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Administrative Review in High Volume Jurisdictions

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Recent statistics concerning social security appeals demonstrate the value and effectiveness of two-tiered systems of review on the merits in high volume jurisdictions. There has been a sharp decline in the number of appeals being taken from decisions of Social Security Appeals Tribunals to the Administrative Appeals Tribunal. The number of appeals has almost halved from a peak figure of 1104 in 1982-83 to 566 in 1984-85. Moreover, there has been an accompanying decline in the total number of appeals being lodged with SSATs and a noticeable increase in the success rates of appellants at this level of review, particularly in relation to non-medical appeals.

During 1982-83, 5407 non-medical appeals and 6677 medical appeals were lodged with SSATs and appellants' success rates (i.e. appeals which were fully or partly upheld or conceded by the Department in advance of a Tribunal hearing) were 54% and 69% respectively. By contrast, during 1984-85, 6209 non-medical and 2082 medical appeals were lodged and the success rates were 62% and 74% respectively. The sharp drop in the number of medical appeals being lodged with SSATs is due in part to changes in primary decision making which have occurred in response to leading decisions of the AAT in this field.

A primary objective of any review system must be to develop general principles for the guidance of primary decision makers which should ultimately lead to better primary decision making and fewer appeals. It would appear that this is occurring in the social security area. It might be thought that it would be more economical and equally effective to have just the AAT reviewing decisions in this field, but in fact this is unlikely to be the case and the full benefits of administrative review are unlikely to be realised if the AAT were to act as a single-tier of review in such a high volume jurisdiction because of the mass of appeals which the Tribunal would be required to handle and the need for speed and informality in the conduct of review hearings. It is doubtful whether even a substantial increase in the Tribunal's resources would enable it to overcome these problems, and even if this solution were feasible it could be expected to involve higher costs than the present two-tier system.

The best solution is to have a two-tiered structure of appeals in high volume jurisdictions, as exists at present in relation to both social security and repatriation entitlements. Such a system involves a first-tier tribunal which provides speedy, informal, and economical review at which level it is expected that most appeals will be resolved to the parties' satisfaction and a second-tier of appeal involving the AAT which gives detailed consideration to the more complex cases and develops principles of general application for the guidance of primary decision makers and the first-tier tribunal alike. The role and function of the two review tribunals in such a structure are quite distinct but are nevertheless complementary.

A two-tiered structure of appeals was recently established in the repatriation area, largely in accordance with the Council's advice in its Report No. 20 Review of Pension Decisions Under Repatriation Legislation. The system has been in operation since the beginning of 1985 and appeals are now starting to flow through from the Veterans' Review Board to the AAT. It may be some time before the AAT's decisions begin to affect the quality of primary decision making and the lower level of review but it is expected that this jurisdiction will eventually follow the pattern which has been established in social security.

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Administrative Review Council

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COUNCIL PUBLICATIONS

Report No. 22: The Relationship Between the Ombudsman and the AAT

On 21 May 1985 the Council's 22nd Report, The Relationship Between the Ombudsman and the AAT was tabled in Parliament by the Attorney-General. This report compares the different nature, functions, scope, remedies and review procedures of the Ombudsman and the AAT. It also describes and analyses the legislative provisions which establish links between the Ombudsman and the AAT, such as: the discretion of the Ombudsman not to investigate complaints where alternative avenues of appeal exist; advisory opinions of the AAT in Ombudsman cases; the Ombudsman as general counsel before the AAT in FOI cases; and certification of delay by the Ombudsman in relation to certain decisions reviewable by the AAT. The report refers to the overlap of Ombudsman and AAT jurisdictions. Such an overlap is considered desirable so that