Administrative Law: developments under a Coalition Government

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This is a period of profound change to the system of Commonwealth administrative law. The projected restructuring of the major Commonwealth administrative tribunals; the proposed radical re-development of the complaints-handling process for human rights and anti-discrimination violations; the reneging on the promise to expand the *Privacy Act 1988* (Cth) regime to the private sector; and the introduction of the Bill to require public consultation for much regulation reform, are developments unlike any experienced since the Commonwealth judicial and administrative review system was first established. If one adds to that the moves to corporatise, to privatise and to contract out government services; the proposed legislative changes to enhance the role and independence of the Auditor-General;[1] and the legislative and judicial restrictions on judicial review rights which have emerged recently, it is clear that there are major changes in place or on foot for the Commonwealth framework of administrative law.

Why are these changes occurring? Whence does the impetus arise? It is clear that there is a distinct preference for less regulation. There also appears to be a perception that there are too many avenues for review, that complaints are too costly, that the system is confusing, and that administrative law inhibits commercial activity. Instead, the emphasis should be on self-regulation, for example by means of codes of conduct on the one hand, balanced by heavy criminal penalties for breach on the other.

These perceptions and the changes which are flowing from them have the potential to marginalise administrative remedies and to downgrade the complaints-handling bodies – key watchdogs of public sector accountability.[2] This paper will explore whether this will happen by focusing on the courts, the tribunal system, the investigative and reporting functions of the Commonwealth and Defence Force Ombudsman (Ombudsman), and the human rights and anti-discrimination bodies – the core elements of the framework of administrative law.

The Harbingers of Change

Pressures for change had been building up for some time. Let me give three instances.

Tribunal processes and fair process. Complaints had been made that the procedures of some tribunals, particularly the Commonwealth Administrative Appeals Tribunal (AAT), had become too formal. These originated from a paper by Professor Disney in 1992 at the Australian Institute of Administrative Law (AIAL) Forum. In that paper Disney criticised the increasing complexity of tribunal processes which he saw as an impediment to citizens obtaining administrative justice.[3] That issue was picked up and debated in Adelaide in September of that year by three eminent administrative lawyers – Professor Dennis Pearce, Justice Deirdre O'Connor, then President of the AAT, and Justice Olsson of the South Australian Supreme Court. Although the three commentators rejected the proposition 'That there is too much natural justice', each stressed that tribunal procedures must be flexible in order to prevent too great a burden being placed on public administration.[4]

Justice O'Connor, however, noted that part of the problem arose from the perceived pressure by the Federal Court that the AAT meet court-like processes and standards. It can be argued that

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that pressure was removed in 1996 by the decision in *Minister for Immigration and Ethnic Affairs v Wu Shan Liang*[5] in which the High Court warned the Federal Court against imposing on the administration requirements that were too demanding. But whether the federal tribunals heeded the warning from Canberra and Adelaide is hard to assess. The perception is that some did not and that their failure to do so was reflected in the announcement by the Coalition Government that the five major federal merit review bodies – the AAT, the Immigration Review Tribunal (IRT), the Refugee Review Tribunal (RRT), the Veterans' Review Board (VRB) and the Social Security Appeals Tribunal (SSAT) – are to be amalgamated.

Immigration. The next warning was directed at the courts but has also impacted on administrative review bodies. The thrust of the admonition was that judicial review was impacting too heavily on public administration, particularly in the migration jurisdiction. The warning appeared in the guise of the *Migration Reform Act 1992* (Cth), implemented in 1994, which took away those grounds of review such as unreasonableness, relevancy and irrelevancy, and bad faith which allow the courts and the administrative review bodies the greatest latitude to invalidate decisions.[6]

The legislative move to restrict the grounds of review was the first such attempt and it was watched with considerable interest by other agencies. They had to wait some time for the restriction to be tested. In November 1996 in *Minister for Immigration and Ethnic Affairs v Ozmanian*[7] the full court of the Federal Court, led by Justice Sackville, found that the legislative intention to exclude review was too powerful to be subverted. The validity of the relevant provisions, which are now found in Parts 2 and 8 of the *Migration Act 1958* (Cth), was upheld.

