INTEGRITY IN TRIBUNALS

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Integrity is becoming a standard of increasing importance. It is a standard expected to be met by all in government and can be useful in measuring performance. Tribunals are in no different position. This article will first define integrity and how it is being used generally (Part A). The discussion next examines what integrity means in the context of individual tribunals and the tribunal system as a whole. The issues discussed in relation to tribunals are familiar but 'integrity' is a new lens through which to view them and the article concludes by assessing how well decisions about and by tribunals are meeting selected integrity measures (Part B).

I PART A

A *Meaning of Integrity*

In common parlance integrity is the antithesis of corruption. But as with many words in the English language, there are subtleties of meaning. The *Macquarie Dictionary* defines integrity in these terms: '*integrity';* (1.) *Soundness of moral principle and character, uprightness, honesty;* (2.) *The state of being whole, entire, or undiminished;* (3.) *Sound unimpaired, or perfect condition'*.[1] The word comes from the Latin *'integritas'* meaning '*soundness, chastity, integrity'.* A related word is an *'integer*' or a whole number. So integrity refers to wholeness or health, that is, someone or something that is functioning properly and as intended.

As the definition indicates, the word has dual meanings: the references to moral principles and character, honesty and indeed chastity refer to individual behaviour; whereas the state of being whole, entire, or undiminished is institutional in focus. In other words, the word has both a behavioural or personal, and an institutional or systemic sense.[2] Despite there being separate senses in which integrity is used, the meanings are interconnected. The differences become important when identifying the measures to test individual as compared to institutional integrity.

B *Measuring Integrity*

It is one thing to know what integrity means, and another to know how it is measured. There are some general principles which should underpin those measures. To be valuable, the measures of integrity must be targeted, and test specific and key operational elements of a tribunal or the tribunal system. The task is not an easy one. As two OECD researchers expressed it: *'Assessment of integrity and corruption prevention policies pose special challenges for policy makers and managers, in particular that of determining what is measurable'*.[3] Only if that challenge is met will public officials and governments demonstrate that they have been able to '*achieve*

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1 The Macquarie Dictionary (Macquarie, 2nd ed, 1987) 907.

2 Chris Field 'The fourth branch of government: the evolution of integrity agencies and enhanced government accountability' (2013) 72 *AIAL Forum*, 1.

3 Organisation for Economic Co-operation and Development, *Public Sector Integrity: A Framework for Assessment* (2005) 13.

agreed policy objectives and contribute to outcomes that matter to their managers and to citizens'.[4]

There are essential steps for an effective integrity measuring process. The first is to decide on the activities which provide a litmus test of the health of the system;[5] the second is to establish measures or standards which are indicative of effective operation;[6] the third, is to set up a system for reporting against those measures; finally there is a need to ensure there is evidentiary support for claimed achievements against those standards. This fourth step requires there to be a thorough and objective methodology to assess the evidence underpinning the findings relating to each measure.[7]

C *Integrity standards*

The attempts to define integrity standards have not always distinguished between the two senses in which the word is used. That is not surprising since they are interconnected. An authoritative source is the seminal study on integrity by AJ Brown and his team.[8] They concluded that the way to judge whether power is being exercised with integrity is through '*reference to the values, purposes and duties for which that power is entrusted to, or held by, the institutions and individual office-holders concerned'*.[9] That is, they identified that two key measures are the manner of exercise by government of its powers and whether power is being used solely for the purpose for which it was granted.[10] Applying the definitional distinction to these standards, it can be hypothesised that the manner of exercise of authority relates to the individual behaviour element of integrity, while the authorised purpose standard can have both an individual and an institutional focus.

Building on these findings, Burton and Williams identified the standards as: legality, fidelity to purpose, fidelity to public values and accountability.[11] The dominant emphasis in this list with its emphasis on accountability, fidelity to purpose and public values is on institutional integrity. Field identified the standards as absence of corruption, misconduct and maladministration, the first two emphasising the individual responsibility element of integrity, and the last, the institutional focus.[12]

In summary, assessing integrity is a mixture of existing measures, such as legality and accountability, and something more. Legality and accountability are entrenched measures for modern government. They are the baseline requirements of integrity. Courts, tribunals and other agencies have long had a role in monitoring and policing the lawfulness of actions by government. Accountability is also a well-established element of Australian democracy. Governments already have to account to Auditors-

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4 Ibid 26.

5 Ibid 13.

6 Marcia Neave, 'In the Eye of the Beholder' in Robin Creyke and John McMillan (eds), *Administrative Justice - the core and the fringe* (AIAL, 2000) 124.

7 Elodie Beth and János Bertók, *Integrity and Corruption Prevention Measures in the Public Service: Towards an Assessment Framework* (OECD, 2005) Part 1, 19.

8 A.J. Brown et al, 'Chaos or Coherence? Strengths, Opportunities and Challenges for Australia's Integrity Systems', *National Integrity Systems Assessment (NISA) Final Report* (2005).

9 Ibid 9.

10 James Spigelman, 'The Integrity Branch of Government' (2010) 31 *AIAL Forum* 2-3.

11 Lisa Burton and George Williams, 'The Integrity Function and ASIO's Extraordinary Questioning and Detention Powers', paper presented at the National Conference of the Australian Institute of Administrative Law (Adelaide, 19-20 July 2012) 26.

12 Chris Field 'The fourth branch of government: the evolution of integrity agencies and enhanced government accountability' (2013) 72 *AIAL Forum* 2.

