against the refusal of a local government to give its consent to the disposal of lots of a subdivision notwithstanding that not all streets have been constructed or drained.

Section 374 enables a person to appeal to the minister against a refusal by the local government to approve plans and specifications of buildings.

Section 374A enables an appeal to the minister against conditions included by a local government in a building demolition licence.

Section 401 enables an appeal to the minister against a direction by a local government to pull down or alter a building which is unsafe, which does not comply with the plans and specifications, or which was built without the local government's permission.

Section 401A enables an appeal to the minister against an order by a local government to a builder to stop unlawful building work.

Section 413 enables a person, dissatisfied with a requisition to install or erect fire escapes, to appeal to the minister.

There is special provision in s421A for the minister to seek reports in relation to appeals under sections 374 and 401.

Appeals under this Act are governed by the *Local Government (Appeals to Minister) Regulations 1961*.

### ***MAIN ROADS ACT 1930***

Under section 13A, a local government may appeal to the minister against a proposed recommendation by the Commissioner of Main Roads to the Governor that a road be declared a highway or main road or that the plans of any new highway or main road be approved.

Under section 33B a person affected by a direction by the Commissioner of Main Roads under a regulation relating to the control of advertisements, may appeal against the direction to the minister.

### ***MARKETING OF EGGS ACT 1945***

Section 32J enables an appeal to the minister against a decision of the Western Australian Egg Marketing Board cancelling or varying a licence or supplementary licence.

Section 32H enables a licensed applicant to appeal to the minister against a failure by the Board to give effect to directions given by the minister under section 32D(2).

### ***MARKETING OF POTATOES ACT 1946***

Section 19A enables an appeal to the minister against any decision of the Potato Marketing Corporation of Western Australia.

### ***METROPOLITAN REGION TOWN PLANNING SCHEME ACT 1959***

Right to appeal to minister under section 43(3) against notice to conform with Metropolitan Region Scheme.

### ***MIDLAND REDEVELOPMENT ACT 1999***

Section 54 enables an appeal to the minister against a direction by the Midland Redevelopment Authority to a person to cease development work contravening section 47 or to remove or modify such development.

### ***MINES SAFETY AND INSPECTION ACT 1994***

Section 52 enables an appeal to the minister against the suspension or cancellation by the Board of Examiners of a certificate of competency.

Section 86 enables an appeal to the minister against the suspension or cancellation by the Mines Survey Board of a mine surveyor's certificate.

### ***MINING ACT 1978***

Section 32 enables an appeal to the minister against the refusal by a warden of a section 30 permit, against any conditions imposed on the permit, and against the amount of money determined by the Warden.

Section 56 enables appeals to the minister against a refusal by the mining registrar or the warden to grant a prospecting licence or against the conditions imposed on such a licence.

Section 56A enables appeals to the minister against the refusal by the warden of an application for a special prospecting licence.

Section 70 enables appeals to the minister against a refusal by the warden of an application for a special prospecting licence.

Section 94 allows an appeal to the minister against a refusal by the mining registrar or the warden of an application for a miscellaneous licence or against conditions imposed upon the licence.

Section 162 makes provision for regulations which would allow an appeal to the minister by the holder of a mining tenement against an inspector's directions to modify or cease mining operations.

### ***OPTICAL DISPENSERS ACT 1966***

Section 5 enables appeals to the minister against the refusal of the permanent head to issue an optical dispensers licence.

### ***PEARLING ACT 1990***

Section 33 enables an appeal to the minister against a decision of the executive director to issue a farm lease, a pearling licence or a hatchery licence.

### ***PERTH PARKING MANAGEMENT ACT 1999***

Section 17 enables a review by the minister of the chief executive officer's decision not to issue, vary, renew or transfer a parking bay licence, or to impose a condition.



### ***PETROLEUM RETAILERS RIGHTS AND LIABILITIES ACT 1982***

Section 5 provides for disputes as to the installation of underground storage to be determined by the Commissioner of Fair Trading and for there to be an appeal from any such decision to the minister.

### ***PHARMACY ACT 1964***

Section 40A enables an appeal to the minister against a determination by the Pharmaceutical Council of Western Australia limiting the goods or services which may be provided by a pharmaceutical chemist company or friendly society.

