

PUBLIC ADMINISTRATIVE LAW AND PRIVATE CORPORATIONS

Bettie McNee*

This is the text of a paper delivered on 16 May 2000 to the 6th Annual Company Secretaries' Update.

1. INTRODUCTION

1.1 Benefits of administrative law

Expressed in its simplest form, administrative law has a dual purpose:

- to improve the quality, efficiency and effectiveness of government decision making generally; and
- to enable people to test the lawfulness and the merits of decisions that affect them.

To put it another way, a person whose interests are affected by a government (or administrative) decision can challenge that decision in a court (such as the Federal Court), an administrative tribunal (such as the Administrative Appeals Tribunal), or through an investigatory agency (such as the Commonwealth Ombudsman). The lessons learned through this process can, in turn, be used to improve future decision making.

In its submission to the Senate Legal and Constitutional Legislation Committee 1996, the Administrative Review Council identified the following as administrative law values:

- lawfulness;
- fairness;
- rationality;
- openness and transparency; and
- efficiency.⁹⁷

These values can be described as 'systemic values' that are expected, by the community, to characterise the administrative law system, which focuses particularly on the way in which decisions are made in the public sector.

The administrative law system has been identified as having the following benefits:⁹⁸

* President of the Administrative Review Council. The views expressed in this paper are those of the President and should not necessarily be taken to be the views of the Administrative Review Council generally.

⁹⁷ See paragraph 15 of the submission.

⁹⁸ Administrative Review Council submission to the Senate Legal and Constitutional Legislation Committee, 1996.

- it provides a mechanism for achieving justice in individual cases by enabling people to test the lawfulness and the merits of decisions that affect them; and
- through the provision of feedback to decision makers, it improves the quality of government administration; and
- it provides a mechanism for ensuring that the government acts within its lawful powers; and
- it contributes to the accountability system for government decision making.

It is this paper's hypothesis that administrative law mechanisms benefit not only government but make for good corporate governance. For the systemic benefits that characterise it - individual justice, good governance, lawfulness and accountability - are as critical for private corporations to demonstrate, as they are for government.

This paper will focus, in particular, upon one of the systemic benefits of administrative law, that of accountability and how the adoption of transparency mechanisms to demonstrate accountability in government decision making can assist in the development of good corporate governance.

1.2 Blurring of public and private law

The traditional view of administrative law is that its mechanisms apply only to public sector agencies, leaving private law remedies, including tort law, contract and consumer protection legislation to govern activities outside the public sector.

That view is increasingly being challenged. A number of commentators and government studies have referred to the blurring of traditional distinctions between what is 'public' and 'private'.⁹⁹

Mechanisms already developed in administrative law have been adopted by the private sector, for example, industry specific ombudsmen and other complaint-handling schemes and legislation extending privacy protections to the private sector has recently been introduced into Parliament.

Governments are increasingly looking to private corporate models for reform of the public sector. For instance, the increasing reliance on contracting out of government services to private contractors, and the consequent 'privatising' of the relationship between service providers and members of the public, is one of the changes occurring in the way government is operating. The Government has sought out alternative models for reform in order to maximise the efficiency and quality of government administration.

⁹⁹ See Seddon N, *Government Contracts: Federal, State and Local*, The Federation Press, 1995, at pages 14-15. See also Aronson M, 'A Public Lawyer's Responses to Privatisation and Outsourcing', and Mullin D, 'Administrative Law at the Margins' in Taggart M (ed) *The Province of Administrative Law*, Hart Publishing, Oxford, 1997; Barnes J, 'Is Administrative Law the Corporate Future?' (1993) 21 *Australian Business Law Review* 66; Airo-Farulla G, "'Public" and "Private" in Australian Administrative Law' (1992) 3 *Public Law Review* 186.

As a corollary, as government services are increasingly being contracted out, and the private sector is performing functions traditionally performed by government, whether through outsourcing, privatisation or through corporatisation and the establishment of government business enterprises (GBE's), the functions performed by private corporations have been put beyond the scope of traditional public administrative law.

Despite this, the government has sought to preserve public law rights of members of the community through contractual mechanisms and administrative law-type remedies. In order to have the advantages offered by the, until recently, untapped public sector, the private sector is needing to adjust itself to the accountability requirements expected of them by government. Further, as the role of government and the private sector blur, the community has increasingly begun to expect corporate citizens to provide similar protections for their interests as provided by government and to be accountable for themselves in ways traditionally limited to the public sector.

