THE IMPACT OF EXTERNAL ADMINISTRATIVE LAW REVIEW: TRIBUNALS

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External review of administrative decisions on the merits is an accepted part of the Australian administrative law landscape. The reforms made in the Commonwealth sphere during the 1970s included the establishment of the Administrative Appeals Tribunal and led to the creation and development of generalist and specialist review tribunals both in the Commonwealth and the States. The significance of these reforms is still recognised by, and influencing reforms in, other jurisdictions. Most recently, the *Leggatt Review* of tribunals in the United Kingdom drew on the Australian experience, commenting:[1]

> We found general agreement that the AAT had had a thoroughly beneficial effect on the development of administrative law, establishing a valuable tradition of individual treatment of cases, and of test cases. That had enabled the development of a distinctive process of merits review which all tribunals used in their separate jurisdictions.

Review of administrative decisions by an external, independent, tribunal which would have the power to substitute the 'correct or preferable' decision was seen by the Kerr Committee in 1971 as the key to correcting 'error or impropriety in the making of administrative decisions affecting a citizen's rights'[2]. The focus was on redressing individual grievances, and only incidentally in playing a role in improving administrative decision-making. The Kerr Committee expressed the hope that the recommended reforms should 'tend to minimise the amount of administrative error' and that the right to challenge administrative decisions should 'stimulate administrative efficiency'.[3]

By the time of the Administrative Review Council (ARC) *Better Decisions* report,[4] improving the quality and consistency of agency decision-making was seen as one of four specific objectives of the merits review system, the others being providing the correct and preferable decision in individual cases, providing an accessible mechanism for merits review, and enhancing the openness and accountability of government.

This paper raises three questions for consideration:

1. Why are we concerned about the impact of external tribunal review, whether on an individual level or on administration more generally?
2. What do we mean by "impact", and how might we measure it?
3. What do we know about how agencies respond to tribunal review decisions?

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1. Why does impact matter?

External review by tribunals is only one part of the Australian system of administrative law (other key elements being the courts, and the Ombudsman). And those external review mechanisms are themselves only a part of what has come to be described as 'administrative justice', a term which has many meanings.[5] Adler has defined administrative justice as referring to 'the principles that can be used to evaluate the justice inherent in administrative decision-making'. Those principles comprise both procedural fairness, concerned with the process of decision making, and substantive justice, which refers to the outcomes of the decision-making process.[6] Adler has argued that the external review mechanisms are not particularly effective on their own in achieving administrative justice:[7]

> This is, in part, because few of those who experience injustice actually appeal to courts, tribunals or ombudsmen; in part because court, tribunal, and ombudsman decisions have a limited impact on the corpus of administrative decision-making. As a result, as Ison (1999:23) points out, "the total volume of injustice is likely to be much greater among those who accept initial decisions than among those who complain or appeal".

While external review may have a limited role to play on its own in achieving administrative justice, it is important to acknowledge that the various external review mechanisms require continuing commitment of significant resources, financial and otherwise, by governments and individuals. They also represent for many individuals the most direct opportunity available to participate in, and question, government decisions which affect them. So there is a need to understand the impact of external review, both in the individual case, and more broadly.

There is a clear shift from Kerr to *Better Decisions* in acknowledging that tribunal review could, and should, have consequences beyond the resolution of an individual dispute. There are several explanations for that. Sir Gerard Brennan, as the first President of the AAT, played an early and crucial role. In the second Annual Report of the AAT in 1978 Sir Gerard noted that '[t]he way in which the system can serve the individual and the administration must be learned, and learning is difficult'.[8] Sir Gerard saw the tribunal's influence on administrative decision-making as arising primarily from its determination of individual cases, and through the quality of its reasons for decision. In 1979 Sir Gerard stated:[9]

> The objective of administrative review on the merits is to improve the quality of decision-making, both in the particular case and, by precept, generally.