Veterans' affairs. A lesser known development occurred in the veterans' affairs arena. The outcome of the moves in this portfolio has seen the removal of the jurisdiction of the Veterans' Review Board, the AAT and the Federal Court over a pivotal question relating to entitlement to a war pension – whether there is a link between a claimed disability or death of a veteran and service. The exclusion of review was made on the basis that tribunals with lay members were not able to deal consistently with medical-scientific issues and that the adversarial approach to fact finding was inappropriate for issues that call for detailed technical knowledge. These reasons again imply a criticism of the administrative and judicial review processes. The solution was to transfer the jurisdiction over the causation issue to two new tribunals with medically qualified members.

The validity of the legislative scheme which set up the two specialist bodies and excluded the more traditional review forums was upheld by the Federal Court in November 1996 in *Vietnam Veterans' Association of Australia v Cohen*,[8] and by an authoritative panel of the AAT in *Re Jenkin and Repatriation Commission*[9] in February 1997. The result has virtually quarantined from review a critical aspect of claims of entitlement to a pension for a service-related disability.

Summary. These developments marked a significant degree of dissatisfaction with federal administrative law from agencies which are high users of the system. The result of the complaints about excessive formality and the stringency of the demands of administrative law has been that two tribunals (the IRT and the RRT) were given only a limited review charter, the AAT was exhorted to be less curial in its procedures, the Federal Court was stripped of part of its supervisory jurisdiction in migration and refugee matters (and may lose it almost completely if a successful ouster clause – see later – is introduced), and the administrative review bodies and the Federal Court have lost a key part of their veterans' affairs jurisdiction. These omens have not been lost on the new Government which can see that its plans for a smaller, less formal and less costly review system is welcomed by sectors within public administration.

New Developments

Framework of Tribunal Review

On 20 March 1997 the Attorney-General announced the Government's intention to implement the Administrative Review Council's *Better Decisions* report and to amalgamate the five major administrative review bodies into a single tribunal, the Administrative Review Tribunal (ART).[10] Public details are limited, although it is assumed, in line with the recommendations in the *Better Decisions* report, that the new body will comprise seven divisions (welfare rights; veterans' payments; migration; commercial and major taxation; small taxation claims; security; and a general division exercising the residual jurisdictions).[11] The combined output of these bodies in 1995-96 was 32,490 finalised hearings which means that the new tribunal will have the highest volume of matters of any federal review body.[12]

The reasons given for the move are the need to lower costs; to reduce the number of applications; to streamline the administrative review tribunal structure; to reassess the scope of administrative review; and to do away with excessive legalism. These criteria contain a thinly veiled criticism of the AAT in the references to 'excessive legalism' and 'costs', although the cost per hearing figures suggest that the two migration tribunals may also have been targeted.[13]

The arguments in favour of retaining the existing structure have been well made by others.[14] My comments will be restricted to four aspects of the Government's announcement: the cost of the new body; whether all federal tribunals should be under the ART umbrella; whether ART should have a review panel structure for reviews by leave; and what should be the ambit of administrative review.

Cost of ART? In view of the criticisms implied in the government announcement, it is surprising that the decision has apparently been made without any detailed costing of the new body. The financial outlays on the mega-tribunal are bound to be significant. Given the projected volume of cases and the fact that representation, leading to longer hearings, will be introduced for at least two of the currently less expensive, high volume, jurisdictions, the expense of the new body will inevitably increase. Moreover, even rough costings are instructive. Using 1995-96 figures, the five merit review bodies cost the taxpayer $64 million.[15] If the cost per AAT hearing in 1995-96 was used for all 32,490 hearings, the total would have been $118 million. If an average cost was adopted, spread over the five tribunals, the total figure for the same number of hearings would have been $76 million. In other words, despite having some costly features, the current system is cheaper than either projected figures, one of which, the average cost model, is an underestimate of the future costs per hearing of the new body.[16]

Is ART to be comprehensive? The proposed amalgamation can be seen as a move to reinstate the original Bland Committee notion that, with limited exceptions, there should be a single Commonwealth merit review body.[17] The press release referred only to the five major merit review bodies – the AAT, the SSAT and VRB and the two migration bodies, the IRT and the RRT. That is consistent with the recommendations in the *Better Decisions* report. The Administrative Review Council did not have the resources to undertake a comprehensive examination of all federal primary decision-making and review tribunals and chose to concentrate solely on the high volume and high profile jurisdictions. The Government does not have that excuse.

