- is accessible to those who need access to the system;
- operates in an efficient and cost effective manner;
- consists of an appropriate number of levels of appeal; and
- results in decisions that appropriately reflect the intention and operation of government policy.

. . .

The Terms of Reference for the review are:

In terms of ensuring that the Social Security and Appeals system meets the aims outlined above, the review will report on the following matters:

1. The number of levels of review within the Social Security portfolio;
2. The operation of internal review;
3. The impact of the appeals and review decisions on the quality and efficiency of decision making by DSS staff;
4. The operation of the SSAT's review processes, including the number of members required to hear an appeal, the requirement to use paper records, basis of proof for evidence rendered and the issue of representation for appellants;
5. Whether the Department (or the agency) should appear at the SSAT;
6. The SSAT's membership arrangements;
7. The SSAT's powers of review; and
8. Whether there should be a right of appeal to the Administrative Appeals Tribunal (AAT) or whether appeal to the AAT should be by leave. "

The review expects to finalise its report to the Minister before the end of June 1997.

Changes to Refugee and Immigration Decision Making and Review Systems

In a Focus Article in this edition of *Admin Review*, the Minister for Immigration and Multicultural Affairs, the Hon. Philip Ruddock MP, discusses a number of changes to decision making within his portfolio. The text of the Minister's Media Release (MPS 28/97) dated 20 March 1997 detailing these changes is set out below

"Sweeping changes to Refugee and Immigration Decision Making

Significant changes will be made to refugee and immigration decision making and review systems to improve efficiency, credibility and accountability, the Minister for Immigration and Multicultural Affairs, Philip Ruddock announced today.

"The major change will be to collapse the current three portfolio review bodies into two review tribunals," Mr Ruddock said.

The change follows the Coalition commitment to undertake a review of immigration decision-making, with particular attention being paid to the membership, role and performance of the Immigration Review Tribunal (IRT) and the Refugee Review Tribunal (RRT).

Currently protection visa (refugee) applications are processed in a two-tier decision making structure. A primary decision on an application is made by the Department of Immigration and Multicultural Affairs. If unsuccessful, an applicant can seek review before the RRT.

Most immigration applications have a three tier merits assessment process, with a primary decision by the Department, a departmental review by the Migration Internal Review Office (MIRO) and an independent review by the IRT.

"The changes will bring all migration processing into line so that there is a two-tier merits assessment of applications," Mr Ruddock said.

"This will mean merging MIRO with the independent IRT, while the RRT will remain a separate body dealing exclusively with review of refugee applications."

"A number of other legislative measures will be introduced to make my portfolio Tribunals more flexible and to improve their performance, while reducing the scope for abuse."

To shorten overall processing times and to discourage frivolous applications there will be restrictions on work rights, review application periods and a change in the structure of the review application fee.

"A significant measure will be to impose a post-decision application fee of $1,000 for the RRT. This will not impose a burden on bona fide refugees and will act as a deterrent for people intent on abusing the system," Mr Ruddock said.

"The $1,000 fee will only be payable if the RRT finds that the applicant is not a refugee. Applicants assessed as meeting refugee criteria will pay no RRT fee."

A number of other administrative measures will be introduced to achieve efficiencies in primary and review decision making.

"My Department will take a more strategic approach to protection visa applications, giving greater priority to straightforward applications and using more streamlined methods, such as reduced documentation where appropriate," Mr Ruddock said.

"Other measures will include clearer articulation of my expectations and directions to Tribunal members and improved utilisation and reduced duplication of resources."

The changes to the structure of review bodies will take effect after appropriate legislative changes.

"The changes announced by the Government will re-establish credibility, integrity and confidence in the immigration decision making process," Mr Ruddock said.

"Not only will people with bona fide applications be given a decision more quickly, but those intent on fraud or deception will not have the benefits of a delayed decision."