In 1996, at a seminar held to mark the 20th anniversary of the AAT, Sir Gerard commented:[10]

> The AAT was intended not only to give better administrative justice in individual cases but also to secure an improvement in primary administrative decision-making. This had to be achieved by the quality of the AAT's reasoning. Departments, like any organised human activity, tend to have an inward focus and the corporate culture tends to be the most powerful influence on the conduct of individuals engaged in that activity. External review is only as effective if it infuses the corporate culture and transforms it. The AAT's function of inducing improvement in primary administration would not be performed merely by the creation of external review. Bureaucratic intransigence would not be moved unless errors were clearly demonstrated and a method of reaching the correct or preferable decision was clearly expounded. AAT decisions would have a normative effect on administration only if the quality of those decisions was such as to demonstrate to the repositories of primary administrative power the validity of the reasoning by which they, no less than the AAT, were bound. Any effect that the AAT might produce in primary administration would depend upon the reasoning expressed in the reasons for AAT decisions.

Other factors were at play during the 1980s and into the 1990s, not the least of which was the changing focus of public administration. Chief Justice Gleeson noted in his speech marking the 30th anniversary of the AAT in 2006 that the AAT does not operate in a static context, and commented:[11]

> There have been major developments, since 1976, in the principles and practice of public administration. Methods of performance review and accountability within the public sector have changed, and continue to change. Privatisation, and the outsourcing of functions, have placed many activities affecting citizens outside the scope of the legislative scheme conceived in the 1970s.

Adler has described these changes as a challenge to the bureaucratic, professional and legal models of decision-making accepted in the early 1980s, by a managerial model associated with the rise of the new public management, a consumerist model focussing on increased participation of consumers in decision-making, and a market model that emphasises consumer choice.[12] The consequence of these challenges is a continuing focus on cost, and efficiency. For example, the 2007 Productivity Commission *Report on Government Services* on its Review of Government Service Provision, focuses on outcomes from the provision of government services - whether through government funding of service providers or the provision of government services directly - in an attempt to measure whether service objectives have been met. Outcomes are to be measured against indicators of equity, effectiveness, and efficiency.[13]

More generally, as the administrative review system has become entrenched, more is expected of it than simply delivering justice in the individual case. There is an expectation that tribunal decisions and decision-making have a role to play in ensuring that there is fairness and consistency in the treatment of individuals by government; that there is an improvement in the quality and consistency of agency decision-making beyond the individual case; and that there is an improvement in administration generally through the adoption of the values inherent in administrative review.[14]

2. How do we measure 'impact'?

There is a growing body of empirical work, much of it coming from the United Kingdom, assessing the impact of judicial review. Some of the empirical studies have focussed on the impact of judicial review as a mechanism for handling individual grievances, examining the ultimate outcomes for applicants. Others have focussed on judicial review as a mechanism for addressing systemic bureaucratic failings.[15] Attempts to understand or measure 'impact' in this context have shifted between considering judicial review as a process, to bureaucratic reaction to particular decisions or series of decisions, or to the impact of judicial review as a system of values and legal norms.[16] The central requirement is that there is a clear understanding of what is being evaluated: impact *of* what, and impact *on* what.

Any evaluation of impact, whether it be of judicial review or tribunal review, must acknowledge that external review is only one influence on administrative decision-making. The 'administrative soup'[17] of influences on decision-making includes factors such as resources, policies, and personal pressures, and the principles and values that lawyers associate with external review change as they mix with those other factors.

While many of the approaches to assessing impact of judicial review are helpful, evaluating the impact of tribunal review raises some different issues. Judicial review as a process involves the interaction between two clearly separate branches of government, as expressed by Brennan J in *Church of Scientology v Woodward*:[18]

> Judicial review is neither more nor less than the enforcement of the rule of law over executive action; it is the means by which executive action is prevented from exceeding the powers and functions assigned to the executive by law and the interests of the individual are protected accordingly.

The relationship between a tribunal and the agency whose decisions it reviews is more complex than that between a court and that agency, and any attempt to evaluate the impact of tribunal review must reflect those complexities.