That raises two questions. Are the existing review bodies which were not mentioned in the press release to be brought under the ART umbrella? These would include, for example, the Australian Fisheries Management Authority, the Great Barrier Reef Marine Park Authority, the Specialist Medical Review Council, and the Development Allowance Authority. What is the relationship of the ART to primary decision-making, independent bodies for which the AAT had exercised a

first tier review function? These include the Australian Community Pharmacy Authority, the Australia New Zealand Food Authority, the Medicare Participation Review Committee, the Defence Force Retirement and Death Benefits Authority, the Export Development Grants Board, and the Conscientious Objection Tribunal. The question of whether these bodies should be permitted to continue as independent tribunals needs to be addressed. If they remain independent, any suggestion that the Bland Committee perception is about to be realised becomes unrealistic. Further, assuming that the ART remains as the review body for these tribunals, that creates the anomalous position that what was intended to be a generalist first tier review body, has a second tier and, in some instances, a third tier review function for a group of existing tribunals. That cuts across the stated objective of the amalgamation which was to "streamline administrative structures" and to reduce costs.

Absence of Review Panel. The most startling omission from the press release is the absence of any reference to the *Better Decisions* recommendation that there be a second, review tier of the Administrative Review Tribunal.[18] Reduced although it was to a 'by leave' only function, the Review Panel of the Administrative Review Tribunal preserved the best aspects of an authoritative final tier of administrative review. If the Government wants an effective administrative review body, it is critical for that body to develop principles which facilitate consistent and uniform decision-making across public administration. To replace the AAT with a collection of divisions speaking in different tongues will exacerbate, not alleviate, that aim. A coherent and consistent administrative review jurisprudence can only be developed by a body with a single and authoritative voice – not by a loose federation of specialist divisions operating according to individualised processes and developing a separate stream of rules.

One of the biggest risks of the *Better Decisions* report was that the elevation of the specialist tribunals to become part of the first tier body would lead to one of two outcomes – either they would become over-judicialised; or that the super-tribunal would lose that independence, stature and the high quality legal and fact-finding skills needed in complex cases.[19] That made the Review Panel idea the more attractive. If formal judicial processes, high level legal representation and a curial model could be confined to the Review Panel, that would prevent the tendency for these characteristics to develop at the first tier of the ART. Legalism is acceptable in the body which is seeking to achieve consensus amongst a disparate group of decision-makers and to devise general principles to apply across the administration. If there is no second tier there are very real fears that creeping legalism will emerge in the divisions and, further that, by default, the Federal Court will become the second tier of administrative review.

Ambit of administrative review. The press release included as one of the justifications for the restructure, the need to reassess "the basis and scope of administrative review". Jack Waterford in an article in *The Canberra Times*[20] refers to a plan to cut back on the scope of the review right to something akin to a rationality test – is the decision defensible, not is it the correct or preferable decision. Reducing review rights in this way has a number of dangers. The article points out that adoption of this test will mean that the merits of the case can be challenged "only if an agency has plainly ignored relevant facts or has taken irrelevant facts into consideration". Such considerations suggest that merits review is to be replaced by judicial review grounds, a development which would undermine the dichotomy between the two forms of review. Even if "defensible" means defensible as a matter of fact and law, use of that test invites the question "defensible" against what criteria? The adoption of "defensible" as compared with "preferable" is at least as open to individual choice and perhaps more so. The better solution, to avoid too great a degree of discretion remaining with decision-makers, is to do as has been done in the social security jurisdiction, namely, tightly define the legislative criteria against which decisions are made.