Yet while the private sector itself has had recourse to administrative law to manage its relationship with the public sector, it has not traditionally seen itself as being regulated by the same administrative law principles.¹⁰⁰

As the division between public and private activities becomes more problematic,¹⁰¹ it is timely to consider the extent to which private corporations, by borrowing public sector concepts and values, are developing a new model of private sector accountability.

2. PUBLIC SECTOR ACCOUNTABILITY

2.1 Administrative law mechanisms

The extensive reforms to administrative law in the 1970's were intended to overcome limitations in Parliamentary and judicial processes for securing redress for individuals affected by government actions.¹⁰²

Administrative law mechanisms occupy an important position in the constitutional framework by safeguarding the democratic ideals of accountability and transparent, participatory and rational government.

¹⁰⁰ Although there have been suggestions that this was a trend for the future: see Jeffrey Barnes, 'Is Administrative Law the Corporate Future?' (1993) 21 *Australian Business Law Review* 66.

¹⁰¹ For example, because of the increasing involvement of corporations and other private bodies (such as religious and charitable institutions) in activities that have traditionally been regarded as 'public' in character.

¹⁰² Administrative Review Council, *The Contracting Out of Government Services: Issues Paper*, Canberra, February 1997, para 3.4.

As a result of these reforms, a person who has a concern or a complaint about government action may have access to a number of administrative law remedies. These remedies cover a number of circumstances, among others:

- if a person is unhappy about the way in which a service was delivered to them or about a decision affecting them, they may complain to the Ombudsman, who can investigate their complaint and seek to have it resolved by the relevant government agency;
- if a person wants access to government information or personal information in the possession of a government agency, they have rights of access under the *Freedom of Information Act 1982* (FOI Act), and can seek to have personal information about them amended;
- if a person is unhappy with a decision that affects their interests, such as a decision about their eligibility to receive a service, they may be able to:
 - seek reasons for the decision;
 - have the decision reviewed and changed by an independent tribunal;
 - have the decision reviewed by the Ombudsman, who may recommend that a different decision be made;
- if a person wants to question the lawfulness of a decision that affects their interests, they may be able to:
 - seek reasons for the decision;
 - have that decision reviewed by a court and ruled unlawful.¹⁰³

In addition, any personal information held by a government agency about that person will be safeguarded by the standards established by the Information Privacy Principles set out in the *Privacy Act 1988*. These govern the collection, storage, security, access, use and disclosure of personal information.¹⁰⁴ With the introduction into Parliament of the Privacy Amendment (Private Sector) Bill on 12 April 2000, the Government has taken steps towards extending further privacy protection in regards to the handling of personal information used by the private sector.

2.2 An accountability system for government decision making

The concept of accountability is central to the notion of good governance and ethical public administration.¹⁰⁵

Openness in government is the indispensable prerequisite to accountability to the public. It is a democratic imperative.¹⁰⁶

¹⁰³ Administrative Review Council, *The Contracting Out of Government Services*, Report No. 42, Canberra, August 1998 at para 3.5.

¹⁰⁴ In relation to the credit reporting industry and tax file numbers.

¹⁰⁵ Industry Commission, *Competitive Tendering and Contracting by Public Sector Agencies*, Report No. 48, Melbourne, 24 January 1996, page 81.

Openness, or transparency, and through it accountability, is served in a number of ways through administrative law mechanisms.

On an individual level, rights are protected by enabling a person to obtain written reasons for an administrative decision. The FOI Act enables a person to obtain access to government documents. Associated with the principles of access to information are the obligations under the *Archives Act 1982* concerning the maintenance and storage of government records.

Further, the system enhances accountability by feeding useful information back into government decision making.

Reports and the general work of the Ombudsman can provide guidance to administrators on good administrative practices, and legal requirements. Complaints to the Ombudsman provide agencies with an opportunity to monitor their performance, and can be used to identify deficiencies in the agency or in the programs they administer.

This feedback promotes better decision making both generally, as well as in the individual case. Similarly, changes to primary decisions by courts and tribunals when fed back into a public sector agency can improve that agency's decision making practices.

Access to information through the FOI Act has an important role in ensuring accountability by the organisation which is holding that information. In particular, it gives individuals the right to demand that specific documents be disclosed by government, which enables them to scrutinise, discuss and contribute to government decision making. Access to one's own personal information, under the *Privacy Act 1988* also enables individuals to protect their privacy.