Tribunals are part of the system of adjudication, and they resolve disputes by methods of application of law to facts similar to those used by the courts.[19] The principle that tribunals should not seek to defend their decisions on review, but simply submit to such order as the court may make is perhaps a reflection of that.[20] However, those tribunals which review administrative decisions on the merits do so, most clearly in the federal context, as an exercise of executive power.

The High Court decision in *Craig v South Australia*[21] draws a distinction between inferior courts and other decision-makers, including tribunals, for the purposes of identifying jurisdictional error, and there is now little room for a tribunal to make an error of law which is not jurisdictional.[22] Under this approach tribunals are clearly part of the executive, and are accountable to the courts in the same way as other executive decision-makers. While tribunals are independent of the decision-making structure within which primary administrative decisions are made, they are still part of that structure – and some have described that position as at its apex.[23] However, tribunals occupy a distinctive role within the administrative decision-making structure. Tribunals are not simply correcting errors (whether of fact or law) made by the primary decision-maker:[24]

> Tribunals overturn departmental decisions for many reasons including: new evidence; applicants taking the process more seriously once they have received a negative decision from the department; changes in the law due, for example, to court decisions; applicants feeling the need to defend their credibility; and different exercise of a discretion.

Further, the ability of a tribunal to depart from government policy and guidelines sets it apart from primary decision-makers. In this regard, the traditional dichotomy of tribunals and primary decision-makers needs to be revisited, to reflect the development of government agencies which act simply as deliverer of services, with the real policy framework provided from outside.[25]

3. What do we know about impact, or how agencies respond to tribunal review?

In Australia, after some early work on evaluating tribunals,[26] Creyke and McMillan have led the way in evaluating impact. Their study of the outcomes of judicial review focussed on outcomes for applicants. [27] The related part of their study on executive perceptions of administrative law looked at impact more broadly, and included responses to tribunal review as well as the other external review mechanisms.[28] Apart from this work (referred to below), we are left primarily with anecdotal observations, to a large extent contained in the proceedings of the AIAL, and those of the 1987 conference which provided the impetus for its formation.[29] The many contributions to those conferences and seminars over the years reflect a range of perspectives of external merits review, from impatience, and sometimes hostility, to a more positive recognition of the role of external merits review in clarifying principles and exposing deficiencies.

Cost has always been a concern, as reflected in the criticisms made by then Minister of Finance Senator Peter Walsh in 1987 of 'the capricious nature and considerable cost' of some AAT decisions.[30] Senator Walsh was referring to both the direct costs of running the system, and the broader costs to public programs of some AAT decisions. While there was early acknowledgement that the system would cost money, there has been little analysis of the real costs and benefits of administrative review.

The costs of running the tribunal system are difficult to calculate, as different measures are used by each tribunal, and administrative arrangements with other agencies complicate the picture. However, based on the information provided in Annual Reports for 2005-2006, the following points can be made.

In the federal sphere, total operating costs for the AAT, Social Security Appeals Tribunal (SSAT), Veterans Review Board (VRB), Migration Review Tribunal (MRT) and Refugee Review Tribunal (RRT) were close to $90,000,000, and these tribunals finalised a combined 30,356 matters. The average cost per finalisation ranged from $1563 for the VRB to $5962 for the RRT. The State sphere is more complex, as tribunals combine both merits review and other jurisdictions, including civil claims, and it is difficult to extract the information relating to the costs of merits review. The NSW Administrative Decisions Tribunal has a retail leases jurisdiction; the Victorian Civil and Administrative Tribunal (VCAT) includes planning decision-making (which is handled in NSW by the Land and Environment Court) and guardianship (which in NSW is handled by the Guardianship Tribunal). The VCAT and the WA State Administrative Tribunal both deal with residential tenancy issues, which in NSW are handled by the Consumer Trading and Tenancy Tribunal. The residential tenancy decisions swamp all other jurisdictions in VCAT and also in those heard in the NSW CTTT.