General, the Ombudsman, the police, to parliament and the people for the appropriateness, efficiency and effectiveness of the programs they administer.

If integrity is to be a useful tool in public discourse the 'something more' must be identified. That is necessary, not least because there is a degree of scepticism about the need for yet another set of standards for public administration. A colourful example of that scepticism is found iin the *Review of the Crime and Misconduct Act 2001 (Qld)* which commented: "'Integrity" has become its own over-elaborate industry involving repetition of the obvious, and clothing it in a morass of high-flown aspirational and often bureaucratic language'.[13] So if that '*something more'* is to avoid such criticism, it must involve concrete and useful measures which will improve public administration. These are to be found in the remaining standards, that is, faithfulness to purpose and to public values, the '*enhanced accountability'*[14]elements of the integrity notion. These standards, not yet as well known or accepted in public law and administration as legality and accountability, are where the '*something more'* is found, and it is on them that this paper focuses.

D *Public purposes and public values*

There are multiple sources of public purposes and public values. They are found in policy documents, and in parliamentary materials. Public purposes and values are also found in the '*outpouring of plans, mission statements, departmental reports and other policy documents which have attempted to describe and improve the performance of the bureaucracy'*.[15] These are documents which have come to dominate decision-making in public administration. They contain the public sector standards, in excess of formal legal rules, which developed in the 1980s, the period of the new managerialism with its emphasis on performance monitoring and measurement.[16] These documents, compendiously described as quasi-law or soft law, often contain the measures of good administration on which public sector managers increasingly rely.[17] Hence it is in soft law that the superadded standards of integrity can frequently be discerned.

Some of these documents are given statutory force. Examples are the 'APS Values and APS Employment Principles', and the 'APS Code of Conduct' which apply in the Australian Public Service (APS).[18] Comparable requirements exist in the states

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13 Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act 2001 (Qld)* (2013) chapter 11, recommendation 4, 215.

14 Ibid.

15 Ibid 124-5.

16 Marcia Neave 'In the Eye of the Beholder – Measuring Administrative Justice' in Robin Creyke and John McMillan, *Administrative Justice – the Core and the Fringe* (AIAL, 2000) 124.

17 Robert Baldwin and John Houghton, 'Circular Arguments: The Status and Legitimacy of Administrative Rules' [1986] *Public Law* 239, 241-5. See also Commonwealth Interdepartmental Committee on Quasi-regulation, Report, *Grey-Letter Law* (1997) (Grey-Letter Law report); Michelle Cini, 'From Soft Law to Hard Law? Discretion and rules-making in the Commission's State Aid Regime' (2000) *Working Paper 35*, European University Institute 4; Lorne Sossin and Charles W. Smith, 'Hard Choices and Soft Law: Ethical Codes, Policy Guidelines and the Role of the Courts in Regulating Government' (2003) 40 *Alberta Law Review* 867, 871; Mark Aronson, 'Private Bodies, Public Power and Soft Law in the High Court' (2007) 35 *Federal Law Review* 3; Robin Creyke and John McMillan, 'Soft Law v Hard Law' in Linda *Pearson (ed) Administrative Law in a Changing State* (Hart Publishing, 2008) 377.

18 *Public Service Act 1999* (Cth) (Act) ss 10, 10A, 13. The amendments to the Act, including the APS Values and Employment Principles, and the APS Code of Conduct, were passed in

and territories.[19] To illustrate their relevance, the second of the APS Values and Employment Standards reads: 'The APS demonstrates leadership, is trustworthy, and *acts with integrity*, in all that it does' (emphasis added).[20] Other sources have less formal origins, such as performance measures, statements to parliamentary committees, or annual reports.[21]

E *Other sources: principles of good administration*

In broad terms these integrity measures are also standards of good administration. They are the province of the integrity arm of government, notably the ombudsman, integrity commissioners and public sector commissioners. They focus on the individual, behavioural element of integrity. But they also have an institutional impact when, for example, breach of these standards impacts adversely on the reputation of government. The 'something extra' is often encapsulated in these concepts.

There are many lists of what constitutes good administration,[22] but a pertinent standard is 'The obligation to be service-minded', taken from the European *Code of Good Administrative Behaviour*.[23]

Another fruitful set of sources is the 'Ten principles of good administration' devised by the Commonwealth Ombudsman.[24] Paraphrasing the principles into standards for tribunals, the Principles require:

- accurate, comprehensive and accessible records;
- adequate controls on the exercise of coercive powers;
- active management of unresolved and difficult cases;
- understanding as to the limitations of information technology systems;
- awareness of the need to guard against erroneous assumptions;
- controls to avoid administrative drift;
- removal of obstacles to prudent information exchange with other agencies and bodies;
- promotion of effective communication in your own agency;
- management of decision making in complex cases; and
- alertness to warning signs of bigger problems.

These precepts of good administration, when considered alongside the broader purposes and values identified, reflect the behaviours and policy objectives expected of those responsible expected to operate with integrity.

February 2013, and are to commence either when proclaimed or in six months from the 13 February 2013, whichever occurs earliest.

19 E.g. NSW: *Model Code of Conduct for NSW Public Sector Agencies.* The Model Code of Conduct for NSW Public Sector Agencies was subsequently incorporated into the Personnel Handbook, Chapter 8 Model Code of Conduct; Vic: Code of conduct for Victorian public sector employees.

20 *Public Service Act 1999* (Cth) s 13(11).

21 E.g. *AAT Annual Report 2011-12* Chs 3, 4, App 9; *VCAT Annual Report 2011-2012* Ch 3; *ADT Annual Teport 2011-2012*, 7, 9-10.