Thus, administrative law plays a unique role in maintaining public accountability. It ensures that administration is accountable to the individual in respect of its decisions that affect that person. It also improves the whole system of government decision making by increasing its openness and transparency. Although the administrative law system imposes costs on government, its benefits, though incapable of precise quantification, in terms of providing individual remedies and in terms of improving the quality of administration, are significant.¹⁰⁷

3. PRIVATE SECTOR ACCOUNTABILITY

3.1 Accountability mechanisms for shareholders

Private sector accountability mechanisms vary between the type and size and influence of the private sector body. Largely, they are driven (and limited) by market forces and principles, profitability and relationships between the body,

¹⁰⁶ *WA Royal Commission Report*, at paragraph 2.1.3.

¹⁰⁷ ARC Report No. 42, paras 3.7 - 1.13.

through its board, and shareholders. Arguably, the larger the corporate body, the more stringent the accountability requirements imposed upon them.

Private corporations have, on the whole, been quarantined from the administrative law values expected of government.

3.2 Accountability mechanisms for members of the public

For redress against a corporate body, not as a shareholder, but as a member of the public affected by the actions of a private corporation, accountability mechanisms are limited.

As a first step, a consumer may be able to access an industry-based complaint-handling scheme.¹⁰⁸ In recent years, there has been growth in the number of organisations establishing systems for complaint-handling. Many of these schemes have been set up in response to market pressures. These also form a useful mechanism for private bodies to gauge performance on a systemic level, through the monitoring of complaints.

Industry-based systems generally operate at two levels - first, the matter is considered by internal complaint-handling processes of the individual business and, second, in the event that the complaint cannot be resolved internally, the matter is looked at by the more formal industry-based mechanism.

However, industry-based organisations are usually only able to investigate complaints against members of the relevant industry who agree to participate in the industry scheme.

If a complaint-handling scheme is not available, or a person is dissatisfied after the process, the person may be able to seek redress in contract. Contractual remedies are available where a contract exists between a private service provider and a recipient of that service.

Legislation provides a range of other consumer law remedies. For example, provisions in the *Trade Practices Act 1974* and a number of State and Territory Acts enable dissatisfied consumers to take action in courts (or in small claims courts or tribunals) - and, of course, damages are provided for situations where companies engage in conduct that is misleading or deceptive.

Other remedies may be more widely available - in some cases, complaints may be made to a regulatory body such as the Australian Competition and Consumer Commission.¹⁰⁹

Further, the law of torts may provide a remedy for loss or damage suffered by a person as the result of the actions of a private body. This enables the seeking of

¹⁰⁸ Examples include the Banking Industry Ombudsman, the Telecommunications Industry Ombudsman and the Financial Services Complaints Resolution Scheme.

¹⁰⁹ *ibid*, para 3.33.

compensation in situations where one person is considered to have committed an act that results in some form of loss or damage to another person or a person's property.¹¹⁰

At other times, however, consumer law remedies are only available to service recipients if there is a contract between the recipient and the contractor.

In the case of outsourced government functions, the contract will be between the private service provider and a government agency. In this case, a member of the public will be unable to enforce the terms of the contract because of the rules relating to privity of contract - that is, persons who are not parties to a contract cannot generally take action to enforce that contract even though they may be the intended beneficiaries of the contract.¹¹¹

3.3 Compliance systems

One means of monitoring the performance of a private corporation, for increased accountability, and profitability, is through enhanced compliance systems which at present are biased towards monitoring compliance against legislative and regulatory requirements as well as quality assurance programs within the organisation.

3.4 Conclusion

Private law remedies have not traditionally provided the same type of feedback and enhancement of government decision making and accountability that is provided by administrative law remedies. There is a potential loss of accountability where administrative law remedies are not available and private law remedies may not fill that void.

4. SHOULD THE PRINCIPLES OF PUBLIC ADMINISTRATIVE LAW APPLY TO CORPORATIONS?

4.1 Administrative law in jeopardy?

This section considers whether, and how, public administrative law mechanisms can be applied to private sector corporate governance.

The administrative law package was:

premised on a traditional understanding of governance, involving direct decision making by government officers under legislation. This model no longer accurately reflects the full spectrum of executive activity in the post-modern state. In recent times, the

¹¹⁰ *ibid*, para 3.27.