The total operating cost of the federal tribunal system, some $90 million in 2005-2006, obviously does not include the costs to the agencies whose decisions they review, or to the individuals who apply to, or appear before, them. The total number of matters, 30,356 (which would include some double counting, for applications made to the AAT for review of decisions of the SSAT and VRB), is a small proportion of the number of decisions made by Commonwealth decision-makers which might affect the interests of an individual or organisation. To take the social security jurisdiction as an example, Centrelink has over 25,000 staff and 6.5 million customers; sends 90 million letters each year and distributes $60 billion in payments.[31] In 2002-3 there were a minimum of 109,000 reconsiderations by the original decision-maker, which flowed on to 39,383 reviews by authorised review officers.[32] In that year, the SSAT received 9,576 applications, and 1,869 applications were made to the AAT.

It is equally difficult to compare results, and the following statistics are based on information provided in the Annual Reports for 2005-2006. For the SSAT, 35.3% of decisions in jurisdictions involving at least 10% of the tribunal's work were set aside or varied,[33] as a percentage of set aside, varied or affirmed.[34] There were appeals to the AAT from 21.7% of appealable decisions (7% by the Secretary); of those, 20.4% were set aside or varied. More than half the matters determined in the AAT are by consent, and in those matters 57.1% are set aside or varied. For those matters that proceeded to a decision, in 28.7% of cases the decision under review is set aside or varied. In the VRB, 28.2% of entitlement decisions were set aside, while in 48% of assessment decisions the rate increased, and was reduced in 0.7% of matters. For those matters that went on to the AAT, the percentage set aside or varied by consent was similar to the overall rate; for matters finalised by decision, however, 36.9% were set aside or varied. In the MRT 51% of decisions were in the applicant's favour (ranging from 22% of decisions concerning bridging visas to 68% of partner visa decisions). For the RRT, an average of 30% of matters were determined in the applicant's favour (ranging from 2% for applicants from Malaysia, to 97% from Iraq).[35]

The general point that can be made about these statistics is that an individual has a reasonable prospect of having an adverse decision changed, and that this remains so if there is more than once chance at review, and those opportunities are pursued. However, those individuals who directly benefit in this way are only a small proportion of those affected by administrative decision-making. The direct costs, and benefits to those individuals who obtain a more favourable outcome, are only part of the picture. Chief Justice Spigelman has warned against the dangers of 'pantometry', or the belief that everything can be counted: '…not everything that counts can be counted. Some matters can only be judged – that is to say, they can only be assessed in a qualitative way'.[36] Qualitative assessments of tribunal review would include fairness, and the value of participation of individuals in decisions which affect them, sometimes for the first time.[37]

The ARC commented in *Better Decisions* on the need to foster cultural change within agencies, noting that "at the primary decision making level many agency decision makers remain sceptical of the value of merits review".[38] This may be an unwarranted assumption, as the empirical research conducted by Creyke and McMillan since then has found a high level of approval of external review.[39] The outcomes were summarised by Creyke in the following terms:[40]

> Overall there was a firm rejection of the following propositions, all of which were couched in the negative. That is, four out of five respondents disagreed or strongly disagreed with the proposition that external review bodies undermine government policy; more than half disagreed with the suggestion that external review bodies give too little focus to the economic and managerial imperatives of government; and nearly two-thirds rejected the proposition that external review bodies give too much emphasis to individual rights when they make decisions.
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> However, although this was not the majority view, a significant number (around one-third) of respondents were critical of external review bodies, particularly tribunals, for their lack of understanding of the context for and pressures on government decision-making, and just over half the respondents considered that external review undesirably prolongs disputes.