### ***PIG INDUSTRY COMPENSATION ACT 1942***

Section 8 enables an appeal to the minister against the valuation by the Chief Veterinary Surgeon of a pig destroyed because it is suffering from a specified disease.

### ***PLANT DISEASES ACT 1914***

Under section 18 the occupier or owner of any orchard or place where a plant is growing may appeal to the minister against a notice requiring him to take steps to prevent the spread of disease.

Under section 22(5) a landowner or occupier may appeal against a notice issued by the Director General ordering the removal of neglected plants from an orchard.

### ***PORTS AND HARBOURS REGULATIONS***

Regulation 16N enables an appeal to the minister by an exempt master whose certificate is cancelled or suspended under regulation 16M(1)(b) or (4) by reason of a breach of regulations 9, 16E(4), 16G or 16J(2) or (3).

### ***RETAIL TRADING HOURS ACT 1987***

Section 10 enables an appeal to the minister against a refusal by the chief executive officer of a certificate certifying that a retail shop is a small retail shop.

### ***ROYAL AGRICULTURAL SOCIETY ACT 1926***

Section 3 enables an appeal to the minister from a refusal by the Royal Agricultural Society to register a society, club, association or other body of persons.

The mode of appeal is set out in regulation 7 of the *Royal Agricultural Society Regulations 1942*.

***ROYAL AGRICULTURAL SOCIETY REGULATIONS 1942***

Regulation 10 enables an appeal to the minister against any decision made by the Royal Agricultural Society upon an appeal by an agricultural society under regulations 8 or 9.

***SCHOOL EDUCATION ACT 1999***

Section 54 enables a review by the minister, on the recommendation of the Home Education Advisory Panel, of a decision of the chief executive officer to cancel a home educator's registration.

***SOIL AND LAND CONSERVATION ACT 1945***

Section 34 enables an appeal to the minister by a person who objects to a soil conservation notice.

Section 39 enables an appeal to the minister against a refusal by the Commissioner of Soil and Land Conservation to discharge a soil conservation notice under section 38.

***STATE SUPERANNUATION REGULATIONS 2001***

Regulation 240 enables an appeal to the minister against the manner in which an election was conducted or the result of the election.

***STRATA TITLES ACT 1985***

Section 26 provides for appeals to the minister (and in some cases appeals to either the minister or to the Town Planning Appeal Tribunal) against the strata title decisions of local governments specified in section 26(1), (4) and (5).

Section 27 enables appeals to be made to the minister or to the Town Planning Appeal Tribunal against decisions of the Commission under sections 6, 19 or 25 of the Act.

***SUBIACO REDEVELOPMENT ACT 1994***

Section 54A enables an appeal to the minister against a direction by the Subiaco Redevelopment Authority to a person to cease development work contravening section 47 or to remove or modify such development.

### ***SWAN RIVER TRUST ACT 1988***

Section 68 enables an appeal to the minister against a direction by the Water and Rivers Commission to a person to cease development work contravening sections 50 or 51 or to remove or modify such development.

### ***TOWN PLANNING AND DEVELOPMENT ACT 1928***

Part V of the Act sets out the procedure for the following appeals and references:

- a. appeals and references under sections 7B(6), 7B(8), 8A, 8B, 10(3) and 26(1) of the Act;
- b. appeals in respect of the exercise of a discretionary power by a responsible authority under a Town Planning Scheme;
- c. appeal under section 45 of the *East Perth Redevelopment Act 1991*;
- d. appeal under section 52 of the *Subiaco Redevelopment Act 1994*;
- e. an appeal under section 52 of the *Midland Redevelopment Act 1999*;
- f. appeal under section 29 of the *Hope Valley - Wattleup Redevelopment Act 2000*;
- g. appeal under clause 33 of the *Metropolitan Region Scheme*;
- h. appeal under section 35F of the *Metropolitan Region Town Planning Scheme Act 1959*;
- i. appeal under the *Heritage of Western Australia Act 1990*;
- j. appeal under section 25 of the *Western Australian Planning Commission Act 1985*;  
and
- k. appeal under section 37E of the *Western Australian Planning Commission Act 1985*.

Under section 39 an appeal may be made to the minister or to the Town Planning Appeal Tribunal. However, as noted above, the *Planning Appeal Amendment Bill 2000* proposes the removal of the alternative right of appeal to the minister.