There are also rumours that the new body will be required to take greater account of policy. That can already be achieved if a Minister is given legislative authority to give directions. Presumably, any developments of these kind could only be achieved by legislative amendment and it is difficult to comment without knowing the form of wording which is contemplated. The dangers are that the move will take away a safeguard in the accountability chain, namely, the ability of review bodies to test the legality of policy developed by the executive. Secondly, it will undermine that independence which is an essential attribute of an effective external review system. Enforced compliance with departmental or Ministerial policies risks loss of that independence and the taint of departmental capture. These suggestions raise significant matters of concern and need critical evaluation before they are adopted.

Ouster of Review in the Migration Jurisdiction

How far the Government is prepared to go to remove the review jurisdictions is indicated by the following development. The Minister for Immigration and Multicultural Affairs, the Hon Philip Ruddock, has announced that it is intended to introduce a broadly worded privative clause which will restrict both High Court and Federal Court review to "exceptional cases" only. An impetus for the clause appears to have been remarks by the High Court, especially Gaudron J, that a factor in upholding the effect of such a clause would be that there is already in place a comprehensive merits review regime.[21] In immigration that requirement is met by the two existing merit review tribunals, the IRT and the RRT, which are soon to be combined in a single division of ART.

The success of this strategy is a long way from being tested. However, it is possible to make some predictions. With one exception,[22] the recent ouster cases being relied on involved the Federal Court or the Conciliation and Arbitration Commission.[23] That is, the bodies whose decisions were being insulated were a superior federal court or the long established body at the apex of the industrial relations system. The High Court may be less prepared to defer to the decisions of what will simply be a division of the new mega-review tribunal.

That judgment is based on the information currently available about ART. The tenor of the press release, combined with the recommendations of the *Better Decisions* report, indicate that ART is intended to operate more like a first tier tribunal than a final tribunal of review. Moreover, the *Better Decisions* report contains a clear message that there is to be less emphasis on legal qualifications in the membership of the new tribunal. Herein lies the weakness of the strategy. The decisions being protected from review will be those of tribunals or a division of a tribunal. The High Court warned earlier in *Craig v South Australia*[24] that it will look critically at any attempt to oust review of decisions of tribunals, particularly if the tribunal is constituted wholly or partly by members without legal qualifications. Given this clear message, the High Court is likely to be reluctant to permit the migration division of ART to be, in most cases, the final tier of review.

To oust judicial review in other than exceptional cases also significantly reduces the ability of the jurisdiction to obtain a final authoritative ruling on issues of law. My experience is that the quality of the lawyering in the Department of Immigration and Multicultural Affairs is extraordinarily high and it can safely be hypothesised that that standard had been attained because of, not despite, the input from judicial review bodies. To substantially restrict Federal and High Court review is likely to diminish, not enhance, those standards to the detriment of migration jurisprudence.

Ombudsman

The Coalition Government Law & Justice policy contained no mention of the Commonwealth and Defence Force Ombudsman (Ombudsman). That omission may indicate that the Office is

already an efficient and effective method of complaint handling. In 1995-96 the Office dealt with 22,000 complaints at a cost of only $8.8 million.[25]

Despite that positive report card, there are other roles which can be suggested for the Ombudsman's Office. The first is novel, the second has already been adopted but could be expanded. A striking weakness of the administrative law framework is that there is no institutional arrangement to follow-up decisions made by external review bodies. That monitoring role would ensure that decisions are implemented in the individual case, and that the implication of review findings are widely disseminated within public administration. The idea is not original. It was suggested by the Western Australian Commission on Government which labelled the position, the Commissioner for Public Sector Standards.[26] At the federal level, rather than create a new office, the Ombudsman could fulfil that critical missing element in the package of administrative law rights and mechanisms.

