TROUBLE with government decisions

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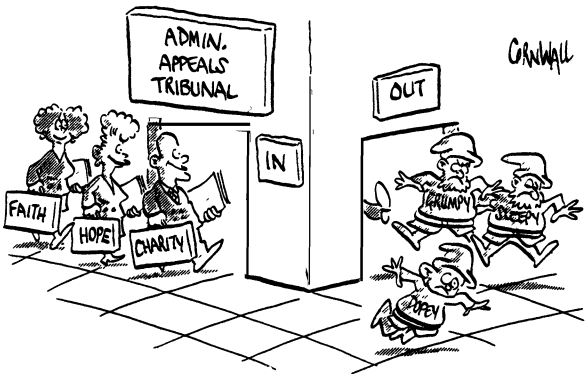
New rights to review government decisions in NSW.



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The people of New South Wales will soon enjoy new rights to appeal government decisions with the creation of a State Administrative Decisions Tribunal (ADT). However, no-one is yet sure what the rights will cover. That will depend on the outcome of a major overhaul of the State's tribunals and a review of government decision-making processes, expected to take another 18 months to complete.

The impetus for the ADT was an election promise to create administrative review rights along the lines of the Commonwealth Administrative Appeals Tribunal (AAT). When the Government started to implement their promise they found over 60 tribunals and a plethora of different types of internal and external mechanisms for reviewing government decisions.[1]

Some of the features of the ADT reflect the 1990s fashion in government tribunals — reviewed, merged and wings clipped. For example, the Tribunal must follow government policy and tribunal members are to be appointed for no more than three-year terms. However, it also has some major innovations which will help to ensure that the tribunal is accessible and flexible in performing its functions. The Tribunal will have a Rules Committee with community representatives to ensure that the procedures are appropriate for the types of issues and the type of people appearing before it. The NSW Government has also foreshadowed a plan to give the ADT concurrent jurisdiction with the Supreme Court to review the legality of government decisions. The result will be the first tribunal in Australia with the express power to review government decisions on the merits and on the basis of common law rights of judicial review.

To encourage informed public debate on the new ADT, community legal centres in NSW conducted a community consultation project on the issue in 1996. The submission to the Attorney-General which resulted from the project, prepared by Public Interest Advocacy Centre (PIAC), proved to be influential in shaping the final form of the *Administrative Decisions Tribunal Act*.

Background

As new rights and obligations have been created by legislation over the past 20 years in areas such as consumer protection and discrimination, tribunals have been created to arbitrate disputes about them. Rights to review government decisions have also grown during that time, covering decisions in areas such as taxing, licensing, freedom of information (FoI), welfare and immigration. These rights are most advanced in the Commonwealth arena and in Victoria and the ACT, which both have AATs modelled on the Commonwealth. These rights are now being reviewed as part of the trend to smaller government and fiscal constraint. An equally important reason for governments to review tribunals is to give executive government greater control over tribunals.

In the case of tribunals that consider merits appeals from government decisions, the reviews reflect the scepticism of many senior bureaucrats and others as to the benefits of independent tribunals conducting merits review of government decisions.[2]

The Commonwealth Government's review of administrative tribunals has been the subject of fierce speculation and public debate since it was announced in April this year. The original proposal announced by the Attorney-General was to 'streamline administrative structures and enhance operations', implementing an Administrative Review Council Report, 'Better Decisions'.[3] This would have resulted in the amalgamation of the AAT with the social security, immigration, veterans and refugee review tribunals into a new Administrative Review Tribunal.

Media reports in June claimed that the review would recommend replacing independent tribunals with appeals to senior bureaucrats from the department responsible for the decision.[4] By mid-July the Attorney-General confirmed that Cabinet is 'firm in its resolve that any proposal for reform of the merit review tribunals is not to affect the level of independence of such bodies in reaching decisions'.[5] A final decision on the review of Commonwealth tribunals, which is being conducted by an inter-departmental committee, is expected later this year.