***WAR SERVICE LAND SETTLEMENT SCHEME ACT REGULATIONS 1954***

Regulation 9 provides for an appeal to the minister against the cancellation by the Classification Committee of a settlement qualification certificate.

***WATER SERVICES COORDINATION ACT 1995***

Section 44 enables an appeal to the minister against a refusal by the Coordinator of Water Services to grant a licence and against the term of the licence, any condition imposed, and any amendment to the licence.

Section 54 enables an appeal to the minister against an order by the Coordinator under section 53 prohibiting or restricting the use of a thing or disconnecting the supply of water services to that thing or to premises.

***WATERWAYS CONSERVATION ACT 1976***

Section 46 enables an appeal to the minister from a refusal of the Water and Rivers Commission to grant or renew a licence under the Act, to revoke or suspend a licence, or to impose a condition upon a licence.

***WESTERN AUSTRALIAN MEAT INDUSTRY AUTHORITY ACT 1976***

Section 22 enables an appeal to the minister against a refusal by the Western Australian Meat Industry Authority to approve an abattoir or alterations to that abattoir or against the conditions or restrictions imposed on an approval.

***WORKERS COMPENSATION AND REHABILITATION ACT 1981***

The transitional provisions of the *Workers' Compensation and Rehabilitation Amendment Act 1993* make provision for an appeal to the minister against a decision of the Commission in relation to the registration of a notifiable cause.

**APPENDIX 6 : THE HON JUSTICE KELLAM, PRESIDENT OF VCAT  
(2001) 29 AIAL FORUM 31**

**CIVIL AND ADMINISTRATIVE TRIBUNALS –  
CAN THEIR PERFORMANCE BE IMPROVED?**

**THE HON JUSTICE KELLAM**

*Paper presented to the Annual General Meeting of the Australian Institute of Administrative Law (Queensland Chapter), Brisbane, 13 September 2000.*

The topic upon which I was asked to address you tonight was whether the performance of tribunals, be they administrative or civil, can be improved. The simple answer to that is yes, but the detail is more complicated.

Improvement in performance depends first upon Government providing an appropriate structure and appropriate resources. It depends on the way tribunals manage the structure and resources they have provided to them.

Tonight I want to deal with the three different approaches taken by Governments in New South Wales, Victoria and the Commonwealth to provide structures which they have considered will provide improvement in the performance of tribunals. I will discuss the question of what, if any, benefits have been derived in Victoria from the new approach taken there.

I propose then to discuss some of the ways tribunals can improve their performance within the structure provided to them.

Over the last 25 years there has been significant growth in the number and variety of tribunals serving the community both in Victoria and throughout Australia. Tribunals were established during this period as specialist bodies to deal with a variety of issues as particular needs arose. It has always been the intention of Parliaments that such Tribunals be relatively informal, cost effective, efficient and, in comparison with courts, be able to apply specialist knowledge to the issues before the tribunal.

However, at least in Victoria and New South Wales, a large number of tribunals developed in a piecemeal fashion in response to *ad hoc* issues seen by Parliament to be relevant at the time of the creation of such Tribunals. It was argued in both States that this, undisciplined proliferation of tribunals led to a number of undesirable consequences, including duplication of administrative infrastructure, inconsistency of approach and unduly narrow specialization by some tribunals. In particular, it was argued that tribunal members were insufficiently independent of the Executive.

A discussion paper entitled "Tribunals in the Department of Justice: A Principled Approach" was distributed widely throughout Victoria in October 1996 and numerous submissions were made in response to it. The paper proposed an improvement to the tribunal system by the creation of a large, judicially led amalgamation of tribunals. It was argued

that small tribunals dealing with specialist areas were not sufficiently accessible, efficient or cost-effective, and that a large tribunal would:

- ♦ improve access to justice;
- ♦ facilitate the use of technology;
- ♦ complement measures to increase the use of alternative dispute resolution programmes;
- ♦ streamline the administrative structures of tribunals;
- ♦ develop and maintain flexible cost-effective practices;
- ♦ introduce common procedures for all matters yet retain the flexibility to recognize the needs of parties in specialised jurisdictions;
- ♦ achieve administrative efficiencies through the centralization of registry functions; and
- ♦ achieve more efficient use of tribunal resources.