A second increased focus of the Office would involve paying greater attention to the systemic impact of its decisions. That was a role recommended for it by the *Access to Justice* report.[27] The Office has taken steps towards that goal with the development of an "own-motion" auditing role which is referred to later under *Codes of Conduct.*

Human Rights and Anti-discrimination Agencies

The Government is in something of a quagmire in relation to the National Native Title Tribunal and the Human Rights and Equal Opportunity Commission (HREOC) following the decision in *Brandy v Human Rights and Equal Opportunity Commission.*[28] The solution for HREOC is apparent from the *Human Rights Legislation Amendment Bill 1996*. The thrust of the amending law is to reduce from three to two the number of stages of review. The mediation and conciliation function is to be retained by HREOC to be exercised solely by the President, delegating to the Human Rights Commissioners; while the determination function is to be located solely in the Federal Court, exercisable principally by judicial registrars drawn, it is suggested, from the Federal Court's industrial jurisdiction.

It is not possible to do justice to the amending legislation in this paper. However, it warrants two brief comments. The plan strips the specialist commissioners of most of their existing powers. They are not even to be involved in the conciliation or mediation process. The redistribution of functions is likely to overload the President and Human Rights Commissioners at the expense of the loss of existing expertise of the specialist commissioners, whose functions have been markedly confined.

The remaining part of the package – granting the determination function to judicial registrars – raises issues about cost, formality and the appropriateness of the qualifications of the industrial registrars to handle this specialised jurisdiction. The proposal invites a number of questions. For example, will the registrars to be given appropriate training? Second, although the Court is to undertake the determination function without being "bound by technicalities and legal forms"[29] will officers of the Federal Court be able to operate in a sufficiently informal manner? Other issues are whether claimants should be able to go straight to the Federal Court, bypassing the HREOC process; and whether it would be simpler to vest the jurisdiction in State and Territory bodies not burdened by the separation of powers legacy.

What Alternatives are Proposed?

The developments chronicled in this paper indicate that the Government wishes to reduce reliance on the existing administrative and judicial review avenues. The issue is how effective are

the proposed alternatives – two of which are greater use of internal review and reliance on codes of conduct.

Internal Review

One theme which it is clear will be a major focus in the coming years is increased use of internal review processes. There are clear advantages in having internal review. It is cheap, it is an excellent performance measure, it provides an effective system of peer review; and is an indicator of needed policy change.

The effectiveness of internal review has been graphically illustrated by an example drawn from the Department of Veterans' Affairs. In 1995-96 extensive use was made of an own motion review provision available under s 31 of the ***Veterans' Entitlements Act 1986*** (Cth). A team of senior departmental officials re-examined 5,500 adverse decisions review of which had been sought by the Veterans' Review Board. 2,100 of the applications, or nearly 40%, were resolved in favour of the applicants.[30] In the first seven months of the 1996-97 financial year from a total of 3,645 applications for review, the original decision was varied in 1,999, or 55% of cases.[31] (These figures contrast with the outcomes in Social Security where that Department's statutorily required internal review only overturns some 25% of the 32,000 decisions considered by Authorised Review Officers.[32]) This was undoubtedly a user-friendly review mechanism for the applicants whose claims were upheld in full or in part.

It is apparent from this example that a properly set up and organised internal review framework can be a cheap and effective filter of review applications. However, internal review has an inherent defect. Its location within an agency means it will always be perceived to lack independence. Hence it can never be a satisfactory substitute for external review. And if there has to be a choice between internal and external review, on cost or efficiency grounds, external review must take precedence. It is significant that that was the direction chosen by the Minister for Immigration and Multicultural Affairs, the Hon Philip Ruddock MP, in his recent announcement of the amalgamation of the Migration Internal Research Office with the Immigration Review Tribunal.[33]

Codes of Conduct

A striking feature of the current regulatory regime is the move to self-regulation. Industry standards, codes of practice, benchmarking, and codes of conduct attest to a renewed belief in the value of 'putting one's own house in order'.[34] The Government Service Charter Task Force is presently developing key principles to be included by public sector agencies, including the national utilities, in customer service charters.[35] What impact are these developments likely to have on administrative law?

