Preface

Tribunals provide a cheap, usually relatively quick, and effective way of deciding disputes. As such they are, increasingly, a preferred mode of dispute resolution. Recognition of the significance of their role has, however, been slow. Governments have generally established tribunals to fulfil a policy objective in a specific area. Little thought, until relatively recently, has been given to the concept of a tribunal, and the general principles which should apply to this model of adjudication.

That changed, in Australia, with a seminal report, the Kerr Committee report, in the 1970s. The report had as its centrepiece a single tribunal that would review decisions across government, that would be national in its reach, independent, and with common procedures and trained and appropriately expert membership. That model, adapted as appropriate, has gradually been emulated by most Australian States and Territories, and has been influential in the development of the UK's Tribunals Service, and in proposals for more integrated tribunals in New Zealand, and in Canada.

Nonetheless, tribunals remain a relatively recent mode of adjudication in which the processes and jurisprudence continue to evolve. The tribunal movement is a phenomenon which has been the subject of sustained examination only since the early 1990s. And in that period, tribunals have been undergoing an active period of development. Much of that development is happening within individual countries, often in isolation. Although the Canadian Council of Administrative Tribunals has, since the 1990s, been holding an international tribunals conference every few years, sustained comparative analysis of tribunal operations is still embryonic.

It was against that background, that a seminar was held in Canberra in 2006 at the Australian National University to bring together selected experts from four key common law jurisdictions to discuss topics of central relevance to tribunals. How do the flexible principles of natural justice apply in a tribunal setting, how to achieve an optimal level of independence for tribunals, evidentiary issues which arise in tribunals set up to operate without reliance on the formal rules of evidence, and how do tribunals, in the uneasy position of straddling the executive and judicial arms of government, manage the role of policy in their decision-making.

The value of this book lies in the insights that each country has been able to provide on these questions. There is no substitute for shared experience and solutions to problems elsewhere can often expedite the local processes of reform and avoid the pitfalls attendant on essaying change. This book emphasises the importance of the comparative

example. So it is that the UK model of a Tribunal's Service has been picked up by New Zealand, that the Canadian depth and breadth of thinking about the operation of tribunals, the impact of human rights instruments, and the methods of improving tribunal performance can be emulated by all the other jurisdictions, and Australia's two forms of integrated tribunal – reviewing either decisions by government alone, or a mixture of public and private law decisions – can be an example for others.

The seminar in which these insights were shared was supported generously by the Canadian, United Kingdom and New Zealand High Commissions in Canberra, as well as by the Australian National University's Centre for Public and International Law. The Australian Government not only provided the financial support which enabled participants, facing that long flight to Australia, to attend, but the then Australian Attorney-General, the Hon Philip Ruddock, also gave encouragement to participants by agreeing to open the proceedings.

The process of collecting and editing the papers for *Tribunals in the Common Law World* was a joint effort of David Ananian-Cooper and Tom Smyth. Tom is also responsible for the Overview. Kath Fitzhenry and Clare Hallifax of The Federation Press have both given of their special talents to craft the papers into a book. I am grateful to them all. Ultimately, however, the value of this work is grounded in the quality of the material provided by the various authors. There is considerable wisdom in their experience which, I trust, will enrich the work of heads of tribunals and tribunal members throughout the common law world.

Robin Creyke
Australian National University, Canberra
November 2008