

THE MODEL FOR THE ART

The ART and Values I

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It always seems to me to be a very wise thing when one is considering change to ask the question: why are we changing? I have been on the speaking circuit for too long and have often told audiences—you generally only get a laugh from this from students at universities—that one of the great lies of the 20th century is: I am from the government and I am here to help you. There is a deep-seated cynicism, which I am sure is being exhibited politically in arenas, thankfully, away from administrative review at the moment, about the processes of government, and in particular about probity. In other words: what are they on about; are they operating properly; how are they going to affect the way in which I live my life? The administrative review system, when you go back to read the seminal documents that set it up in the seventies, was intended really to offer to the Australian public something that it did not have before, certainly not in the form in which it was ultimately drafted in the legislation that set up the federal administrative review system, and which I am tired of saying, but which of course you all do know, is regarded as world's best practice. It was intended really to play a role that perhaps in other countries is played by rights which arise under constitutional guarantees. I have said elsewhere that we do not have a bill of rights in this country but we do have with the current system the capacity to have individuals complain or, to put it more positively, assert their right to question the behaviour of the executive government.

Over the last 25 years in which the system has been operating, the amount of interference—and I use that word even though it has a colour to it—that government legislation and programs have in the lives of ordinary Australians has increased. One watches the number of bills in which AAT review is given and, when we get a new legislation list, it climbs virtually every month. We are now up to 360 pieces of legislation. There were very few, in fact, on the agenda for review by the AAT when the system was set up. So you have an incremental increase in government decision making that affects individuals.

The system that was set up is what I call an audit process of that bureaucratic action. The benefits of bureaucratic action are very great. I do not wish to be suggesting that the sorts of work and decisions that are being made by the executive and departments are of themselves a bad thing. It is obviously the will of people: it has passed through the Australian parliament. I am not critical of that. But, when there is a vast bureaucracy that affects the lives of individuals, it seems to me that individuals are entitled to have an appropriate degree of protection from bureaucratic error. In my view the current system does this.

I know that one could describe the four tribunals that are being amalgamated as having different cultures. But by and large, from the meetings that I have been having with the heads of these tribunals over the last two years, it seems that we share a lot of common values as well as having our own particular work and cultures. The question one should ask is: will the amalgamated tribunal as it currently exists in the bill before the Australian Parliament protect the good features of the present system and provide opportunities for improvement of that system? There is no doubt that the *Better Decisions* report was focused on improving the system and that amalgamation of the tribunals was intended not only to

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save money. I presume the government will publish the financial details of the way in which that money is going to be saved at some stage. I do not think it is yet on the public record. I have a great deal of scepticism as to whether one can, with the current proposal for amalgamation, save much of the administrative costs that the current tribunals have not already shaved from their budgets and dealt with appropriately.

So we should be asking these questions: how can the amalgamated tribunal, the ART, improve what the Australian public already has? How can it improve the quality of the decisions that are made? What improvements in service are going to result from amalgamation? How will the Australian public benefit from the amalgamation? I confess that I started to get a degree of fatigue when reading this consequential bill on the computer, so I have not read every single one of the amended acts, but I have read the ones where I perhaps suspected that there might be things that could bear upon the questions that I have raised there. It does seem to me that there is in this bill an increase in the capacity for the Executive, in a range of different ways, to be intimately involved in the operation and control of the review system. I think that should be given enormous and detailed scrutiny because we are reviewing the decisions of the bureaucracy and the role that bureaucrats have in controlling the way in which that is done.

Whether it be the appointment of members or the funding and all the other issues that are going to be discussed today, that should be the measure. If there is seen to be an impediment to what is arms-length, independent, quality decision making offered to ordinary people in a way that allows them to have a real review of the decisions that have been made by the bureaucracy and that they are challenging, I think we have to say that you have to apply the 'if it ain't broke, don't fix it' epithet. I cannot resist saying that as the Attorney was interested in quoting parts from the ALRC's report on managing justice, I would like to quote from paragraph 12.210 of the report about a client or a person who went through the system at the AAT. She said:

I was given all help required and was made to feel confident in presenting my own case. This was my first experience of anything of this type. I was not confident until I became involved with dealing with the AAT staff and received their help, advice and informative material. Even a video of a typical AAT hearing was made available to me.

I thought that was not a bad comment on the way in which the AAT operates in helping unrepresented people.

The last comment I would make is that, for anybody to say that you can give assistance to unrepresented people—especially in an environment where access to legal services is very much diminished—without spending money on it, that is a fraud. It costs a lot of money to create support to help unrepresented people. If unrepresented people are also people who do not have the benefit of, say, tertiary education or a background which would enable them to navigate that system, you may have a vastly diminished administrative system. I would like to see governments contributing more money to this process of review—flexible, non-legal and all the other things are given. It does not seem to me that cheaper is necessarily going to be better.

As my parting shot can I say to you, so that you can have some comparison for looking at what is now seen as the vastly expensive administrative review system, that for the total budgets of the four tribunals that are being amalgamated—and in today's dollars, because I did the figures—you can get administrative review by those four tribunals for 10 years into the future for what it has cost this country to produce one Collins class submarine.