The changes to the immigration review process are consistent with foreshadowed Government moves to introduce further reform of merits review tribunals across all portfolios. It is proposed that all tribunals will eventually be consolidated into a new Administrative Review Tribunal.

However the revamped immigration and refugee review process would remain a discrete division within the new tribunal.

Further announcements will be made shortly on other enhancements to the decision making process."

and in the Attachment to the Media Release

"Details on Review of Refugee and Immigration Decision Making

Tribunals

The changes to tribunals are designed to improve flexibility and performance, so that delays are reduced and more consistent decisions are made.

- Principal Members of Tribunals will be given clear authority to apply efficient processing practices, including the ability to give directions on the operation of the tribunals and the conduct of reviews
- applicants will not be able to delay hearings where prescribed notice of a personal hearing has been given
- personal hearings will be at the discretion of the tribunal member considering an application
- Tribunals will be able to use telephone and other media to conduct hearings
- Where appropriate, documentation will be reduced to allow more efficient utilisation of tribunal members' time
- In line with Government policy to move towards cost recovery, the fees for applications to MIRO and the IRT will be increased to $500 and will be nonrefundable
- The period in which an unsuccessful onshore applicant can seek review will be reduced from 28 to 14 days

Primary Decisions

- In line with Tribunal changes, procedures will be streamlined to ensure greater productivity
- Greater priority will be given to processing straightforward applications, so that applicants in genuine need and those without substantial claims are dealt with quickly.
- Where a protection visa application is made, access to work rights will be limited to those people who have been in Australia for less than 14 days in the past 12 months.

This Media Release was issued on the same day as that by the Attorney-General announcing that the Government proposed to amalgamate the 5 major merits review tribunals. That announcement is outlined in a note at the beginning of this edition of *Admin Review*. The full text of the Attorney-General's Press Release appears in TRIBUNAL WATCH (below).

Introduction of Privative Clause For Certain Migration Act Decisions

On 25 March 1997, the Minister issued a further Media Release concerning a proposed privative clause to be introduced to limit refugee and immigration litigation. The text of that Media Release follows:

"Government to limit Refugee and Immigration Litigation

The Minister for Immigration and Multicultural Affairs, Philip Ruddock has announced plans to limit the growing cost and incidence of litigation of refugee and immigration decisions.

"There has been significant growth in cases going to the courts in recent years and this has added to delays and has cost the taxpayer millions of dollars, " Mr Ruddock said.

"Immigration and refugee applicants have access to a thorough merits assessment of their case. If they are unhappy with the outcome, they can seek independent merits review before a Tribunal, so they have every chance to put their case."

"However, in addition they can also access the Federal and High Courts, giving them up to three levels of judicial review."

There are currently 623 active litigation cases in the Immigration portfolio, of which 422 relate to on-shore refugee decisions.

A substantial proportion of these cases will be withdrawn prior to hearing. Of those cases that do go onto substantive hearings, the Government currently wins 89%.

"Many people are using litigation to delay their departure even though they have no legitimate claim to remain in Australia," Mr Ruddock said.

"To address this issue, the Government will introduce a 'privative clause' for many decisions under the Migration Act, to effectively limit the volume and cost of litigation."

A privative clause is a provision within an Act of Parliament, the practical effect of which will be to limit judicial review to whether the decision maker made a decision that was within their jurisdiction and power to make. This does not affect access to merits review.

The Government has received advice from several leading Queens Counsel that this is likely to be the most effective way of addressing this problem.

The change, foreshadowed last week, follows the Coalition commitment to undertake a review of immigration decision-making and is in line with the Government's determination to simplify the decision-making system.

The 1995-96 Budget shows that litigation cost the Department of Immigration and Multicultural Affairs $7.4 million dollars. This does not include legal aid nor the cost of running the Courts."

Effect of Treaties in Administrative Decision Making – Government Response to the *Teoh* Case

On 25 February 1997 the Minister for Foreign Affairs, the Hon. Alexander Downer MP, and the Attorney-General and Minister for Justice,