In 1987 Derek Volker, then Secretary of the Department of Social Security, commented on how few people had used the various avenues of access to information or review of decisions: explained in part by the complexity of the system, but also by what he saw as rapid and significant improvements driven by external scrutiny of decisions in the quality of decisions, the reasons for decision, and clarification of legislative provisions and policies.[41] In 1998 Michael Sassella, then First Assistant Secretary in the Department of Social Security, agreed that clarification of the legislation had been positive, however, he was critical of the tribunals' 'lack of sufficient interest in government and departmental policy and practice'.[42] This criticism echoes a concern expressed in 1993 by Kees de Hoog, who commented that the tribunals involved in review of social security decisions tended to focus on legal technicalities and the individual facts before them, rather than on consistency and the needs for efficiency at the primary decision-making level.[43]

These comments reflect the impact of tribunal review as a mechanism for handling individual grievances. Consideration of tribunal review as a mechanism for addressing broader administrative issues has so far focussed on two factors: the influence of a tribunal's reasons for decision, and the need to build a bridge between tribunals and government agencies.

Tribunal reasons

Better Decisions identified two ways in which review tribunal decisions could have a broader effect on agency decision-making: by ensuring that tribunal decisions are reflected in other similar decisions, and by taking into account review decisions in the development of agency policy and legislation.[44] The ARC argued that agencies need to have organisational structures and procedures to enable them to take account of tribunal decisions. The 'appropriate organisational systems' identified by the ARC required that agencies have in place processes for:[45]

- receiving review tribunal decisions and analysing their potential effects on agency decision-making (including determining whether further review should be sought of, or an appeal made against, particular review tribunal decisions);
- effective and timely distribution of relevant review tribunal decisions (or a synopsis of decisions where that is sufficient), and identification of changes to legislation, guidelines and policies which should arise from those decisions; and
- training staff (particularly primary decision-makers) in appropriate aspects of administrative law, including the role of external merits review.

The ARC discussed appropriate agency responses to tribunal decisions, noting that there is a range of possible responses, including a change in agency policies or guidelines. The ARC accepted that there may be legitimate reasons why an agency which believes that a tribunal decision is not correct does not pursue available appeal rights or seek Parliamentary clarification of its policy intention. However, the ARC commented that it is unsatisfactory for an agency to respond to a tribunal decision which it believes to be incorrect only by advising its decision-makers not to follow the decision in future similar cases. Such a response does not resolve any difference of opinion between the agency and the tribunal, may lead to different results for individuals depending on how far they pursue their appeal rights, and may diminish the credibility of the tribunal in the eyes of both agency decision-makers and tribunal users.[46] Appropriate responses would be to amend policy or seek an amendment to the law; to appeal or seek review of the tribunal decision; or to make a public statement of their position in relation to the tribunal decision.[47]

The other side of the equation is that tribunals need to deliver 'high quality and consistent decisions'.[48] Bayne has identified three ways in which tribunals can, through the process of making decisions, have a normative effect on primary administration:[49]

> First, in relation to the process followed, to reduce the possibility of error or injustice; secondly, in relation to the correct application of the law; and, thirdly, in relation to the kinds of considerations and policies which inform the making of discretionary judgments.

Creyke and McMillan observed from their empirical work that there was general satisfaction with the quality, length and comprehensibility of the reasons for decision of review bodies (courts and tribunals). However there were some concerns expressed about variations in the quality of reasons, and greater approval of reasons provided by the courts than those provided by the tribunals, with the AAT faring better than the specialist tribunals.[50] The study included questions intended to gauge the agencies' responses to the recommendations of the ARC. Those questions elicited the rather disappointing outcome, that only one third of agencies had addressed the specific recommendations concerning appropriate responses to tribunal decisions, or the recommendations for implementing appropriate organisational processes.

Communication between tribunals and agencies

The Kerr Committee recommended that one of the three members constituting its proposed Administrative Review Tribunal should be an officer of the department or agency whose decision was subject to review. This was seen as being of benefit to the tribunal, as it 'would ensure that particular knowledge of the area of administration which produced the decision under review would be available to the Tribunal'.[51] Feedback from the Tribunal to the agency was considered only in the context of the limited role that the Kerr Committee perceived for review of government policy:[52]

> It may also be desirable that the Tribunal should be empowered to transmit to the appropriate Minister the opinion of the Tribunal that although the decision sought to be reviewed was properly based on government policy, government policy as applied in the particular case is operating in an oppressive, discriminatory or otherwise unjust manner.