It should be noted that the recent proposed amalgamation of Commonwealth Tribunals was said in the explanatory memorandum to the Administrative Review Tribunal Bill 2000 to be for similar reasons.

It was argued, too, that tribunals had been insufficiently independent and inconsistent. I can only speak for Victoria in this regard but many of the criticisms of the proliferation of tribunals in Victoria were justified. This is not a criticism of the membership of those tribunals, but a criticism of the structure and a criticism of the way in which governments treated such tribunals. In the years leading up to the creation of VCAT it was not uncommon for there to be a perception of political

interference with tribunals as the result of the appointment of members who were known by the government of the day to have a viewpoint of a particular type. Tribunals were perceived as an appropriate dumping ground for unwanted public servants or as places where some friend of the government of the day might be appointed. For example, it was not unknown in Victoria for a parliamentarian who had lost a seat in an election to be soon after appointed to a tribunal. It was not uncommon for the terms of members of tribunals not to be renewed for reasons which were not explained, but which were clearly not related to issues of merit.

Another matter of concern has been the insidious depreciation of the value of remuneration paid to tribunal members. In Victoria, only one increase in remuneration has occurred in the last nine years.

The discussion paper suggested that longer terms of appointment for tribunal members and senior judicial leadership would improve these areas of tribunal concern.

### **THE JUDICIALLY LED AMALGAM**

It is interesting to note that arguably the two most significant reforms which have taken place in recent years, the tribunals systems of Victoria and New South Wales, are judicially led amalgams. This process commenced in Victoria with the creation of a judicially led administrative review tribunal, the former Victorian AAT, in 1984. In many ways the Victorian AAT at the time of its creation was a copy of the Commonwealth Administrative Appeals Tribunal. That model of the judicially-led administrative review tribunal has been taken a step further in both New South Wales and Victoria by the inclusion of jurisdictions other than administrative review.

## ADMINISTRATIVE DECISIONS TRIBUNAL OF NEW SOUTH WALES

In October 1998 the Administrative Decisions Tribunal commenced operation in New South Wales. That Tribunal incorporates the functions of the former Legal Services Tribunal, the former Equal Opportunity Tribunal, the former Community Services Appeals Tribunal and, in addition, it has a substantial administrative review jurisdiction including the hearing and determination of *Freedom of Information Act* 1989 appeals. Formerly these appeals were heard in "the District Court. The ADT continues to accrue jurisdiction, with its Community Services Division and Retail Leases Division both commencing in 1999.

The amalgamation of tribunals by the New South Wales Government aimed to promote a more efficient and effective tribunal justice system. In the course of introducing the legislation, the Attorney General to the State of New South Wales, the Honourable J.W. Shaw said:

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.

These were the same arguments as those which led to the evolution of VCAT in Victoria. The ADT and VCAT have developed a close working relationship. Only last month two deputy presidents from VCAT went to Sydney to spend a week each working with the ADT. Closer communication between Australian tribunals is most important. Soon the Australian Institute of Judicial Administration will set up a Tribunals Committee to further such communication.

## VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

I turn now to the establishment of the Victorian Civil and Administrative Tribunal, now known by the acronym VCAT, the evolution of which I, not surprisingly, have greater knowledge. The establishment of VCAT was the most far reaching change to the operation of the tribunal system ever undertaken in Victoria, if not in Australia.

There has always been broad bipartisan, political support for what has taken place in Victoria. It was a Labour government which established the Victorian AAT in 1984. A Liberal Party government created VCAT in 1998. The Labour opposition at the time generally supported the legislation which created VCAT.

Having had a change of government in Victoria since the establishment of VCAT it is gratifying that the present Attorney-General wholeheartedly supports the work of VCAT and its commitment to providing high quality and affordable access to justice for all Victorians.

Last financial year, the VCAT operated within a budget of approximately \$20 million. It determined in the order of 90,000 applications. It now does more civil business than the Magistrates' Court in Victoria. There are 42 full-time members of whom 18 are women. There are 145 part-time or sessional members. In addition 9 magistrates, 6 of whom are based in rural Victoria, are sessional members of the Tribunal.

VCAT performs the quasi-judicial functions of 14 Tribunals, Boards and Authorities which operated previously within the Department of Justice. In addition it performs the disciplinary functions of a number of previously separate organisations which operated outside the Department.