22 For example, UK Parliamentary and Health Services Ombudsman, *Principles of Good Administration* (2007); Statskontoret, *Principles of Good Administration in the Member States of the European* Union (2005.4); Commonwealth Ombudsman, *Fact Sheet 5,* 'Ten principles for good administration' (2009).

23 Statskontoret, above n 22, 17.

24 Commonwealth Ombudsman, above n 22.

II PART B

This Part first identifies the public purposes and values of individual tribunals and of the tribunals system, and then considers some of the values and purposes identified in the context of Australian tribunal systems, and of some individual tribunals.

The introduction identified separate meanings of integrity. Both meanings can be applied to tribunals: the first, to measure the conduct and decisions of individuals who comprise the staff or members of a tribunal; the second, to test the decisions which are critical to the health of a tribunal, or the tribunal system as a whole. Unless you have honest, trustworthy, responsible members of a tribunal who in their decision-making comply with the laws, procedures, policies and codes of conduct of the tribunal, the tribunal as a whole will not be operating in a healthy, sound fashion. Equally unless you have an effective tribunals' system, functioning in the manner envisaged, including having appropriate roles for, and appointees to each tribunal, there will not be an unimpaired, properly functioning tribunal system.

A *Sources of public purposes and values of tribunals*

The public purposes and values of, for example, the AAT, can be located in the *Second Reading Speech* for the Administrative Appeals Tribunal Bill 1975. Although the distinction between public purposes and public values is not easily discernible in this and similar documents, an attempt to differentiate has been made for the purposes of this paper. The public purposes of the AAT are to:

- provide a 'single independent tribunal with "judicial" status' and as wide a jurisdiction as possible;
- stem the proliferation of tribunals except where special circumstances make it desirable to have a specialist tribunal;
- provide for independent review of discretionary powers;
- ensure that persons are dealt with fairly and properly in their relationships with government; and
- build up 'a significant body of administrative law and practice of general application'.

The public values underpinning the AAT were that the tribunal would:

- operate with informal procedures; and
- ensure that its members and staff could make enquiries and, if appropriate, settle matters at preliminary conferences.

Subsequently the introduction into the AAT Act of the requirements, now almost standard within major Australian tribunals, that the AAT operate in a manner which is 'fair, just, informal, economical and quick',[25] that the Tribunal is 'not bound by the rules of evidence but may inform itself on any matter in such manner it thinks appropriate',[26] and that it should provide a range of alternative dispute resolution mechanisms as part of its standard operating procedures,[27] has cemented those purposes and values.

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25 *Administrative Appeals Tribunal Act 1975* (Cth) (AAT Act) s 2A.
26 Ibid s 33(1).
27 Ibid Part IV, Div 3.

A more recent example is found in the *Second Reading Speech* for the *Queensland Civil and Administrative Tribunal Act 2009* (Qld). The purposes of the Queensland Civil and Administrative Tribunal (QCAT) were to:

- create a one-stop shop for accessing justice services so as to minimise public confusion about where to go for help;
- avoid the previous proliferation of tribunals;
- provide a modern, efficient and accessible system of civil and administrative justice; and
- improve the quality and consistency of decisions.

The public values of QCAT were to:

- be responsible, informal, cost-effective and expeditious;
- provide decisions which were independent and impartial;
- adopt a more inquisitorial approach than courts to dispute resolution;
- have a large and flexible membership with specialist expertise; and
- be accessible, fair, just, economical, informal and quick.[28]

Another list of public purposes and values of tribunals is the blueprint for the amalgamated tribunals' service in England and Wales. These were:

- manifest independence from those whose decisions are being reviewed;
- as short a waiting time as was appropriate for the matter being dealt with;
- resolution of a case without a formal hearing when possible;
- being located in a hearing centre which was accessible and with modern facilities;
- provision of easily navigable, comprehensive and comprehensible information about the process;
- holding hearings which were not daunting or legalistic;
- having matters dealt with by independent and skilled members;
- providing decisions which are authoritative, consistent and comprehensible and which command the respect of those affected; and
- being a cost efficient service that provides good value to the taxpayer.[29]

There are common themes in these lists of public purposes and values of tribunals. They include avoiding the proliferation of tribunals, ensuring tribunals are independent of government, and providing more accessible administrative justice. Common values include the resolution of disputes without a hearing, the offering of a cost efficient, relatively efficient service, using procedures when appropriate that are informal, and the provision of decisions that are authoritative, consistent and

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[28] Queensland, *Parliamentary Debates,* Legislative Assembly, 19 May 2009, 351-353 (Cameron Dick, Attorney-General and Minister for Industrial Relations).

[29] Office of Public Service Reform, *Transforming Public Services: Complaints, Redress and Tribunals* (2003) 20.

comprehensible so that they command respect and provide guidance to government. These purposes and values can be applied to government when deciding upon or renovating the structure of its review bodies, and to the individuals within tribunals.

Identification of appropriate measures requires an understanding of the purposes and functions of the tribunal system as a whole or of an individual tribunal. These public purposes and values do not neatly divide into institutional versus behavioural integrity. Some purposes such as a tribunal's independence, whether tribunals in a jurisdiction are to be amalgamated or co-located, the quality of the membership of the tribunal, and whether it is to be located within the judicial or executive arm of government are determined primarily by government. They can be categorised as applying to the institutional element of integrity.