The AAT and the other merits review tribunals adopted quite a different role in deciding whether or not to apply government policy.[53] That led to criticism both of the tribunals' independent role in determining the legality of policy, and whether its application in a particular case would result in injustice, and to charges that the tribunals were failing to consider government policy at all. Much of the force of these criticisms has waned, in part because policy guidelines are now more readily available both to tribunals and the public as a result of the requirements of Freedom of Information legislation, and advances in technology.

The call for better communication between tribunals and agencies has been consistent over the years, and has come from all quarters, including the administration,[54] the tribunals,[55] and government.[56] Tribunals must retain independence from the agencies whose decisions they review, however many tribunals are closely linked with those agencies through funding and other administrative ties. Most tribunals have established liaison procedures with relevant agencies. As the ALRC noted in the context of a tribunal obtaining information from the department whose decision is subject to review, formal and transparent links are less of a threat to independence than informal links.[57] Some tribunals now have formal agreements with their portfolio agencies.

The Memorandum of Understanding between the Department of Immigration and the MRT and RRT is available on the Tribunals' website, and includes provision for regular meetings. Much of the detail in this Agreement concerns information exchange, technology, and financial arrangements, and makes minimal reference to the organisational matters raised in *Better Decisions*. Para 3.6 rather cryptically states 'The agencies [ie, the department and the tribunals] shall endeavour to assist each other in increasing the quality and efficacy of decision-making and decision-making processes.' The Centrelink/SSAT Administrative Arrangements Agreement sets out comprehensive liaison and feedback arrangements, intended to facilitate the shared goal of making the correct or preferable decision at either the primary stage or on review.

We do have some understanding of the processes by which some agencies respond to review tribunal decisions. For example, at the 2004 AIAL National Forum, Pat Turner (Deputy Chief Executive Officer, Customer Service) outlined the processes for consideration of SSAT and AAT decisions by Centrelink and the then Department of Family and Community Services. Under those processes, there is consultation between the program branches and the Legal Services Branch in considering whether a decision of the tribunals which changes the original decision should be appealed. Centrelink makes recommendations to client agencies both as to whether a decision should be challenged, and whether policy or legislative change is warranted. Further, the SSAT receives copies of the comments on individual tribunal decisions.[58]

Overall, however, it is discouraging to note that while lawyers, administrators, tribunals and courts have been talking about these issues for thirty years, there is still limited evidence beyond the anecdotal. There is a need for a more concerted and coherent attempt to measure the effectiveness of the tribunals, and not just in terms of financial cost.[59] Creyke and McMillan have made a start, however their review of executive perceptions addressed all external review avenues, and for various reasons did not focus on outcomes for individual specialist tribunals. There remains a need for further empirical work, both to understand current feedback mechanisms, and to build on that in developing a protocol for appropriate mechanisms for dialogue between tribunals and agencies.

Endnotes

1 Sir Andrew Leggatt *Tribunals for Users One System, One Service* Report of the Review of Tribunals, 2001: Part II, para 6.
2 Commonwealth Administrative Review Committee Report, Parliamentary Paper No 144 of 1971, para 354
3 Ibid, para 364.
4 Administrative Review Council *Better Decisions: Review of Commonwealth Merits Review Tribunals* Report No 39, 1995.
5 A comprehensive discussion is provided by P O'Connor 'Measuring the Quality of Administrative Justice', paper delivered to the COAT NSW Chapter 4th Annual Conference, May 2007.
6 M Adler 'A Socio-Legal Approach to Administrative Justice' (2003) 25 *Law & Policy* 323-352 at 323-4.
7 Ibid, at 328.
8 *Foreword to Second Annual Report* 1978, AGPS, ii.