The Victorian Government has been conducting a major review of its tribunals since 1993. It includes the State AAT as well as tribunals which determine *inter partes* disputes, including small claims, discrimination, credit, residential tenancies and domestic buildings.[6]

The Victorian Minister for Justice and Fair Trading in October 1996 set out perceived deficiencies with the tribunals and plans to address the deficiencies in a discussion paper released in October 1996. The perceived deficiencies include a lack of logical structure of tribunals, inappropriate transfer of jurisdiction from courts to tribunals, inappropriate conferral of administrative and policy functions to tribunals, lack of uniform procedures, and lack of independence from government.

The Minister proposed transferring administrative and judicial functions out of tribunals and conferring functions on tribunals only where the amount in dispute is small, the volume of cases is high, and informality is desirable. Notably, the proposal also says there should be a presumption in favour of merits review of all administrative decisions.

The Minister proposes a merger, and in some cases replacement, of nearly 20 Victorian tribunals, including the Administrative Appeals Tribunal, the Anti-Discrimination Tribunal, Residential Tenancies Tribunal and Small Claims Tribunal, into a Victorian Civil and Administrative Tribunal. The Tribunal is to have eight specialist divisions: Land and Environment, Consumer, Taxation, Licensing, Discrimination, Domestic Buildings, Guardianship and Administration, and a General Division.

Decisions on the licensing of a number of occupational groups which are currently made by tribunals are to be transferred to administrative authorities. These include decisions on the licensing of credit providers, finance brokers, travel agents, private agents, motor car traders and brothel operators. Applications on appeal costs and criminal injuries compensation will also be made to an administrative agency. The Government's decision on implementation of the proposal is to be decided later this year.

The NSW Government's reforms were introduced by the *Administrative Decisions Tribunal Act* and associated legislation passed in June 1997 (ADT Act). At this stage the NSW reforms are primarily an administrative structure to facilitate streamlining of tribunals and to provide potential new rights to review government decisions. The ADT Act amalgamates six existing tribunals and transfers the appeals in areas such as Freedom of Information and taxing and licensing decisions from the courts to the ADT. The tribunals that are merged include the Community Services Appeals Tribunal, the Equal Opportunity Tribunal, the Veterinary Surgeons Disciplinary Tribunal, the Legal Services Tribunal, the Schools Appeals Tribunal and the Boxing Appeals Tribunal.

The further additions to the ADT's jurisdiction will be introduced after a comprehensive review of 21 NSW tribunals and the internal review mechanisms within the NSW Government. The Department of Fair Trading is independently reviewing the tribunals it administers, including the Residential Tenancies Tribunal and the Commercial Tribunal, with a view to the potential for merging them.

The new rights of review

The NSW Government's reason for introducing rights to review government decisions, as contained in the ADT Act, were described by the NSW Attorney-General, Jeff Shaw, by quoting from a 1973 Law Reform Commission report:

> any official action should have reasonable regard to the balance between the public interest which it promotes and the private interest which it disturbs, and be fair. Any person adversely affected by an official action should be able to question the action simply, cheaply and quickly; and procedures should be available which are fair, impartial and wherever possible open.[7]

These principles are reflected in the objectives of the ADT Act and the range of administrative review options it provides. The mechanisms include a right to reasons for government decisions, rights to appeal decisions through internal review and, if necessary, to further appeal to the Administrative Review Tribunal.

The right to reasons and external appeal to a tribunal bring NSW in line with the Commonwealth and Victoria. The provision on internal review of government decisions is the first time the process has been codified in law in Australia. However, the rights only exist if a statute provides a right to make an application to the Tribunal.

Who will enjoy the rights?