Matters such as the provision of comprehensive and comprehensible information about tribunal procedures, running hearings which are not daunting or legalistic, the independence of mind and the skilfulness of those conducting pre-hearing or hearing processes, the promptness in delivery of decisions, the provision of effective outreach, and the operation of a cost-effective service, are within the behavioural integrity domain.

B *Responsibility for ensuring tribunals meet integrity standards*

As the earlier discussion has foreshadowed, there are three distinct groups responsible for ensuring tribunals meet integrity standards: the government; tribunal management; and staff and members of tribunals. The responsibility of government is for the integrity of a tribunal in the institutional sense, that is, how effective are its policies about tribunals and tribunal systems. Equally, in an institutional sense policies of tribunal management, for example, devising metrics for the tribunal, should meet integrity standards. At the same time the actions of members and staff determine a tribunal's behavioural integrity, that is, how well do its administrative, dispute resolution and formal decision-making functions meet integrity measures.

To illustrate, it is government which determines whether a dispute handling body is to be a tribunal or a court, the level of a tribunal's independence, whether tribunals are to be amalgamated or co-located, and the quality of the membership of the tribunal. These are issues that broadly shape the culture, the mode of operation, and the effectiveness of the tribunal and contribute to its health and wholeness.

The institutional role of tribunal management is evident in its operational decisions. It is management which decides how budgets are to be spent and on its level of financial probity; whether its committees are effective to achieve the purposes for which the tribunal has been established; whether members and staff are fulfilling their functions and so meeting the tribunal's goals; what policies and directions best serve those functions; and what are the workforce metrics needed to achieve these objectives. In other words, management is responsible in an intimate sense for the culture, efficiency and effectiveness of the tribunal.

Finally, actions by staff and members of tribunals determine whether a tribunal is operating with integrity. How staff and members conduct dispute handling processes, the perception or otherwise of the impartial manner in which they treat applicants, the reasoning processes in their decisions, the sensitivity with which they react to individuals seeking their assistance, and the level of guidance they provide to those agencies the subject of their decisions, all contribute to the perception of their level of behavioural integrity.

C *How well do Australian tribunals measure against these standards?*

A selection of purposes and values is discussed with a view to identifying how well government in its decision-making about them, and Australian tribunals understand, adhere to and hence meet integrity standards.

Processes are in place in Australia for measuring aspects of integrity in tribunals. Legislation often contains purposes or objectives for a tribunal, including adherence to procedural norms such as natural justice. Tribunals have time limits for finalising matters, and there are often criteria for membership of a tribunal. Reporting against these measures frequently appears in annual reports. Specific reviews of a particular tribunal or of the tribunal system refer to objectives they should achieve.[30] User satisfaction studies are administered. However, it is rare to find evidence of the effectiveness of a tribunal system or of the processes of individual tribunals. In other words there tends to be a paucity of information about the third and fourth elements of the four-stage integrity testing process.

D *Identification of the characteristic of a 'tribunal'*

A decision by government which affects all those who are involved in a tribunal is whether the body is intended to be a court or a tribunal. In other words, what public purpose does it serve? That is a practical issue since the powers and functions of each, and their mode of operations differ, often markedly. It is undeniable that a signal feature of the tribunal model is its flexible structure and mode of operations. This makes the tribunal an attractive adjudicative option for government since it enables a choice of model from a range of bodies bearing that label. That flexibility, however, can be accompanied by a degree of uncertainty about the status of the body.

The need for a clear indication of status has arisen for three reasons: the first is constitutional; the second is jurisdictional; and the third relates to functional capacity. To date there has been costly litigation on these issues for tribunals or courts in Tasmania, South Australia, New South Wales and Queensland, often with apparently inconsistent results.

1 *Constitutional issues*

Federal tribunals, for constitutional reasons, are located within the executive branch and cannot be created as courts exercising federal judicial power. The position is less clear at the State and Territory level, given the absence of a constitutional imperative to observe the separation of powers doctrine.[31] As a consequence it is at the state and territory level that this issue generally arises.

The status of the body depends on the answer to two questions: is the statutory intention that the body be a court or tribunal; and, if a court, can it exercise the judicial power of the Commonwealth under Chapter III of the Constitution. The answer to the second question depends on whether the body can be described as a 'court of a state' in

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30 For example, see the discussion in this paper of public purposes and public values.

31 *Cf. Sunol v Collier (No 1)* [2012] NSWCA 14 (Appeal Panel of NSW Administrative Appeals Tribunal only able to give an opinion on a state constitutional issue).

the Constitution Chapter III sense.[32] In both cases the answer is to be discerned in the statutory framework for the body.[33]

The issue has received High Court attention in two relatively recent decisions, *K-Generation Pty Ltd v Liquor Licensing Court*[34] and *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police.*[35] The essence of the judgments is that whether a body is a court or a tribunal depends on a range of factors.[36] In the constitutional context, key characteristics in favour of a body being a court rather than a tribunal are that the body is a 'court of record',[37] and that its members are to act with independence and impartiality.[38] An additional criterion for a state body to be a Chapter III court is that its functions do not offend the *Kable* principle,[39] that is, it exhibits institutional integrity.[40]

These questions have been considered in two relatively recent decisions in Queensland. In *Jomal Pty Ltd v Commercial & Consumer Tribunal (Jomal),* Douglas J for the Queensland Supreme Court listed 22 characteristics which determined whether Queensland's then Commercial and Consumer Tribunal was exercising administrative or judicial power, in other words was more tribunal or more court-like.[41] Douglas J identified eight characteristics of the tribunal which were administrative,[42] and fourteen which pointed towards it being judicial.[43] While he acknowledged that the fact that

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32 *Commonwealth v Anti-Discrimination Tribunal (Tas)* (2008) 169 FCR 85; *Trust Co of Australia (t/a Stockland Property Management) v Skiwing Pty Ltd (t/a Café Tiffany's)* (2006) 66 NSWLR 77; *Owen v Menzies* [2012] QCA 170; *Sunol v Collier (No 1)* [2012] NSWCA 14.