The advantages of self-regulation are uncontrovertible. Self-made rules are more likely to be observed; charter precepts can be changed rapidly; handling complaints within an agency provides information about the adequacy of the service, leading to improvement in performance and customer satisfaction; and the very experience of developing a charter, particularly if there is input from consumers, is a valuable aid to management.[36] But will self-regulation oust administrative law remedies?

The answer is undoubtedly "No". The 'charter movement' is focused on an improvement in the delivery of goods and services. Administrative law provides mechanisms for the handling of complaints about decisions, not goods or services. Hence, the impact of the movement is likely to be minimal on review agencies. The principal exception may be in relation to the Ombudsman's Office. That Office has the function of improving general agency practices and the introduction

of Charters, if they improve services offered by agencies, may lead to a diminution in the Ombudsman's workload. However, even if a code of conduct contains a standard for decision-making, that standard is likely to take the form of a general exhortation, with moral, not legal force. Obligations of that kind are unlikely to have sufficient impact to significantly improve the quality of decision-making and hence reduce the volume of applications for review.

Within government, how effective is the move to adopt codes or charters? In a recent survey of agencies to assess whether they had adopted a service complaints process, the Ombudsman's Office discovered that "very few had a system in place that even approached the requirements of the Australian Standard for complaints handling – AS 4269–1995."[37] The survey indicates that this is no short-term panacea. Changing the culture of institutions requires patience, education, persistence and stringent monitoring. Codes of conduct are not likely to be a substitute for administrative law review, even in the long-term.

Conclusion

Robert Hughes designated the prevailing mores as a culture of complaint. That is something to celebrate, not to decry. Australia, particularly at the federal level, has developed mechanisms for dealing with citizens' complaints of which it can be justly proud. The system has been the product of much careful thought, it has been regularly monitored and, if necessary, adjusted.

In its pre-election policies the Coalition stated:

> Administrative law exists to enhance administrative justice. It is a crucial means by which the Government and the bureaucracy are directly accountable to individuals affected by their actions.[38]

Let us hope the Government heeds its own policies. We need to remember it is easy to abolish institutions and to undo good work. Moves to reduce the importance of the courts and the tribunal system and to lessen the effectiveness of the bodies which investigate citizens' complaints should be resisted because they are taking away important safeguards. Governments weaken the links in the accountability chain at their peril; people only have confidence in a system which is independent and impartial. We forget these lessons at our peril.

Notes

1 Auditor-General Bill 1996; Audit (Transitional and Miscellaneous) Amendment Bill 1996; Commonwealth Authorities and Companies Bill 1996; and the Financial Management and Accountability Bill 1996.

2 The other links in the accountability chain are the accountability of parliamentary members to their electors; the accountability of the executive to the Parliament; and the accountability of the executive for meeting their financial and other goals (B Stone "Constitutional Design, Accountability and Western Australian Government: Think With and Against the 'WA Inc' Royal Commission" (1994) 24 *WA Law Rev* 60).

3 J Disney "Access, equity and the dominant paradigm" in J McMillan (ed) *Administrative Law: Does the Public Benefit?* Canberra, AIAL, 1992, 1.

4 The three papers are reproduced in (1994) 1 *AIAL Forum* commencing on p 82.

5 (1996) 185 CLR 259.

6 *Migration Act 1958* (Cth) s 476.

7 (1996) 141 ALR 322.

8 As yet unreported, 15 November 1996, No NG111 of 1996.

9 As yet unreported, 20 February 1997, No V96/145.

10 Press Release "Reform of Merits Tribunals" Attorney-General and Minister for Justice, 20 March 1997.

11 Administrative Review Council *Better Decisions: review of Commonwealth Merits Review Tribunals* (*Better Decisions*) Report No 39 (1995) paras 8.10-8.19.