The rights to reasons and appeals from government decisions under the ADT Act are only available to 'interested persons'. The definition of 'interested person' varies according to which Act provides the right of review. For example, under the *Community Services (Monitoring and Appeals) Act* (NSW) it means a person with a 'genuine interest' in the matter that is the subject of the appeal. Under most licensing provisions which are covered by the ADT Act only the person who applied for the licence has a right of appeal. In other legislation 'persons aggrieved' are entitled to appeal, which in common law means a special interest in the subject matter needs to be established. Other legislation, such as the *Entertainment Industry Act 1989*, allows 'a person' to apply for review of decisions of local councils on licences or conditions in licences.[8]

Given the variety of provisions defining who has an 'interest', there will be occasions when the ADT will to need to interpret whether or not a person or organisation has a

recognised 'interest' in a decision. The ADT has specific power to decide whose interests are affected by a decision, but the ADT Act does not spell out how it should do so. According to the Second Reading speech, the Tribunal has a wide discretion: 'the issue of who will be eligible to apply for the review of an administrative decision will also be resolved flexibly ...' If the Tribunal finds that the interests of a person are not affected by a decision, it can be the subject of an appeal to the Appeal Panel of the Tribunal. A decision that a person does have an 'interest' cannot be appealed (s.68 ADT, Act).

PIAC and other community groups sought to have a clause in the Act which would guide the ADT in making decisions about the definition of 'interests'. They sought a provision that would make it clear that a reference to 'interests' is an interest of any kind and is not limited to proprietary, economic or financial interests. They also sought a provision, modelled on a section of the Commonwealth AAT Act, which deals with 'interests' of organisations. It provides that an organisation or association is taken to have an 'interest' in a government decision if the decision relates to a matter included in the organisation's objects or purposes (as long as the decision was made before the objects of the association). An amendment moved by Ian Cohen of The Greens addressed these two issues, but it was not supported by the Government or the Opposition and was therefore unsuccessful.

What decisions will be covered?

The rights to reasons and to appeal decisions will only exist in areas of government decision making where the Parliament has conferred the rights under an Act of Parliament. The conferral of jurisdiction in this way is consistent with the approach in the Victorian and Commonwealth AATs. In NSW the review jurisdiction conferred on the ADT so far includes:

- FoI decisions,
- a range of taxing and licensing decisions,
- public health orders (all currently decided by the courts), and
- the decisions currently reviewed by the Community Services Appeals Tribunal.

The ADT Act does not introduce any new rights to review government decisions. It just transfers the existing rights from courts and tribunals to the ADT. Any new rights will be introduced in future legislation over the next 18 months.

The categories of government decisions that the NSW Government plans to consider for inclusion in the ADT's jurisdiction in future include:

- professional disciplinary tribunals;
- the granting or refusal to grant a licence, permit, registration, authority, or approval;
- determination of an entitlement or eligibility for a financial or like benefit;
- acquisition, disposal or dealing with property;
- satisfying safety and other standards;
- remittance of penalties, interest, debts or fees; and
- the protection of vulnerable persons.

One of the potential limitations of confining the ADT's jurisdiction to decisions under Acts of Parliament is that a wide range of decisions are potentially excluded. An example is public housing decisions. The *Housing Act* (NSW) creates the Housing Corporation and confers on it very general powers to provide public housing. Powers to make specific types of decisions are not dealt with in the Act. Decisions about housing applications, eligibility for priority housing with the Department of Housing, rehousing applications, housing assistance, and tenancy management are currently subject to internal review. To include these decisions in the ADT's jurisdiction would require an amendment to the *Housing Corporation Act* which specifies that they are reviewable by the ADT.[9]

Other areas of government decision making which community organisations have urged the NSW Government to include in the ambit of the ADT Act include:

- expulsion and discipline decisions in schools, to ensure procedural fairness;
- decisions on security classifications of prisoners and parole decisions (currently appealable to the Supreme Court);
- decisions about the care of children in State care;
- decisions on licensing of boarding houses (including third party rights);
- decisions of the Guardianship Board; and
- environmental and planning decisions.[10]

The last four types of decisions are reviewable on the merits by the Victorian AAT. Decisions of the Mental Health Review Tribunal will not be included in the ADT's jurisdiction. The next conferral of jurisdiction on the ADT is promised for the Spring session of Parliament.