9 'The Future of Public Law – the Australian Administrative Appeals Tribunal' (1979) 4 Otago Law Review 286, cited in R Balmford 'Administrative Tribunals and Sir Gerard Brennan: Some Specific Topics' in R Creyke & P Keyzer (eds) *The Brennan Legacy: Blowing the Winds of Legal Orthodoxy* 2002, Federation Press, 92 at 97.
10 'Twentieth Anniversary of the AAT' in J McMillan (ed) *The AAT – Twenty Years Forward* (1998, AIAL), at 11-12.
11 Hon M Gleeson 'Outcome, Process and the Rule of Law' (2006) 65 *Australian Journal of Public Administration* 5 at 7.
12 Adler note 6, at 331-2.
13 Productivity Commission *Report on Government Services* 2007, 1.9-1.18.
14 G Fleming 'Administrative Review and the 'Normative' Goal: Is Anybody Out There?' (2000) 28 *Federal Law Review* 61 at 63.
15 P Cane 'Understanding Judicial Review and its Impact' in M Hertogh & S Halliday (eds) *Judicial Review and Bureaucratic Impact* (CUP, 2004)15 at 32-33.
16 M Sunkin 'Issues in Researching the Impact of Judicial Review' in M Hertogh & S Halliday (eds) *Judicial Review and Bureaucratic Impact* (CUP, 2004) 43 at 47.
17 Ibid, at 71.
18 (1982) 154 CLR 25 at 70:
19 P Bayne 'Tribunals in the System of Government' *Papers on Parliament No 10* 1990, 3.
20 *R v Australian Broadcasting Tribunal; ex parte Hardiman* (1980) 144 CLR 13.
21 (1995) 185 CLR 163
22 Creyke has described this as corralling tribunals into the 'to-be-watched-carefully' category: R Creyke 'The special place of tribunals in the system of justice: How can tribunals make a difference?' (2004) 15 *Public Law Review* 220 at 222.
23 P Bayne 'The Proposed Administrative Review Tribunal – Is there a Silver Lining in the Dark Cloud?' (2000) 7 *Australian Journal of Administrative Law* 86, at 98.
24 S Tongue 'An Era of Opportunities: The Role of the Administrative Review Process in Addressing Complexity, Accuracy and Consistency in Decision-Making' (1999) 93 *Canberra Bulletin of Public Administration* 54 at 54-5. As an illustration, in 2005-2006 'new information' (including financial, medical, and information about circumstances) was the basis for 37% of decisions set aside by the SSAT: *Annual Report* 2005-2006, 16.
25 The obvious example here is Centrelink, which delivers services for ten policy departments: http://www.centrelink.gov.au/internet/internet.nsf/about_us/departments.htm.
26 J Goldring, R Handley, R Mohr & I Thynne 'Evaluating Administrative Tribunals' in S Argument (ed) *Administrative Law and Public Administration: Happily Married or Living Apart under the Same Roof?* (AIAL,1994) 160.
27 R Creyke & J McMillan 'Judicial Review Outcomes – An Empirical Study' (2004) 11 *Australian Journal of Administrative Law* 82; R Creyke & J McMillan "The Operation of Judicial Review in Australia" in M Hertogh & S Halliday (eds) *Judicial Review and Bureaucratic Impact* (CUP, 2004) 161.
28 R Creyke & J McMillan 'Executive Perceptions of Administrative Law – An Empirical Study' (2002) 9 *Australian Journal of Administrative Law* 163.
29 'Administrative Law: Prospect and Retrospect', Canberra 15-16 May 1987, published in *Canberra Bulletin of Public Administration* No 58, April 1989.
30 P Walsh 'Equities and Inequities in Administrative Law' (1989) *Canberra Bulletin of Public Administration* No 58, 1989, 29 at 30.
31 Centrelink's Vital Statistics, available at www.centrelink.gov.au/internet/internet.nsf/publications/co154.htm.
32 Auditor General Audit Report No 35 3004-2005 *Centrelink's Review and Appraisal System*, para 1.11.
33 Recognising that most, but not all, such decisions will be favourable to the applicant.
34 These were age pension, disability support pension, family tax benefit, newstart allowance, and parenting payment.
35 The set aside statistics for the RRT fluctuate considerably: 12% in 2001-2002, 6% in 2002-2003, 13% in 2003-2004 and 33% in 2004-2005. The relatively higher set aside rates in 2004-2005 and 2005-2006 are probably attributable to applicants from Afghanistan and Iraq representing a significant proportion of the RRT caseload in those years.
36 Hon JJ Spigelman 'Measuring Court Performance' (2006) 16 *Journal of Judicial Administration* 69 at 70.
37 S Tongue 'An Era of Opportunities: The Role of the Administrative Review Process in Addressing Complexity, Accuracy and Consistency in Decision-Making' (1999) 93 *Canberra Bulletin of Public Administration* 54 at 54.
38 *Better Decisions*, para 6.10.
39 R Creyke & J McMillan 'Executive Perceptions of Administrative Law – An Empirical Study"' (2002) 9 *Australian Journal of Administrative Law* 163.
40 R Creyke 'The special place of tribunals in the system of justice: How can tribunals make a difference?' (2004) 15 *Public Law Review* 220 at 224-5.
41 D Volker 'The Effect of Administrative Law Reforms: Primary level Decision-making' (1989) *Canberra Bulletin of Public Administration* No 58, 1989, 112 at 112-3.
42 M Sassella "Sunset for the Administrative Law Industry? Commentary" in J McMillan (ed) *Administrative Law under the Coalition Government* (1998, AIAL) 65 at 67.

