

## TRIBUNAL WATCH

### Amalgamation of Merits Review Tribunals

On 20 March 1997 the Attorney-General and Minister for Justice, the Hon Daryl Williams AM QC MP, issued the following News Release

#### “Reform of Merits Tribunal

Cabinet has agreed in principle, to amalgamate the Administrative Appeals Tribunal, the Social Security Appeals Tribunal, the Veterans’ Review Board, the Immigration Review Tribunal and the Refugee Review Tribunal into a single tribunal, the Administrative Review Tribunal.

The amalgamation would streamline administrative structures and enhance operations.

It is envisaged that separate divisions of the proposed ART would develop and maintain flexible, cost-effective and non-legalistic procedures relevant to their jurisdictions.

An interdepartmental committee comprising senior Commonwealth officers will devise a strategy for implementing the amalgamation.

The basis and scope of administrative review, designed to reduce the number of applications, the overall costs of merits review and excessive legalism, will be examined.

Detailed implementation of the recommendations for improvements to process and procedures of merits review tribunals contained in the *Better Decisions* Report of the Administrative Review Council will also be considered.”

### Proposal for an Administrative Decisions Tribunal for New South Wales

The New South Wales Attorney-General’s Department have advised the Council Secretariat that it is expected that legislation to establish an Administrative Decisions Tribunal will be introduced into the New South Wales Parliament in early June. It is hoped that the legislation can be passed in the current session of

the Parliament (which runs until the end of June).

In the preparation of its legislation, the Department has been consulting with a number of experts and says that the proposals have advanced considerably from those raised in early discussions last year.

### United Kingdom: The Annual Report of the Council on Tribunals for 1995/96

The United Kingdom Council on Tribunals is an independent advisory body which was established in 1958. Its functions, as set out in the *Tribunals and Inquiries Act 1992*, include keeping under review the constitution and working of a large number of tribunals and advising on administrative procedures relating to certain statutory inquiries. The Council on Tribunals has a Scottish Committee with direct responsibility for supervising tribunals set up under Scottish legislation.

The Annual Report of the Council on Tribunals for 1995/96 was released in December 1996. Matters in the Annual Report which may be of interest to *Admin Review* readers include:

- Consultation with the UK Council on Tribunals

The UK Council on Tribunals notes that while its primary function, as it relates to tribunals, is to keep under review the constitution and working of specified tribunals, much of its time is taken up with giving advice to Government Departments about proposed legislation to establish new tribunals and new appeal procedures.

The Council on Tribunals notes that a very helpful device for drawing the Council’s existence to the attention of legislation developers within Departments is the *Code for Consultation with the Council* which the Council agreed with UK Government some years ago. The Code explains the desirability of Departments consulting the Council at an early stage in the formulation of proposals requiring new adju-

dicative systems or involving amendments to existing systems. In the Council's view, such advice can best be given at the time that Departments deliver their drafting instructions to Parliamentary Counsel. Parliamentary Counsel has offered to remind Departments of the desirability of approaching the Council for advice. The Council notes its hope that this arrangement will go far to avoid the situation that has sometimes arisen of its becoming aware of proposals to establish a new tribunal only after the legislation establishing it has been introduced into Parliament.

#### Appeal rules: model appeals mechanism

The *Deregulation And Contracting Out Act 1994* contains provisions about enforcement provisions and appeals. These provisions were included in the Act to meet criticisms that enforcement powers were being used by regulators in an over-zealous, disproportionate and unreasonable manner, and that appeal procedures were inadequate. The Act empowers Ministers, subject to certain conditions, by order to improve statutory enforcement procedures in specified ways. It also requires the Secretary of State by order to prescribe model provisions with respect to appeals against enforcement action with a view to their being incorporated, if thought fit and with or without modifications, in certain kinds of enactment affecting businesses.

In its Annual Report for 1994/95 the Council on Tribunals indicated that it had expressed reservations about these provisions mainly because of the proposed use of secondary legislation to deal with matters more appropriately dealt with by primary legislation. It also considered that the provisions were geared to the needs of businesses, as opposed to individuals. With regard to model provisions for appeals, the Council commented that in its experience it was very difficult to devise a single form of appeal mechanism that could be applied to tribunals as a whole and that much remained to be done in working out, in practical terms, procedures appropriate to the various areas in which the model appeals mechanism were to apply.

In the latest Annual Report, the Council on Tribunals updates what has happened on this matter. With the Council's involvement in the drafting, the model appeals mechanism was launched in March 1996: *Deregulation (Model Appeal Provisions) Order 1996*. The Council considers that the new model appeals mechanism achieves a considerable degree of success in providing a suitable framework for appeals systems in the field of enforcement action against businesses and that the Model contained many features of which the Council strongly approved. It said:

"The model is designed to provide a fair and independent process for resolving business disputes. In the interests of achieving the best balance of independence, efficiency and fairness, it provides for a three person tribunal comprising a legally qualified chairman, a member with special knowledge of the matters under dispute and a member representative of the interests of business appellants. Within this framework, the twin objectives of the model ... are to ensure that appeals are determined without unnecessary delay and that the costs or expenses incurred by the parties to appeals are kept to a minimum."

Nevertheless the Council repeated its reservations about the model appeals mechanism. It said:

"We believe that the model tends to obscure the distinction between matters which, in our view, should be provided for in primary legislation, and those which may properly be left to subordinate legislation. We have long considered that the constitution of a tribunal, and its jurisdiction and powers (other than powers relating to purely procedural matters), should be set out in primary legislation. This greatly enhances the perception of the tribunal's independence. However, we favour the use of secondary legislation form procedural rules. This makes future amendment of the rules much easier, and also brings

into play the requirement to consult us under the Tribunals and Inquiries Act 1992.”

- The Council’s Advice on procedural issues arising in the conduct of public inquiries set up by Ministers

The Council’s advice arose out of a consultation exercise initiated by the Lord Chancellor in the light of the report by Sir Richard Scott of his inquiry into Exports of Defence Equipment to Iraq. The Council was invited to comment on the recommendations in that report about the conduct of public inquiries set up by

Ministers to investigate particular matters of public concern.

The Council’s advice examines a number of issues to be addressed by those setting up an inquiry including issues relating to the constitution, powers and procedures of the inquiry. The Council concluded that it is wholly impracticable to attempt to devise a single set of model rules or guidance that will provide for the constitution, procedure and powers of every inquiry. Instead, the Council advised that such issues should be addressed by taking into account, for each inquiry, the objectives of effectiveness, fairness, speed and economy.

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