Features of the NSW Tribunal

Structure and membership

The ADT will make original decisions in areas such as anti-discrimination and professional discipline and will review government decisions in areas such as FOI and community services appeals. To accommodate the need for specialisation in the different areas that the ADT will cover, it will have specialist divisions for Community Services, Equal Opportunity and Legal Services. Other decisions will be made by the General Division.

The Tribunal has an Appeals Panel which will hear appeals from both original decisions of the Tribunal and decisions which review government decisions. Questions of law can be referred by the Panel to the Supreme Court. Decisions of the Appeal Panel on questions of law can be the subject of an application for an appeal to the Supreme Court. However, the Act gives the Supreme Court the discretion to decline applications for review of decisions where alternative review of the decisions is available — internal review or a review by the Tribunal.

The Tribunal also has a range of alternative dispute resolution options to draw on including: preliminary conferences (to facilitate the parties conferring informally before a hearing), and referral of a decision to mediation or neutral evaluation.

The independence and quality of the Tribunal's decisions depends to a large extent on the terms of appointment, and the range of expertise of its members. The ADT will be constituted by judicial and non-judicial members and assessors, with a President who must be a judge.

The terms of office for members of the ADT are to be short. Members are appointed for no more than 3 years and

in the case of the President of the Tribunal, there is no option of renewing the appointment after the maximum three year appointment.[11] Short terms of office facilitate a greater level of control over tribunals by the executive because tribunal members wishing to seek reappointment would be mindful of how their decisions will be regarded by the Government of the day. They also make for a less stable tribunal. Recognising the public criticism of short-term appointments, the Victorian Government's review of tribunals recommended that appointments should be for periods of between 5–7 years, with the option of renewal.

Procedures

Like its Victorian and Commonwealth counterparts, the NSW ADT is to make the correct and preferable decision, taking into account the material before it. It is to conduct itself in an informal manner and has a wide discretion to inform itself as it thinks fit, and is not bound by the rules of evidence (ss.63 and 73, ADT Act). However, the NSW Attorney-General said:

> I have taken account of the criticism which has been levelled against the Commonwealth and Victorian tribunals that despite legislative prescription for informality and flexibility the actual hearings have become formal and adversarial.[12]

They decided to introduce a Rules Committee to ensure that the Tribunal procedures meet the needs for which it is established. The Committee is composed of the President, the Divisional Heads, other Tribunal members and stakeholder and community representatives. There is provision for subcommittees for each Division of the Tribunal so that specialist divisions can conduct hearings in a manner appropriate to the subject matter and nature of the applicants before them. Draft rules must be exhibited publicly for two months and written submissions in response to the draft must be considered by the Committee.

The provision for a Rules Committee is in contrast to the Victorian Government's proposal to set out the rules of procedure for the Victorian Civil and Administrative Tribunal in the legislation establishing the Tribunal, including any necessary variations relevant to particular Divisions. The operation of the rules is to be monitored by the Victorian Tribunal Council, constituted exclusively by judges and lawyers, who are to recommend any changes to the Attorney-General.

Legal representation

Having gone to so much trouble to encourage the Tribunal to be informal and flexible, the Government provided a right to legal representation for parties who appear before the Tribunal. The only exception is that where the Tribunal (not including the Appeal Panel) considers it appropriate, it can disallow oral presentation of submissions by legal representatives. When doing so, the Tribunal must take into account a number of factors such as the complexity of the matter, whether each party has legal representation, and the type of proceedings. Decisions to disallow legal representation for presentation of oral submissions can be the subject of an appeal (ss.71(2) and (3), s.112(2)). This is in contrast to the Community Services Tribunal and the Equal Opportunity Tribunal in NSW which only allow legal representation by leave of the Tribunal.