More specifically, VCAT encompasses the jurisdictions -of the old Victorian Administrative Appeals Tribunal, the Anti-Discrimination Tribunal, the Credit Tribunal, the Domestic Building Tribunal, the Estate Agents Disciplinary and Licensing Appeals Tribunal, the Guardianship and Administration Board, the Residential Tenancies Tribunal and the Small Claims Tribunal. VCAT assumed the licensing appeals functions and the inquiry and disciplinary functions of the Motor Car Traders Licensing Authority, the Prostitution Control Board and the Travel Agents Licensing Authority and the licensing appeals and disciplinary functions of the former Liquor Control Commission. It should be noted that for the most part these jurisdictions are exclusive to VCAT and not concurrent with court jurisdictions.

In addition, the Tribunal has a number of new jurisdictions such as jurisdiction to hear and determine disputes under the *Retail Tenancies Reform Act 1998* and under the *Fair Trading Act 1999* and to review decisions of the Psychotherapists Registration Board, the Dental Practice Board and most recently the Chinese Medicine Registration Board.

The Tribunal has judicial leadership, Its President is a Supreme Court Judge and it has two Vice-Presidents, each County Court Judges. The judicial members are responsible for the administration of the Tribunal. It is divided into two Divisions, a Civil Division and an Administrative Division, each headed by one of the County Court Judges. Each of the Judges and each Member of the Tribunal has a fixed 5 year term of tenure at the Tribunal. The members, many of whom are sessional, are from a wide range of disciplines. Legal members are the most numerous but there are doctors, accountants, engineers, planners, academics and the like amongst the members. The Civil Division has a number of lists which are each headed by a

Deputy President and which might be said to hear inter-parties matters, such as anti-discrimination credit, domestic building, residential tenancies, retail tenancies and the like. Similarly the Administrative Division has a number of lists, each of which is headed by a Deputy President There are senior members and ordinary members attached to one or more lists. The Administrative Division is basically an administrative review jurisdiction. It deals with reviews of Freedom of Information decisions, planning decisions, State tax decisions, land valuation and in addition reviews the decisions of a number of licensing and disciplinary bodies such as the Medical Board, Nurses Board and various other professional and business organisations.

It is interesting to observe that the distinction between civil and administrative tribunals which existed previously in Victoria has been blurred, if not removed, by the creation of VCAT. The administrative review functions are now seen as a quasi-judicial rather than an administrative function in Victoria.

#### **HAS THERE BEEN AN IMPROVEMENT IN PERFORMANCE BECAUSE OF AMALGAMATION?**

Many members of previously separate tribunals viewed the introduction of VCAT with real trepidation. Some concerns which had a real basis were that the collegiality of the small tribunal would be reduced by the creation of a very large tribunal. Other concerns were that the degree of expert specialization would decrease with a large amalgamated tribunal. A further concern was that the tribunal would become increasingly legalistic; and that the appointment of judicial leadership would not lend itself to informality and user-friendliness or accessibility.



It is, of course, for others to judge whether or not these concerns now have any justification. However we have endeavoured to meet each of these concerns. First, each individual list, of which there are 13, is managed by a deputy president. In a number of cases that deputy president was the former head of the tribunal whose jurisdiction is now managed by a list. Substantial managerial discretion is delegated to such heads of lists. Furthermore, we have endeavoured to make the Tribunal more, rather than less, informal, particularly by the introduction of mediation and compulsory conference procedures. In addition, substantial time has been spent on professional development and training in relation to such matters as the proper conduct of a hearing, writing of reasons for decisions and issues of potential conflict and bias.

However, although the Tribunal is only two years old, it is apparent that there has been a significant improvement in other ways. First, there can be no doubt that the Tribunal is more independent than many of the individual tribunals were in the past. Each member has a five-year term. Although appointments are made by the Governor-in-Council, a protocol has been reached between the Attorney General and the President of the Tribunal as to an appropriate process of appointment. That process is based upon merit. Since the commencement of the Tribunal no political interference has been experienced in the appointment of, or the termination of employment of, members, and we do not anticipate that it will in the future. The political price to be paid by such interference is now a high one in that each judge has the entitlement to return to his court. Indeed each sits in his or her respective Court as well as in the Tribunal.