12 Administrative Review Council *Twentieth Annual Report 1995-96* 28-32.

13 Press Release "Reform of Merits Tribunals" Attorney-General and Minister for Justice, 20 March 1997.

14 eg D O'Connor "Effective Administrative Review: an Analysis of Two-Tier Review" (1993) 1 *Aust J of Admin Law* 6-7; J Disney "Reforming the Administrative Review System" (1996) 6 *Law and Policy Papers* CIPL, 20-32; P Johnston "Recent Developments Concerning Tribunals in Australia" (1996) 24 *F L Rev* at 330; R Creyke "Introduction and Overview" (1996) 24 *F L Rev* 228-29.

15 These costings, from annual report figures, are for the 32,490 hearings which occurred in 1995-96.

16 The costs in 1995-96 per application finalised, was $621 for the SSAT; $717 for the VRB; $3,270 for the IRT; $4,500 for the RRT; and $3,637 for the AAT (figures obtained from annual reports for these bodies). The average cost is likely to be an underestimate because in 1995-96 60% or nearly two-thirds of the total number of hearings were conducted by the SSAT and the VRB and do not have agency representation. It is assumed that there will be agency representation at many of those hearings when ART is established.

17 *Final Report of the Committee on Administrative Discretions* (the *Bland Committee Final Report*) Parliamentary Paper No 316 of 1973, paras 122-131.

18 ***Better Decisions*** paras 8.42-8.72.

19 R Todd AM "The Structure of the Commonwealth Merits Review Tribunal System" (1996) 7 *AIAL Forum* 35, 37-38.

20 Jack Waterford "Government re-opens case for independent review rights" *The Canberra Times* Monday, 28 April 1997, 1.

21 *Darling Casino Ltd v NSW Casino Control Authority Ltd* (as yet unreported, decision No FC 97/011, 3 April 1997; *Deputy Commissioner of Taxation v Richard Walter* (1995) 183 CLR 168.

22 *Deputy Commissioner of Taxation v Richard Walter* (1995) 183 CLR 168.

23 *O'Toole v Charles David Pty Ltd* (1991) 171 CLR 232; *Public Service Association (SA) v Federated Clerks' Union (SA)* (1991) 173 CLR 132; *Deputy Commissioner of Taxation v Richard Walter Pty Ltd* (1995) 183 CLR 168.

24 (1995) 184 CLR 163 at 176-177.

25 J T Woods "Where are complaints going?" a paper delivered at the IPAA National Conference, 22 November 1996; *Commonwealth Ombudsman: Public report on activities for 1995-96* 1; Administrative Review Council *Twentieth Annual Report 1995-96* 28-32.

26 P Johnston "Recent Developments Concerning Tribunals in Australia" (1996) 24 *F L Rev* 331-332.

27 *Access to Justice - an Action Plan* Canberra, Attorney-General's Department, 1994, para 12.54.

28 (1995) 127 ALR 1.

29 Human Rights Legislation Amendment Bill clause 46PO.

30 *The Annual Reports of the Repatriation Commission and the Department of Veterans' Affairs 1995-96* 36.

31 Information supplied by the Department, 24 April 1997.

32 Less than 1% (0.9%) of the total of some 35 million primary decisions made annually by the Department (Department of Social Security Preliminary *Briefing on Review and Appeals System* 2).

33 The Hon Philip Ruddock MP "Sweeping Changes to Refugee and Immigration Decision Making" Press Release, 21 March 1997.

34 A D Rose "Future Directions in Australian Administrative Law: the Administrative Law System" in J McMillan (ed) *Administrative Law: Does the Public Benefit?* (1992) Canberra, AIAL, 217-218.

[35] Administrative Review Council *The Contracting Out of Government Services* Issue Paper February 1997 para 4.18; JTD Woods "Where are complaints going?" a paper presented to the IPAA National Conference, 22 November 1996, 2.

[36] Regulatory Review Unit, The Cabinet Office NSW *From Red Tape to Results Government Regulation: A Guide to Best Practice* February 1995, 39.

[37] JTD Woods "Where are complaints going?" a paper presented to the IPAA National Conference, 22 November 1996, 5.

[38] *Law and Justice* The Liberal and National Parties; Law and Justice Policy, February 1996, 27.