The extent of legal representation before the ADT was a vexed question for the Government, which was the subject of vigorous lobbying by the legal profession and community organisations. Community organisations submitted that legal representation should be allowed by leave of the Tribunal if not to do so would prejudice the applicant. They were concerned that the presence of lawyers as a matter of course would tend to make the Tribunal more expensive and adversarial, and therefore less accessible. However, legal professional bodies took the view that giving the ADT the power to disallow lawyers would discriminate against the legal profession and ordinary citizens taking action against government.[13]

Role of government policy

The extent to which merits review tribunals should be bound by government policy is a controversial issue. In a review of Commonwealth tribunals in 1995 the Administrative Review Council said that requiring merits review tribunals to give greater regard to government policy would be inappropriate. It would change the objective of merits review from achieving the best result for the applicant — the correct and preferable decision in the circumstances — to simply agreeing with government agencies as long as their decisions are lawful and reasonable. The ARC regarded improvement of government policy as one of the objectives of merits review of government decisions.

However, a number of Commonwealth government agencies expressed the view that tribunals should give greater regard to government policies.[14] The Victorian Government's proposal also indicates criticism of tribunals trespassing into the role of administrative decision making and policy making.

The NSW Government deals with the issue explicitly in the ADT Act. It requires the ADT to give effect to government policy in making determinations, except to the extent that it is contrary to law or 'produces an unjust decision in the circumstances of the case'. The last part of this provision, dealing with review of unjust policies, was incorporated into the Act following an amendment moved by independent MP Mr Corbett, and supported by the Opposition. The Government opposed the amendment.

The ADT Act also provides that 'Government policy' in relation to a particular matter is anything certified as such by the Premier or other Minister. There was concern that this would mean that Government policy is anything certified as such after the event, rather than limiting the meaning to policies actually made at Ministerial level. An amendment to the Bill added a definition which says 'Government policy' means a policy adopted by Cabinet, or the Premier or other Minister, that is to be applied by administrators in the exercise of discretionary decisions. The Government did not oppose this amendment. A further amendment also limits the applicable policy to the one that was in force at the time the reviewable decision was made.

The provision amending the definition of 'government policy' was based on the views of Justice Brennan in 1979 when considering the extent to which the Commonwealth AAT is bound by government policy in *Re Drake and the Minister for Immigration and Ethnic Affairs (No. 2)* (1979) 2 ALD 634 at 644. He said:

> When the Tribunal is considering a discretionary power reposed in a Minister, and the Minister has adopted a general policy to guide him in his exercise of power, the Tribunal will ordinarily apply that policy in reviewing the decision, unless the policy is unlawful or unless its application tends to produce an unjust decision in the circumstances of the particular case. Where the policy would ordinarily be applied, an argument against the policy itself or against its application in the particular case will

be considered, but cogent reasons will have to be shown against its application, especially if the policy is shown to have been exposed to parliamentary scrutiny.

Concurrent judicial review

The NSW Attorney-General has foreshadowed a radical plan to give the ADT concurrent jurisdiction with the Supreme Court to hear common law applications for judicial review. The Attorney-General spelled out the major benefits of this proposal in the second reading speech:

- it allows the tribunal in judicial review proceedings to focus on the substance of an applicant's grievance free of technical issues as to the availability of common law remedies;
- it provides for an array of flexible remedial powers; and
- by prescribing the most important grounds of review in summary form and reasonably comprehensive language, it has educational and presentational advantages for administrators and citizens, as to matters that would render an administrative decision contrary to law.

If the NSW Government goes ahead with the plan it will be only the second State Government to codify the common law forms of judicial review. The Queensland Government introduced reforms to judicial review of administrative decisions in 1991, with the *Judicial Review Act* (Qld). It is regarded as the best model for judicial review in Australia at present, having improved on the *Administrative Decisions (Judicial Review) Act 1989* (Cth) in both scope and procedure.

The NSW proposal will be a radical departure from the traditional separation of the executive and judiciary. Although the doctrine is not enshrined in State Constitutions, as it is in the Commonwealth Constitution, State legislators rarely strayed outside it. The move is in completely the opposite direction to the Victorian Government's proposal, which specifically seeks to take away administrative and judicial functions from tribunals, leaving them only to provide basic dispute resolution and strict merits review of government decisions.