¹¹¹ ARC Report No. 42, paras 3.21 - 3.22.

traditional model of government activity has been overtaken by new pressures and new expressions of public power.¹¹²

As Stephen Free continues, the 'capacity of the existing instruments of administrative law to safeguard the principles of accountability and administrative justice has been jeopardised by the restructuring of public administration'.¹¹³

Administrative law protections, that provided adequate redress for individuals whose interests were affected by government decision making, are being eroded by increased use of contracting out, privatisation and corporatisation.

4.2 Limitations of administrative law in private sector

Administrative law remedies may not, in the absence of legislation, be available to people affected by the actions of government contractors, GBE's or private corporations.

For example, in contracting out, the actions of the contract service provider do not generally fall within the scope of judicial review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (AD(JR) Act). Members of the public may not have any right to seek an internal or external review of a decision of a contractor that affects their interests, or a right to seek reasons for those decisions.¹¹⁴

The Ombudsman may not be able to investigate all complaints about service delivery by a contractor. Complaints to the Ombudsman can be made in relation to a 'matter of administration' only.¹¹⁵ This means that the Ombudsman may be able to investigate the actions of the agency managing the contract, but not those of the contractor.¹¹⁶

Access to documents, other than those containing personal information, under the FOI Act, will not be available.¹¹⁷ Privacy protections will be available under the Privacy Amendment (Private Sector) Bill 2000 in relation to personal information held by contractors under government contracts.¹¹⁸

Similarly, GBE's decisions that are commercial decisions or decisions made other than under specific statutory powers are unlikely to be reviewable under the AD(JR)

¹¹² Free, S, 'Across the Public/Private Divide: Accountability and administrative justice in the telecommunications industry', *AIAL Forum* No. 21, 1999 at page 3.

¹¹³ *ibid* at page 4.

¹¹⁴ ARC Report No. 42, page 18.

¹¹⁵ *Ombudsman Act 1976*, section 5(1).

¹¹⁶ ARC Report No. 42, para 3.15.

¹¹⁷ ARC Report No. 42, at para 3.16.

¹¹⁸ The 'special issues' arising from outsourcing were noted by the Attorney-General in the second reading speech of the Privacy Amendment (Private Sector) Bill 2000. The Attorney said that, 'where government services involving personal information are outsourced to the private sector....it is important to ensure that personal information is given the same level of protection it would receive if it were held by government...'.

Act. The extent to which GBE's are merits reviewable by the Administrative Appeals Tribunal depends upon there being a legislative provision providing for merits review of decisions made under the relevant decision making power. There have been few decision making powers by GBE's, which have been made susceptible to AAT review. The FOI Act applies rarely to GBE's. The Ombudsman may be able to investigate only certain limited action by a GBE.¹¹⁹

4.3 Private corporations and public administrative law influences upon them

Despite this, there are a number of instances where administrative law values have been adopted or adapted for use in the corporate sphere.

Corporatisation

With corporatisation of the Australian Government Solicitor's Office (the AGS) in September 1999, certain public law standards were expected to be met by providers of legal services to the Commonwealth, whether private or through the AGS. These standards were expressed in the form of Legal Services Directions, issued by the Attorney-General, to provide a framework for the delivery of Commonwealth legal services, and in particular, the conduct of Commonwealth litigation. The expectation in this has been that private law firms, providing legal services to the Commonwealth, will be required to observe the highest standards for the provision of legal services, including the 'model litigant' concept, as the AGS has traditionally observed.¹²⁰

With the deregulation of telecommunications in the early 1990's, the then Government announced that it would establish a Telecommunications Industry Ombudsman (TIO) as a mechanism that would protect consumers in the wake of the government's decision to move from its monopoly position and introduce competition to the industry. The TIO was established in 1993.

The role of the TIO is to resolve disputes between telecommunications companies and internet service providers, and residential and small business customers. Federal legislation requires all telecommunications carriers and eligible service providers to be members of the TIO. The TIO is able to make monetary awards to complainants.

Contracting out of government services

Increasingly, government is expecting private service providers to provide what could be termed certain minimum 'public law standards' in the provision of that service. These standards are being effected contractually.

¹¹⁹ Administrative Review Council, Report No. 38, *Government Business Enterprises and Commonwealth Administrative Law*, Canberra 1995, pages 16 - 35.