33 *Orellana-Fuentes v Standard Knitting Mills Pty Ltd* (2003) 57 NSWLR 282; *Commonwealth v Anti-Discrimination Tribunal (Tas)* (2008) 169 FCR 85.

34 *K-Generation Pty Ltd v Liquor Licensing Court* (2009) 237 CLR 501.

35 *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police* (2008) 234 CLR 532.

36 *Jomal Pty Ltd v Commercial & Consumer Tribunal* [2009] QSC 3 (affirmed on appeal, *Jomal Pty Ltd v Commercial & Consumer Tribunal* [2009] QCA 326).

37 *Owen v Menzies* [2012] QCA 170, [10] per De Jersey CJ, with whom Muir JA agreed at [101]; at [49], [52], [61] per McMurdo P, with whom De Jersey CJ agreed).

38 *North Australian Aboriginal Legal Aid Service Inc v Bradley* (2004) 218 CLR 146, 152 (Gleeson CJ); *Owen v Menzies* [2012] QCA 170, [19] (De Jersey CJ); at [49] (McMurdo P, with whom De Jersey CJ agreed); *Commonwealth v Anti-Discrimination Tribunal (Tasmania)* (2008) 169 FCR 85.

39 *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51.

40 *Owen v Menzies* [2012] QCA 170, [53] (McMurdo P, with whom De Jersey CJ agreed).

41 Ibid, [42] – [54].

42 The factors which inclined towards the body being administrative were: its jurisdiction was established by statute; there was no compulsion for it to hold a hearing; it could decide a matter on the papers; members of the tribunal did not have to be legally qualified; there was no obligation to hold hearings in public; the objectives of a tribunal to be 'just, fair, informal and cost efficient', and to make the decision which is 'correct or preferable, imposed no obligation on the tribunal, unlike a court, to do 'justice according to law', nor to hear and decide a matter 'according to law'; there was no obligation to abide by the rules of evidence; and tribunal members could decide matters of law according to their own opinion and not necessarily, as in a system bound by precedent, according to decisions above it by the courts.

43 The factors which inclined towards the body being judicial were: it could decide questions of law; an appeal lay to the District Court on questions of law; it was bound by the rules of natural justice; the proceedings involved pleadings and the tribunal could make directions regarding the conduct of proceedings; parties could be legally represented; hearings were generally open to the public; it could summon witnesses, order the production of documents, take evidence on oath, punish for contempt, make orders, and give directions, must give written reasons, and make orders for costs; it could make orders in the nature of injunctions; it must make orders which were just; its members were immune from liability; it had both original and review jurisdiction; matters commenced in a court could be remitted to the tribunal; members were appointed under the former *Commercial and Consumer Tribunal Act*

members could be non-lawyers was a strong indication of the tribunal exercising administrative, not judicial power, this was counterbalanced by the fact that decisions of the tribunal could be registered in the District Court and take effect as a judgment of that court. On balance he concluded: 'these considerations seem to me to justify the conclusion that the decision was judicial in its nature'.[44] His Honour's decision was upheld on appeal.[45]

In *Owen v Menzies,*[46] the most recent of the two decisions, the Queensland Court of Appeal also identified over twenty relevant factors. The key factor for the Court in deciding that the body was a court for Chapter III purposes was that the Queensland Civil and Administrative Tribunal was a 'court of 'record'.[47] Other significant factors were that it decided controversies between parties according to their legal rights and obligations, it could make binding, authoritative and enforceable decisions, its members were independent and impartial, its decisions were subject to appeal, and it was subject to the Supreme Court's supervisory and appellate jurisdiction.[48] Although key indicators have been identified in these cases, the outcomes have not necessarily been consistent, so the issue remains a live one.

2 *Jurisdictional issues*

There are other consequences of a failure to identify the status and powers of a tribunal. One such issue pertains to rights of appeal or review and whether the tribunal's functions are executive or judicial in nature. The significance of the distinction arises in the context of judicial review statutes which permit judicial review only of decisions of an 'administrative character'.[49] So if a tribunal is making decisions which are judicial in character, there can be no judicial review of those decisions under Judicial Review statutes. This was the issue in *Jomal* in relation to Queensland's Commercial and Consumer Tribunal,[50] but it has arisen also in other cases.[51]

The jurisdictional issue can also be raised by the question of whether the tribunal is a court for state legislative (or judicial) purposes. In *Trust Co of Australia (t/a Stockland Property Management) v Skiwing Pty Ltd (t/a Café Tiffany's)* the NSW Court of Appeal concluded that although not a 'court of a state' for Chapter III purposes, the Appeal Panel of the NSW Administrative Appeals Tribunal had the relevant characteristics of a 'court' for the purposes of the *Suitors' Fund Act 1951* (NSW). Accordingly, the respondent to the appeal, Skiwing, was entitled to a certificate under the Act with respect to the costs of the appeal and the decision of the Appeal Panel was not invalid.[52]

2003 (Qld), not the *Public Service Act 1996* (Qld); a party could register a decision by the tribunal in the registry of a court, when it had for the purposes of enforcement, the same force and effect as if it was a judgment of a court.