Other mechanisms for review

Right to reasons

The ADT Act imposes a duty on government administrators to prepare a statement of reasons for 'reviewable decisions' if requested in writing by an 'interested person'. This brings NSW in line with obligations on Commonwealth Government officials to provide reasons (s.13, AD(JR) Act). The Act also prescribes what the statement must contain — the findings of material questions of fact and the evidence on which it was based, the administrator's understanding of the applicable law and the reasoning process that lead the administrator to the conclusions made.

Reasons can be refused if the administrator believes the person is not entitled to it or if the request is not made within a reasonable time of the decision (28 days). A refusal can be the subject of an appeal to the ADT (ss.49-52, ADT Act).

The Attorney-General described the rationale for providing reasons for decisions in the second reading speech:

> An essential element of good administration is the need to ensure that reasons are given for administrative decisions ... [It] will give people dealing with government departments and agencies an assurance that decisions are made rationally, taking into account only relevant considerations. This will ensure that decisions can be seen to have been lawfully made and also reduce the likelihood of appeals on the merits of the decisions.

These sentiments echo statements from the judiciary and a number of public inquiries in Australia over the past 20 years.[15]

Community organisations sought to have the duty to provide reasons framed so that reasons are provided as part of the process of informing people of a decision that affects their interests, rather than only in response to a request. Experience with the equivalent Commonwealth provision indicates that a statement of reasons provided after a request can often reflect an extemporaneous justification for the decision. The assumption is that a request for reasons indicates a potential appeal from the decision, and the statement of reasons is drafted with that in mind.[16] This defeats the major policy reasons for providing a right to reasons — to improve the quality of government decision-making and to assist people who are affected by a decision to understand how it was reached.

Internal review

Community organisations in NSW advocated for the ADT Act to cover internal review.[17] Internal review, when done properly, allows for speedy resolution of problems at the local level and encourages improved decision making internally. The ADT Act creates an opportunity to assess and streamline the range of formal and informal internal review mechanisms within the NSW Government. It will also ensure that the link between internal review processes and external review is clear.

The internal review provisions in the ADT Act provide a model for internal review across government:

- the person dealing with the review must be someone who is not substantially involved in the process of making the decision and is substantially qualified to deal with the issues it raises;
- any relevant material must be taken into account;
- the decision must be made within 14 days, or it is deemed to have been completed, and an appeal for external review can therefore be made;
- the applicant must be given reasons for the decision and be informed of their right to have the decision reviewed by the Tribunal (s.53, ADT Act).

Relationship with Ombudsman

There is potential for overlap between the Ombudsman and the ADT's jurisdiction to review government decisions. While the ADT will adjudicate on the merits of government decisions, the Ombudsman makes recommendations on systemic issues arising from complaints about the decision-making process. The ADT Act deals with potential overlap by providing for administrative arrangements to be entered into between the two bodies dealing with transfer of matters between them. The aim of the cross referral arrangement is to 'ensure that a complaint is dealt with in the most appropriate manner ... [avoiding] multiple actions or matters "falling through the cracks"'.[18]

The Act also provides for the ADT to provide an expert opinion to the Ombudsman in relation to any legal questions which might arise in the course of the Ombudsman carrying out the duties of office.

Future prospects

The NSW Government's ADT significantly improves on other models by formalising internal review and establishing a Rules Committee, which includes community repre-

sentatives, to decide its procedures. The short terms of office for Tribunal members, and the likely predominance of lawyers in the membership do not augur well for an accessible Tribunal with an emphasis on merits review. The extent to which the Tribunal will regard itself as bound by government policy will also be important to watch.

The greatest unknown factors for the NSW ADT are the extent of its jurisdiction, and how 'interests' in government decisions which the Tribunal can protect are to be defined.

Before the dust has settled on the new ADT it will be the subject of a Parliamentary inquiry — within 18 months of it commencing operation. Originally the operation of the Tribunal was to be reviewed by the Attorney-General's Department after five years of operation. However, a Parliamentary inquiry won preference in the Parliament.