¹²⁰ The *Managing Justice* Report, by the ALRC, makes clear an expectation that concepts such as the 'model litigant' will still apply - see, in particular, paragraphs 3.130 to 3.132 of that Report.

For example, contracts are requiring mechanisms for dealing with complaints and for informing recipients of complaint mechanisms.¹²¹ Ideally, a contractor's complaint handling systems would satisfy the standards identified by Standards Australia, including the recording of complaints and their outcomes.¹²²

Under legislative reforms proposed by government, agencies that have a contractual right to access any of the documents held by a service provider will be able to access those documents under the FOI Act, subject to exemptions provided by that Act. The Privacy Amendment (Private Sector) Bill 2000 proposes to apply to requests by individuals for access to and correction of personal information about themselves held by a contractor on behalf of the government.

A current example is that of private organisations taking over job placement functions. There has been considerable comment made in relation to charitable organisations that have assumed these functions, and then applied their own values (such as religious beliefs) to the way in which these functions are performed.¹²³

Corporate 'philanthropy'

Increasingly, the government is placing expectations upon corporate citizens to 'fill the gap' in areas of services and amenities previously provided by government. As corporations meet these expectations by providing such services and amenities and fulfilling roles previously the domain of government, the community as well as government are beginning to broaden the scope of persons towards whom private corporations must be accountable.

Already, the community expects that corporations take into account issues which go beyond shareholders' interests and embrace other stakeholders. As an example, government has been critical of the banking industry for withdrawing services from rural Australia - yet to whom do or should banks owe a duty? The blurring of lines between private funded initiatives and public sector, or taxpayer funded, initiatives may be seen as regulating corporate behaviour of a standard beyond that previously applying.

There is no doubt the 'constituency' of private corporations has become broader, extending beyond the traditional model that included shareholders and customers, to the wider community. It is arguable that, once a corporation undertakes traditional, or historical, 'public sector' activities, it acquires new responsibilities.

But what of corporations who have no links with public sector decision-making, whether through inheritance or outsourcing? Should administrative law values and

¹²¹ eg Department of Finance and Administration, *Competitive Tendering and Contracting: Guidance for Managers*, March 1998, page 18.

¹²² ARC Report No. 42, paras 4.12 - 4.14.

¹²³ See, for example, Laura Tingle, 'Church apologises to Jews for jobs policy', *The Sydney Morning Herald*, 1 May 2000, at page 3, relating to the criteria to be applied, by charitable organisations, who receive job applications from individuals who previously worked for public sector job placement agencies.

mechanisms be adopted by a corporation, whose primary obligation is clearly to its shareholders?

5. APPLICATION OF ADMINISTRATIVE LAW VALUES TO PRIVATE CORPORATIONS

The administrative law values referred to above can be, and in some instances are already, incorporated into private sector corporate governance systems by the use of certain mechanisms that have been used in the administrative law system. They have been adopted, on the whole, to enhance the good governance and accountability mechanisms within the corporate body, as well as to meet government, industry and community expectations of accountability.

The administrative law mechanisms adopted or adapted include:

- use of codes of conduct and development of ethical cultures;
- use of statements of reasons;
- privacy protections;
- freedom of information regimes; and
- extended use of ombudsmen as industry regulators.

5.1 Codes of practice and the development of ethical corporate cultures

Corporate decision-making could be enhanced by the use of aspirational (as well as disciplinary) codes of practice that seek to establish, and develop corporate cultures that promote and reward ethical behaviour.¹²⁴

Corporate vision statements and leadership are now common. But with the evolving role of corporations in the broader community, it is timely to review these statements and models to see whether they continue to reflect present day expectations, not only of shareholders, but of the wider community.

5.2 Statements of reasons

The value of statements of reasons, to public sector decision-making, has long been recognised. Such statements assist the decision maker, the person affected by the decision, and future decision makers, by:

¹²⁴ See the report by the Independent Commission Against Corruption, *Ethics: The Key to Good Management* December 1998. See also Noel Preston 'Can Virtue Be Regulated? An Examination of the EARC Proposals for a Code of Conduct for Public Officials in Queensland' (1992) 51 (4) *Australian Journal of Public Administration* 410, at page 412, where he describes the distinction between '*disciplinary* codes that set the lowest common denominator of conduct and which focus on inability to sanction behaviour without intruding on an individual's moral outlook; and *aspirational* codes which set out to inspire rather than punish... encouraging a critical, autonomous and internalised morality.'