44 *Jomal Pty Ltd v Commercial & Consumer Tribunal* [2009] QSC 3, [48].

45 *Jomal Pty Ltd v Commercial & Consumer Tribunal* [2009] QCA 326.

46 *Owen v Menzies* [2012] QCA 170.

47 Ibid, [48] (McMurdo P, with whom De Jersey CJ and Muir JA agreed).

48 Ibid, [4] (De Jersey CJ); [49], [54] (McMurdo P, with whom Muir JA, agreed).

49 Judicial review statutes exist in the Commonwealth, Queensland, Tasmania and the ACT.

50 *Jomal Pty Ltd v Commercial & Consumer Tribunal* [2009] QSC 3.

51 E.g. *Medical Board of Queensland v Lip* [2007] QSC 271 (whether decision of Health Practitioners Tribunal was a decision of an administrative character).

52 *Trust Co of Australia (t/a Stockland Property Management) v Skiwing Pty Ltd (t/a Café Tiffany's)* (2006) 66 NSWLR 77, [74] (Basten JA, with whom Handley JA and McDougall JA agreed). See also *Commonwealth v Anti-Discrimination Tribunal (Tasmania)* (2008) 169 FCR 85 (acceptability of exercise by a state tribunal of state judicial power).

3 *Functional reasons*

Further reasons why clarity on these issues can be critical arise in the context of the tribunal's procedures. An example is whether documents creacted for a tribunal proceeding enjoy legal professional privilege. Traditionally this has turned on whether the proceedings of the tribunal can be described as 'legal proceedings' in the terms of the *Evidence Act 2005* (Cth) ss 118, 119, or under the general law.

The matter appears settled as far as the AAT is concerned in favour of the privilege applying.[53] The Court said that application of the privilege in the context of a tribunal proceeding must be based on the general principle underpinning the privilege, namely, to encourage the greatest candour in communications between solicitor and client. Reliance on the reason for the privilege, rather than an *a priori* categorization of the tribunal either as inquisitorial or adversarial, or as part of the executive or the judicial arm of government, was the correct approach. As Mason and Wilson JJ said in *Waterford v Commonwealth:*[54] '[T]here is no warrant to draw an arbitrary line through the functions of government … to exclude the privilege from those described as of an administrative nature'.[55] The Full Court of the Federal Court has reached the same conclusion in relation the migration tribunals.[56]

In summary, it is not always clear from their legislation that an adjudicative body is intended to be a tribunal or a court. Institutional integrity would be served if there was a template – whether drawn up by parliamentary drafters, or by a body such as the Administrative Review Council, listing the minimum powers and authorities needed to ensure that the status of a body – as a court or a tribunal – and the extent of its powers, was clear. These steps would help avoid the uncertainty and extensive costs entailed when the classification of the body is ambiguous.

E *Non-proliferation and accessibility*

Two of the key themes identified as public purposes and values of tribunals are the need to minimise the proliferation of tribunals, and for steps to improve their accessibility. The two are interrelated. If separate tribunals are folded into a single service or co-located, the possibility of enhancing access to the combined bodies is increased. Government attention to these issues would assist those tribunals, particularly smaller ones or those which meet infrequently, having to be housed in temporary premises or, for cost reasons, in out of the way places. The problem is commonly encountered: 'The bigger tribunals have good accommodation, frequently under-used; the smaller ones are scratching around for suitable venues for hearings'.[57] Combined tribunals, whether co-located or amalgamated, can afford to be in a central location and thereby become more accessible.

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53 *Re Farnaby and Military Rehabilitation and Compensation Commission* (2007) 97 ALD 788; not following Bergin J in *Ingot Capital Investments Pty Ltd v Macquarie Equity Capital Markets Ltd* (2006) 67 NSWLR 91; *Valantine v Technical and Further Education* Commission (2007) 97 ALD 447.

54 *Waterford v Commonwealth* (1987) 163 CLR 54, 63.

55 Ibid. See also in the taxation context: *Pratt Holdings Pty Ltd v Commissioner of Taxation* (2004) 136 FCR 357, 376-383.

56 *SZHWY v Minister for Immigration and Citizenship* [2007] FCAFC 64.

57 *Tribunals for Users One System, One Service* Report of the Review of Tribunals by Sir Andrew Leggatt (the Leggatt report) (2001), [1.18].

F *Co-location*

There is a tendency for governments to set up a separate tribunal to deal with a novel area needing independent dispute handling. This leads to a multiplicity of bodies with the label 'tribunal', and the costs to government escalate. In response, there are calls for amalgamation or at the least co-location, of the tribunals. This phenomenon has been evidenced in Australia in the last decade. Co-location, that is, several tribunals using common premises and facilities, can lead to better standards of information about the tribunals involved, less confusion for users, avoidance of duplication of corporate services, and uniformity of standards.