The fact that the Tribunal has a substantial budget and the fact that it is led by a Supreme Court judge means that the

Tribunal has instant accessibility to the Attorney General of the day. This is a significant issue in terms of budget and other issues principle which affect the Tribunal. I understand that many of the constituent pans of VCAT when they were individual tribunals had real difficulty in communicating with the government of the day. One example of the increased status of the Tribunal is that the President of VCAT sits on a Courts Consultative Council with the Chief Justice, the President of the Court of Appeal, the Chief Judge of the County Court, the Chief Magistrate and the Attorney General Head of the Department of Justice. Access to such consultative bodies was not available to the smaller tribunals. Indeed, a recent consequence has been that the Attorney- General has accepted that Tribunal members' salaries should be independently reviewed by the JRT which reviews judges salaries annually.

The President of the Tribunal is required to report annually to the Parliament. I believe that an annual report of this nature is a powerful tool in educating both the public and Parliament about the operations and needs of the Tribunal. Concerns expressed in such a document from the President a tribunal of the nature of VCAT are more likely to receive attention than they did in the past.

The capacity for improvement in processes and efficiency within VCAT has been substantial. For example, it was not uncommon in the past for three of the constituent tribunals to be conducting hearings in *one* major provincial centre at the same time. In certain circumstances, three members in three cars incurring three costs of accommodation could take place. With the amalgamation of the Tribunal, a number of members now sit across jurisdictions. Now one member can go to a provincial city and deal with a number of matters which previously were the province of separate tribunals. This is obviously

efficient. However, more than this, it provides significant career satisfaction for members who are now able to have a variation in the types of case which they hear.

The VCAT Act requires, uniquely in such legislation as far as I am aware, that the judicial members have a statutory obligation for the training, education and professional development of members of the Tribunal. Immediately upon the commencement of VCAT, a Professional Development and Training Committee was established. This enables each list to conduct seminars on matters of specific relevance to its list but also is an opportunity for all members to be involved in areas of common interest such as ethics, or decision-writing. In addition, further list-specific training is conducted throughout the year. Funding is provided for the purposes of cross-cultural training of members. A considerable amount of work has been done by the mediation committee in relation to mediation training for members.

Last year the issue of the need for assistance on the judicial learning curve came to prominence in the media and throughout legal circles. As you will be aware, the AIJA has been deeply involved in discussions which it is hoped will lead to the creation of a National Judicial College. The Victorian Attorney-General has appointed a Judicial Education Working Party chaired by the Chief Justice, with a view to the creation of a Judicial Studies Council. He intends that it will have responsibility for continuing professional education for VCAT members as well as the judiciary. I believe professional training and education is an area which VCAT is equipped to handle particularly well. At VCAT, a New Members' Handbook has been developed, which provides newly appointed members with a convenient guide to practical aspects of membership. We have a mentoring programme for new members. There is also

a New Members Committee which provides practical support and assistance to newly appointed members.

However, notwithstanding the work done internally by any tribunal, there must be a recognition by Government that access to justice includes access to competent and well-trained members. This year for the first time we have an actual budget figure allowed for training. We are hopeful that that figure will be increased in years to come. From these funds, eight members will undertake a Monash University diploma course in Tribunal Procedures this year, as well as, conducting the many other list specific seminars. The issue of professional training and development is a significant one. The development and maintenance of community respect for Tribunal decisions is closely related to that issue. I believe that resources for adequate professional development are more likely to be provided in the context of VCAT, than was likely in the context of the numerous smaller tribunals which existed previously.

Many of the members of VCAT are qualified to sit in a number of jurisdictions that were previously managed by separate boards and tribunals. The flexibility to use the expertise of members across a broad range of lists increases VCAT's effectiveness. For example most reviews of decisions of the Medical Board justify the inclusion of a member with medical qualifications. This was not possible under the old AAT. A number of doctors, nurses and other professional persons are now members of VCAT. More than that however, it enables a cross fertilisation of management and hearing culture between lists, broader experience for members, and enables members to accumulate new perspectives and knowledge. VCAT has found that this results in greater career flexibility and satisfaction for members. Rotation of Deputy Presidents occurs. This gives new focus to senior members, breaks down further cultural differences between

old tribunal jurisdictions and contributes to Deputy Presidents and Senior Members having the significant leadership and responsibility in the Tribunal. It also gives them greater career satisfaction, and a broader experience with the attendant possibilities of other judicial appointments becoming open. Already, one Deputy President has been appointed to the County Court since the commencement of VCAT.