PIAC proposed that an independent monitoring body be established to provide independent advice to the Attorney-General on the jurisdiction and performance of the ADT. The proposal was based on the Administrative Review Council at Commonwealth level. The work of the ARC has been credited with ensuring that Commonwealth administrative appeal mechanisms enjoy much greater public awareness than the equivalent in Victoria.[19]

In the long term, getting an overview of the operation of the ADT and its jurisdiction will be possible through the annual reports it is required to produce (s.26, ADT Act). The lack of a requirement for the Victorian AAT to produce any periodic reports has presented a major impediment to monitoring its development.

The stage is set for an interesting time in NSW over the next few years while the ADT is established and acquires its new and potentially novel jurisdiction.

References

1. Centre for Legal Process, 'Model Tribunal Procedures: Summary of Survey of NSW Tribunals', June 1997.
2. See for example Roger Wilkins, Director General of Cabinet Office for many years. Wilkins, R., 'Whither Administrative Law?', conference paper AIAL NSW chapter conference — The State of Administrative Law: Current Issues, November 1994.
3. Reform of Merits Tribunals, news release, Attorney-General, Daryl Williams, 20 March 1997; and Administrative Review Council (ARC), 'Better Decisions: Review of Commonwealth Merits Review Tribunals', Report No.39, 1995, chapter 8.
4. Merrit, Chris, 'Tribunals lose independence in government', *Australian Financial Review*, 30 June 1997.
5. News release, Attorney-General, Daryl Williams, 13 July 1997.
6. Hon. Jan Wade, MP, Attorney-General's Discussion Paper, 'Tribunals in the Department of Justice: A Principled Approach', October 1996, chapter 2.
7. Second Reading, speech, Hansard, Legislative Council (NSW), 27 June 1997, at p.11278, referring to NSW Law Reform Commission, 'Report on the Right of Appeal from Administrative Tribunals and Officers', 1973.
8. An example of the 'person aggrieved' provision is the *Bee Keepers Act*, s.35. The latter is in s.42 of the *Entertainment Industry Act*.
9. 'Trouble with Government Decisions?', Submission to the NSW Attorney-General on an Administrative Decisions Tribunal, prepared by Public Interest Advocacy Centre for the Combined Community Legal Centres Group (NSW), March 1997, pp.7-9. A review of the Housing Appeals Committee in April 1997 recommended coverage of such decisions by the ADT Act.
10. 'Trouble with Government Decisions?', above, recommendations 9, 10, 6 and 13. The issue of Guardianship orders was addressed in a submission by People with Disabilities (NSW) to the Social Issues Committee, NSW Parliament, Inquiry into Clinical Trials, conducted during July and August of 1997.
11. Assessors can be appointed for up to seven years (schedule 4). The restriction on the terms of appointment of members is the result of an Opposition amendment which was supported by the Government — see Hansard, above, p.11307.
12. Second reading speech, Hansard, above, p.11280.
13. 'Trouble with Government Decisions?', above, recommendation 22; Letter to PIAC form Chief Executive, Law Society of NSW, 20 June 1997; and *State v the Public*, Bernard Lagan, *Sydney Morning Herald*, 13 May 1997.
14. ARC, above, paras 2.5, 2.7, 2.17, 2.18.
15. In *Osmond v Public Service Board of NSW* [1984] 3 NSWLR 447 (CA), Kirby P (as he then was) said the requirement to give reasons is derived from the principles of natural justice — 'fair play in action'. The Commission on Government in Western Australia in 1996 recommended a right to reasons as a matter of routine for people whose interests are affected by government decisions; COG Report No. 4, p.17. ARC, *Review of the Ambit of the Administrative Decisions (Judicial Review) Act*, 1989.
16. See 'Trouble with Government Decisions?', above, recommendation 26; and *Administrative Decisions (Judicial Review) Act* and s.28 *AAT Act* (Cth).
17. 'Trouble with Government Decisions?', above, recommendation 1.
18. Second reading speech, Hansard, above, pp.11280-81; s.39 ADT Act.
19. Saunders, Cheryl, 'The Administrative Review System of the Commonwealth', paper presented to The State of Administrative Law in NSW — Present and Future Directions, RIPA and AIAL (NSW Division), 20 March 1992.