43 K de Hoog "A View from the Administration" in S Argument (ed) *Administrative Law and Public Administration: Happily Married or Living Apart under the Same Roof* (AIAL, 1994) 67 at 77.
44 *Better Decisions* para 6.2.
45 *Better Decisions* para 6.18.
46 *Better Decisions* para 6.39.
47 *Better Decisions* Recommendation 73.
48 *Better Decisions* paras 6.3, 6.4.
49 Bayne, note 21 at 89.
50 R Creyke & J McMillan 'Executive Perceptions of Administrative Law – An Empirical Study' (2002) 9 *Australian Journal of Administrative Law* 163, at 172.
51 Kerr Committee para 292. Sir Anthony Mason, one of the members of the Kerr Committee, later acknowledged that this recommendation had been a mistake, noting that while it might have encouraged public service support for the overall scheme, it would have created difficulties, in particular by subjecting the departmental representative to "an undesirable conflict": Sir Anthony Mason "Administrative Law Reform: The Vision and the Reality" (2001) 8 *Australian Journal of Administrative Law* 135 at 139.
52 Para 299
53 *Re Drake and Minister for Immigration and Ethnic Affairs (No 2)* (1979) 2 ALD 634.
54 For example, see S Skehill 'The Impact of the AAT: The View from the Administration' in J McMillan (ed) *The AAT- Twenty Years Forward* AIAL, 1998, 56 at 61.
55 See S Tongue 'An Era of Opportunities: The Role of the Administrative Review Process in Addressing Complexity, Accuracy and Consistency in Decision-Making' (1999) 93 *Canberra Bulletin of Public Administration* 54 at 57.
56 Including former Attorney-General, the Hon D Williams: "Improving the Quality of Decision Making" Commonwealth Review Tribunals Conference 1996, in [1996] *Admin Review* 46.
57 ALRC *Managing Justice: A Review of the Federal Civil Justice System* Report No 89, 2000, para 9.94.
58 P Turner "The Normative Effect in Centrelink: Part of the Feedback Loop" in C Finn (ed) *Shaping Administrative Law for the Next Generation: Fresh Perspectives* (AIAL, 2005) 226 at 235-6
59 Hon M Kirby 'Have We Achieved RN Spann's Vision of Administrative Law?"'(1997) 56 *Australian Journal of Public Administration* 3 at 10.