- requiring the decision maker to set down the reasons for the decision, the facts relied upon to make the decision and any evidence used to support those facts. The discipline of doing this helps the decision maker to ensure that the decision is well-reasoned, backed up by facts and defensible;
- helping the person affected to understand the basis for the decision, and thus to decide whether the decision should be challenged. A well-reasoned decision, backed up by facts and made on the basis of principles that are clearly expressed, will be less vulnerable to challenge than a decision without such a 'paper trail' to demonstrate its good faith;
- helping a future decision maker (whether reviewing an original decision, or making one on his or her own account) to find and to understand a 'corporate memory' on particular matters; and
- enhancing the quality of corporate decision making by continuing to build the corporate memory and to guide decision makers through the process of making well-reasoned decisions.¹²⁵

The right to request statements of reasons ensures that the decision making process is demonstrably transparent and accountable.

5.3 Privacy

One thing that the community at large has a strong interest in is how private sector corporations protect and respect privacy.

The expanding capacity of private sector corporations to acquire, store, use and transfer information about members of the public is increasingly of concern to the community. In the second reading speech for the Privacy Amendment (Private Sector) Bill 2000, the Attorney-General noted that:

The Australian public has expressed concern about the security of personal information when doing business online.

This concern, and related matters such as the sale of personal data and the security of health information, has been recognised by the Government in its recent work to establish a private sector privacy regime. In the second reading speech for the Privacy Bill, the Attorney-General stated that:

For the first time, Australians will have a right to gain access to [personal information held about them by private sector organisations] and a right to correct it if it is wrong.

¹²⁵ The ARC will shortly publish booklets about how to prepare a statement of reasons, and the benefits of doing so. Although these booklets are targeted at public sector decision makers, they contain valuable information for decision makers working in private sector decision-making.

This bill is about confidence building. It is about giving consumers confidence in Australian business. It is about giving business confidence in a more level playing field. It is about giving the international community confidence that personal information sent to Australia will be stored safely and handled properly.

The advantage for business in providing privacy protections will be that, with increased transparency and accountability for their handling of privacy information, will come increased consumer confidence in business.

5.4 Freedom of information regimes

Access to information gives life to the administrative law value of transparency.

For public listed corporations, stock exchanges force a level of transparency upon them through listing rules requirements. But there are a number of corporations which are not widely owned or listed which have no imperative or incentive for transparent decision making.

While most private corporations operate in a climate of openness with customers, and, to a more limited extent, suppliers, they remain opaque to the general community.

5.5 Ombudsmen

... all the evidence suggests that ombudsmen are destined to become permanent fixtures in the private sector and indeed, at least in crude quantitative terms could eventually supplant the legal process as the primary forum for the formal and informal resolution of disputes between business enterprise and consumers.¹²⁶

Today, some industries have established ombudsmen schemes, which are modelled to a greater or lesser extent on government ombudsmen, to deal with spheres of activity including telecommunications, banking, credit and insurance.

A number of other industries operate complaint resolution schemes, such as health complaints commissioners and, soon, the involvement of the Privacy Commissioner in the private sector.

Often, the extent of remedies available to these industry complaints resolution bodies goes beyond that available to their government counterparts. For example, the Banking Industry Ombudsman and the Telecommunication Industry Ombudsman are able to make monetary awards to complainants, an option unavailable to the AAT or the Commonwealth Ombudsman.

¹²⁶ P Morris, 'The Banking Ombudsman — I' [1987] *Journal of Business Law* 131, at page 132.

The importance of adequate complaint-handling mechanisms cannot be over-stated in creating consumer confidence in the private corporate body. It is both a useful tool for satisfying consumer demand, while operating as an effective quality assurance and accountability mechanism.

6. CONCLUSION

There is increasing evidence that large public corporations are embracing many administrative law principles - but in a piecemeal way, and without the framework that supports public sector agencies.

There exists the opportunity for the private sector to take the public sector experience in developing administrative review systems and leverage on that experience to create its own systems.

Private corporations, particularly those with wide public ownership, will increasingly be under pressure by the broader community to demonstrate their support for the administrative law values of:

- lawfulness;
- fairness;
- rationality;
- openness and transparency; and
- efficiency.