Members are not the only people at VCAT benefiting from the amalgamation. The reorganisation of seven former registries into a single registry with three sections has produced staff efficiencies and enhanced career opportunities for registry staff.

The VCAT Act places a substantial emphasis upon mediation which is a significant factor in the conduct of proceedings before the Tribunal. In many cases now before the Tribunal, mediation is being used successfully where it was not used previously. In particular, since the commencement of VCAT, mediation has been used with considerable success in anti-discrimination matters. A Mediation Committee has been established to develop a Code of Conduct for VCAT mediators and is now conducting a study of the mediation work done in VCAT. Monash University conducted a research project upon mediation in planning cases. However, we are yet to maximise our capacity to use mediation as a tool for dispute resolution and I plan to take steps this year to achieve this by creating a central mediation unit led by a senior member to co-ordinate all mediations and to ensure that appropriate standards are maintained.

There is increasing recognition of the benefits afforded by mediation, not only within the Tribunal. Research indicates that mediation empowers people in a way that hearings do not and that people who have been through mediation feel better about the results, even if they 'lose', than if they go

through hearings. With this in mind, several of the lists at VCAT are reviewing their approach to mediation, with the aim of increasing significantly the percentage of cases which proceed to mediation.

The benefits for members of the public of the amalgamated tribunal extend beyond the ease of accessibility afforded by a single Tribunal when making an application. In its first year of operation, list members conducted hearings at 52 venues throughout Victoria including Melbourne, suburban locations and rural centres. This year hearings were conducted at 14 venues. The ability of members to sit across various lists greatly increases the access of rural and regional Victorians, in particular; to the Tribunal. Last month, VCAT Online commenced, an internal based electronic application process which cost over \$1 million to develop. It is the first interactive electronic lodging process of its type in any Australian court or tribunal. Application can be made at any time from any place and the system will issue a receipted application form with the date of hearing over the internet. At the moment this is restricted to residential tenancies cases, but we are exploring ways of internet electronic lodging in other areas. Although this project commenced before the creation of VCAT there can be no doubt that it was given great impetus by the creation of the amalgam, as was an electronic order processing system which permits many parties to receive their certified order at the hearing.

As with all processes of change, the establishment of VCAT was more a starting than a finishing point. The evolution of VCAT is ongoing. There have been substantial logistical and cultural difficulties associated with the amalgamation of so many previously separate organizations. Many of these difficulties have been surmounted. With very few exceptions, the overwhelming majority of VCAT members and staff have

had the strength of character to accommodate the many changes that have taken place, with enthusiasm and good grace.

However, much work remains to be completed in the evolution. For example, VCAT inherited from the various bodies that preceded it an ad hoc bundle of practice notes. Not only were practice notes in different form, but in some instances they applied different approaches to similar situations. Their language was inconsistent and, in some cases, convoluted and overly legalistic for the many people without legal representation who use VCAT. Following the introduction of several practice notes that cover the whole of VCAT, such as expert evidence, air of the practice notes are being rewritten. All will adopt the same format and style, and all will be written in plain English so as to be accessible to non-represented parties.

I am hopeful that the Tribunal will be provided with a permanent duty lawyer scheme to assist the numerous unrepresented users.

I expect that over a period of time the work undertaken by the Tribunal will expand. For instance, a number of Bills before Parliament now expand the jurisdiction of the Tribunal.

The Information Privacy Bill which is designed to establish a regime for the responsible collection and handling of personal information in the Victorian public sector, has had its second reading. If passed in its present form, VCAT will have jurisdiction to hear complaints after a conciliation by the Privacy Commission in much the same way as it does in Equal Opportunity matters<sup>1</sup>.

The Autumn 2000 session of Parliament included the *Chinese Medicine Registration Act 2000*, *First Home Owner Grant Act 2000*,

and the *Psychologists Registration Act 2000*, all of which expanded the jurisdiction of the tribunal.