Co-location is not a new idea. In 1994, Disney called for increased accessibility of legal services including, it can be inferred, services provided by tribunals,[58] and in 1996 he referred specifically to co-location of tribunals.[59] The Administrative Review Council in 1995, while recognising that there is a trade-off between accessibility and cost, recommended that 'co-location between tribunals may offer some prospect of allowing cost-effective servicing of additional offices'.[60] This was in response to many submissions that 'there were significant savings to be made from tribunals sharing overheads, including office accommodation (co-location)'.[61]

Following the demise in 2001 of the proposal for the amalgamation of the major national tribunals (the Administrative Review Tribunal or ART proposal), the Australian government in 2004 recommended co-location as an alternative approach. The purpose was to enable the tribunals to achieve 'administrative efficiencies'.[62] However, in the face of the costs involved the suggestion was only that 'tribunals should pursue co-location as current leases expire in circumstances where it is appropriate and cost-efficient to do so'.[63]

The most recent review of national tribunals in 2012, the Skehill Review, endorsed the recommendation of the 2004 review in relation to co-location,[64] but at some later time.[65] In her response to Skehill's report, the Attorney-General said only that she 'welcomed the recommendation that the major Commonwealth merits review tribunals formally cooperate to identify further efficiencies between them',[66] but declined to endorse the recommendation to revive the ART. In effect she endorsed the 2004 review that co-location should be pursued provided it fulfils the cost-efficiency requirement.

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58 Julian Disney, *Improving the Quality and Accessibility of Legal Services*, Paper No 2, Law & Policy Papers, Centre for International and Public Law, Australian National University, 1994, 29.

59 Julian Disney, *Reforming the Administrative Review System*, Paper No 6, Law & Policy Papers, Centre for International and Public Law, Australian National University, 1996, 16-17.

60 Administrative Review Council, *Better Decisions: Review of Commonwealth Merits Review Tribunals*, Report No 39 (1995) [5.41].

61 Ibid [7.27].

62 *Tribunal Efficiencies Working Group Report* (2004). Executive Summary at [17].

63 Ibid. Recommendation 3.1 was that 'The tribunals should work through the Heads of Tribunal forum to consider the co-location opportunities identified by the Working Group, and implement those opportunities where possible and economical, noting the significant costs involved'.

64 *Strategic Review of Small and Medium Agencies in the Attorney-General's portfolio (**Skehill Review**)* (2012).

65 Ibid [7.25].

66 Attorney-General for Australia, 'The Hon Nicola Roxon MP, Review of Attorney-General's portfolio agencies released' (media release, 8 June 2012).

Co-location is, however, taking place in the AAT. For example, the ACT Registry of the AAT presently hosts eight other state and national tribunals.[67] They use its premises on a regular basis or as needed. This example is replicated to varying degrees in other registries of the Tribunal. The seven registries of the AAT nationally may, in time, become shared tribunal premises, with a new and distinctive name and identity.

Despite these steps, co-location at the national level is patchy and a long way behind comparable initiatives in the states and the ACT. Nonetheless, it can be expected that progressively, as it becomes financially sensible to do so, co-location of federal and other tribunals will occur.

G *Non-proliferation*

1 *State and Territory Tribunals*

The call for non-proliferation has been responded to more effectively in the states and the ACT than in the Commonwealth. The development of the Civil and Administrative Tribunals (CATS) model has not only seen many tribunals housed in single premises, but also many tribunals being combined into a single service.

The Victorian Civil and Administrative Tribunal (VCAT), WA's State Administrative Tribunal (SAT), Queensland's Civil and Administrative Tribunal (QCAT) and the ACT's Civil and Administrative Tribunal (ACAT) are located in one building in central capital locations. That means all tribunal services are provided in one place. Where there is a need for providing the service outside the capital city, members can either travel to outlier locations,[68] complete with tribunal accoutrements – such as the Victorian the 'tribunal in a box' initiative,[69] or even, as is progressively occurring in that state, setting up more permanent regional locations for the tribunal, often located in community or other premises.

Both New South Wales and South Australia have announced that they will minimise proliferation of tribunals by establishing a new body: the New South Wales Civil and Administrative Tribunal (NCAT), and the South Australian Civil and Administrative Tribunal (SACAT).[70] New South Wales has passed the relevant legislation and NCAT is to begin operating on 1 January 2014.[71] South Australia has yet to respond to a report on the proposal so it is not possible yet to judge what form the amalgamation will take.

NCAT is to be an amalgam of 23 separate state tribunals which may not be co-located. The Attorney-General has said the government eschews the 'one size fits all' approach of the other CATS,[72] suggesting rejection of the single location model. [73] That is understandable in relation to at least the Consumer, Trader and Tenancy

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67 The Social Security Appeals Tribunal, the Veterans' Review Board, the two migration tribunals, the Defence Honours and Awards Committee, the NSW Road Transport Authority, the Australian Crime Commission, and the Australian Commission for Law Enforcement Integrity.

68 Given its size and absence of satellite cities or towns, there is no need for regional hearings in the ACT.

69 *VCAT Annual Report 2012* 56. VCAT in a Box 'is a wireless remote access kit, primarily used by Members hearing matters in non-traditional venues. See also Kevin Bell, *One VCAT: President's Review of VCAT* (2009) 73.

70 John Rau, SA Attorney-General, Keynote speech at the AIAL National Conference in Adelaide, 19 July 2012.

71 *Civil and Administrative Tribunal 2013* (NSW).

