

Book Review

Geoff Cahill,

"Promotion and Disciplinary Appeals in Government Service"

Published by Law Book Co., 1986

Reviewed by J.W. SHAW

Amongst the proliferating administrative tribunals found in contemporary Australian life are those concerned with promotion and discipline within public sector employment. The tribunals deal with vital rights of public servants when they adjudicate upon disciplinary matters — dismissals, demotions, fines and the like. However, the predominant work of the tribunals (in quantitative terms) is to be found in the assessment of officers for promotion. Lockhart J (in *Hamblin v Duffey* (No. 2) (1981) 55 FLR 228) thought it clear that such appeals could "adversely affect the rights, person and legitimate expectations..." of the officers concerned.

Hunt J had doubts, expressed in *Osmond v Public Service Board* (1983) 1 NSWLR 702, whether the officer had any more than "an interest" at stake until he had convinced a decision-maker of his superior fitness.

Whatever might be the precise outcome of this analysis, it is plain that the tribunals are performing important functions, with an aggregate impact upon the competence of the public sector. Much has changed from the times when seniority dominated public service progression, when the longest serving employee had what Sir Owen Dixon referred to as the "presumptive claim" to a vacant promotional position. Nowadays, most of the statutes make "efficiency" either the predominant or the exclusive criterion of advancement.

Despite the obvious impact of promotion and disciplinary appeal tribunals upon the approximately one third of the workforce engaged in public employment, little has been written about their work and little published analysis is obtainable about their decisions or their reasoning. Notwithstanding the involvement of legal practitioners appearing before such tribunals and in argument in the superior courts arising from their processes, the tribunals have led a cloistered existence.

Whilst general in its title, the Law Book Co.'s recent publication by Mr. Cahill turns the spotlight on only one, but an important one, of these tribunals, namely the Government and Related Employee's Appeal Tribunal which deals with the New South Wales Public Service and most statutory corporations created by the New South Wales Parliament. The author is a legally qualified chairman of the tribunal whose senior chairman (Mr. Justice W.B. Perrignon) has sat for many years in the statutory predecessors of the present forum. In an era of acronym, it is wholly unsurprising that this tribunal is known colloquially and (even) in the superior courts as the "GREAT."

The book is a workmanlike and useful account of the legislation governing the tribunal and the way that the legislation has been developed in practice. It includes references to many unreported decisions of the tribunal as well as an analysis of judgments given by the Court of Appeal — to which appeals go on questions of law — both reported and unreported. Obviously, the author was in a unique position to assimilate the material and to put it in a



coherent form for publication. One of the chief dangers of any such publication — judicial decisions overtaking and indeed contradicting the text — has been largely overcome by the publisher's inclusion of an "update" at the start of the book which draws attention to and comments on a series of recent judgments. For example, the overturning by the High Court of the Court of Appeal's judgment in *Osmond* (concerning the giving of reasons for administrative decisions) and the as yet unreported judgment of the Court of Appeal given in July 1986 in *Strange-Muir v Corrective Services Commission of New South Wales*, wherein the Court of Appeal decided (by majority) that the withdrawal of a successful appointee from his or her promotional position did not destroy the continued obligation of the tribunal to determine an appeal lodged against that appointment are dealt with.

The work is graced by an elegant foreword contributed by Mr. Justice M.D. Kirby, who kindly records for posterity the role of Miss Irene Bradshaw, an administrative mainstay of the Crown Employee's Appeal Board during the 1960s and 1970s.

As usual, criticisms could be made. The text would have been illuminated by reference to the works of G.J. McCarry of the Sydney University Law School whose contributions in the area of public sector employment law in journals of industrial relations and public administration have been substantial. The author has, ambitiously, provided his own cartoons to enliven the publication. Kirby J has kindly compared these to the artwork and humour to be found in Professor Wilenski's survey of New South Wales public administration. But those cartoons were the talented product of Patrick Cook, and the publishers might have been well advised to have commissioned works of that calibre.

These quibbles aside, the book has both readability and utility. For practitioners concerned with the area, either at first instance or in the appellate courts, it is essential.