## SUMMARY

It is interesting to note that the Commonwealth, in creating the Commonwealth AAT, led the way towards the judicially led tribunal which resulted in the creation of the large amalgams in New South Wales and Victoria. It would appear that the Commonwealth is now heading away from that model. In Victoria there was bipartisan political support for the appointment of judicial leadership as a necessary step in ensuring the independence of the tribunals which were the subject of the amalgamation. I am confident that that leadership has, been a significant aspect of the public, perception of the independence of the Commonwealth AAT, the former Administrative Appeals Tribunal of Victoria and now the New South Wales Administrative Decisions Tribunal and VCAT. There are of course many issues relating to tenure of members of tribunals, but I think we would all agree that the longer the term, the greater the perception of independence. Accordingly the 5 year terms of VCAT members are a significant improvement on past arrangements in Victoria.

We shall all await with interest, the developments in the Commonwealth tribunal sphere. Interesting developments were proposed by the Administrative Review Tribunal Bill. Although the proposed ART structure of divisions and a four-tiered hierarchy mirrored the VCAT model, there were significant differences. The Bill set out no qualifications required of the President or other members. The Bill provided for performance agreements to be entered into by all members other than the President, and for a code of conduct to be prepared. Tenure is not fixed, but cannot exceed 7 years although a member may be

reappointed. Whether these arrangements would enhance or detract from the independence of the Commonwealth Tribunal is unclear.

However, whatever might be happening in the Federal arena, I think it is likely that the judicially led amalgam is here to stay in the foreseeable future in Victoria, New South Wales and in a different way in South Australia.

I am, of course, not submitting that a tribunal of the type created in Victoria and New South Wales is appropriate everywhere. There are advantages in discreet tribunals dealing in specialized areas. The particular disadvantages of lack of independence and inconsistency of approach which applied in Victoria may well not apply elsewhere if tribunals are given appropriate resources and are guaranteed independence. However, the creation of VCAT in the Victorian context has significantly increased the independence of the Tribunal and has enabled the Tribunal to be efficient in using the resources which are made available to it. I think it is likely that over a period of time the Tribunal will be able to negotiate more substantial resources for the professional training and professional development of its members than would have been the case with the constituent small tribunals. The Tribunal is now very well known in Victoria. Hardly a day goes past that some issue relating to the Tribunal does not appear in a major metropolitan daily newspaper. On the one hand, there are difficulties with this in the sense that a criticism made of the Tribunal has much more public force than in the past because it is now so well known to the community. Nevertheless, on balance, it appears to me that a public institution which is well known to the community is, as long as it gains the respect of the community, more likely to be understood and appreciated by the community.

A final matter relating to whether the performance of tribunals can be improved is the issue of communication. All tribunals are grappling with better ways of communicating with the public and with the users of tribunals. The report "Courts and the Public", which was produced by the Australian Institute of Judicial Administration in 1998, and was written by Professor Parker previously of Griffith University, deals with many ways in which the needs of the public might be met.

VCAT has expended considerable effort and money in producing annual reports. These reports ought to be as transparent as possible in relation to the activities, successes, failures and difficulties of the Tribunal. VCAT's Annual Reports are written as much to be read by the community and users of the Tribunal as they are to fulfil their statutory purpose.

However, there are other ways for tribunals to communicate with the public. An appropriate and useful web site has been set up by VCAT which is in itself an extensive legal resource because of its links. We have established user groups who meet regularly. We encourage constructive criticism of our processes and performance by such user groups. Publication of guidelines as to the operation of the Tribunal is another important way of meeting the needs of the public. We are working upon the production of some of our guidelines in a number of languages other than English. Having rules, practice notes and the like written in plain simple English is important. Tribunals should have available to their public a service charter indicating what services will be provided, what standard of services will be provided and advising users as to how they might make a complaint about the operation of the Tribunal. We have such a charter and we now have electronic monitoring of complaints.

A further improvement which is called for in tribunals across Australia is improved accessibility of decisions. This can be done several ways by the use of websites, perhaps Austlii, or by publications. However, another way of communicating to the public, and one method by which the Tribunal operates, is to produce short summaries of significant decisions. A more detailed consideration of these issues can be found in Professor Parker's report.

The tribunal system in Australia is in good hands. The tribunal system in this country is likely to expand notwithstanding whatever

might be happening in the Commonwealth sphere. Tribunals provide access to a justice system which is not otherwise available to many members of our community, and continual improvement of our tribunals will enhance community confidence in the decisions which are made.

#### ENDNOTE

1. The *Information Privacy Act 2000* has now been enacted. It received assent on 12/12/2000.