72 Press Release, NSW Attorney General, Mr Greg Smith SC 'Consolidation of NSW tribunals' (26 October 2012).

73 Ibid 2, 4.

Tribunal (CTTT), given its large caseload and well-established infrastructure. However, the government may relocate the other tribunals into a single or limited number of premises. Given Sydney's rental prices, however, there is every reason for this process to be a slow one if the tribunals wait until their leases expire. But even if NCAT is not in a single location, the NSW Government envisages 'sharing of facilities', that is, a single registry and corporate services division,[74] and one gateway for all tribunal users.[75] That suggestion will give better visibility for the tribunals to be folded into NCAT, particularly if the gateway portal is well publicised, and the proposal that 'all registry staff will receive the benefit of common training, technology and supplies' is implemented effectively.[76]

2 *Federal tribunals*

The *Skehill Review* recommended that other than in exceptional circumstances, the government should decide that no new Commonwealth merits review body should be established, and any new jurisdiction should be conferred on the AAT,[77] a recommendation which was accepted.[78]

H *Accessibility*

1 *Location*

Tribunals should easily be accessed by the public since it is tribunals, rather than courts, that are the face of justice to most Australians. That is evident in one of the public purposes of tribunals , namely, that they settle people's disputes in a more efficient, cheaper and less daunting manner than going to a court. The advantages of greater visibility and ease of location was provided in QCAT's 2011 *Annual Report* which noted that the tribunal had received 37 per cent more applications in that financial year than the combined tribunals it had absorbed.[79]

If a tribunal is to be accessible it must be visible. Currently tribunals are often difficult to find. There are no 'Tribunal Hearing Centres' to match the local court-house. There are no signposts in the street, in maps, or on public transport saying 'Tribunals here'. Contrast this with the situation relating to courts. Even in many of our country towns, the courthouse is one of the more imposing buildings and it is generally located in the main street. Residents know where it is, and for non-residents, it is likely to be well signposted. In metropolitan areas, courthouses are usually located in prominent and central locations. So the relative invisibility of tribunals, by contrast, contributes to the perception that tribunals, in the eyes of governments, are inferior to courts in status and in public importance.[80]

As mentioned, one means of improving tribunals' visibility is to house them in a single building or a recognisable selection of buildings. The report card is mixed when seeking objective evidence of government success in this field. Some tribunals –

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74 NSW Government Response to the report of the Standing Committee on Law and Justice Inquiry into Opportunities to consolidate tribunals in NSW' (October 2012) 4.

75 Ibid, 3.

76 Ibid, 4.

77 *Strategic Review of Small and Medium Agencies in the Attorney-General's portfolio (**Skehill Review**)* (2012) [7.45].

78 The Hon Nicola Roxon, Commonwealth Attorney-General 'Review of Attorney-General Portfolio Agencies Released' (media release, 6 Jun 2012) 3.

79 *Queensland Civil and Administrative Tribunal Annual Report 2010-2011*, 6.

80 Andrew Leggatt, *Tribunals for Users One System, One Service*, Report of the Review of Tribunals (the Leggatt report) (2001) [5.3].

QCAT and SAT come to mind - are in central locations. Others are not. Australia is a long way from having tribunal hearing centres with comparable visibility to that of even the lower tier of courts. In order to meet the accessibility goal, governments will need to take steps such as securing the naming rights of buildings which house tribunals, increase signposting to tribunals, and publicise the location of tribunals when revising maps, securing entries for GPSs, or providing information to Google. Absent such moves decision-making by government about tribunals will not merit the adjective 'integrity' when measured against the accessibility standard.

2 *Service standards – being client focused*

Accessibility is not just visibility. In practice accessibility means knowing about what the tribunal does, how it operates, how to access its information or to supply it with documents, and what assistance the tribunal provides. That is an expectation about tribunals which chimes with the 'easily understood procedures' and 'accessible service' values of tribunals identified earlier. These are expectations which should be heeded by government in its decision-making about tribunals, and by tribunal management in their strategic policy decision-making for the tribunal. At the same time, these issues need to be supplemented by more specific objectives which focus on the operational objectives of tribunals as goals for tribunal management, staff and members (see VCAT 2009 survey below).

A relevant and indicative measure which exemplifies values against which to test tribunal's staff and members is found in the European Ombudsman's *Code of Good Administrative Behaviour*, namely, the obligation to be '*service minded'*. Being service-minded includes:

- being polite, helpful and efficient;
- providing information in languages other than English;
- using electronic communications with the public as appropriate; and
- providing guidance on how to initiate proceedings and to send material to appropriate persons as requested or required.[81]

These service standards are central to integrity and apply appropriately to tribunals. They are reflected in the values identified earlier that tribunals provide an accessible service, have processes that are easily understood, are informal when appropriate, and are not daunting or legalistic. Implementation of these practices is principally a matter for tribunal management, while execution is a matter for tribunal staff and members. At present, tribunals' performance against these goals is variable.

Some of these deficiencies underpin the calls for change in the 2009 review of VCAT. The review identified a number of matters requiring attention,[82] some of which exemplify criticisms likely from any user survey of tribunals. VCAT has responded by setting up a program to rectify the issues, it has developed standards, and is monitoring whether standards are being achieved.

Deficiencies identified included:

- too little assistance for self-represented parties and non-lawyer advocates;
- opposition to legal representation;
- excessive cost;

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81 Statskontoret, above n 22, 62, 63-65, 67.
82 Kevin Bell, above n 69, 20-24.

- getting back to the tribunal's roots and avoiding '*creeping legalism'*;
- inconsistency in procedure and result;
- delay in being listed and getting a decision;
- administrative inefficiency;
- stronger focus on customer service;
- better support for ADR; and
- need for plain English forms and correspondence.[83]

This paper assesses whether the major tribunals meet a selection of these standards.

The first issue is whether tribunal websites provide information in multiple languages.[84] VCAT, QCAT and SSAT have a link on their web pages to advice – albeit brief – in different languages. There were no comparable links on the 'Contact Us' icon for SAT, ADT, ACAT, or the VRB. Surprisingly the migration tribunals only refer on their home page to a link to translation and interpreting services, and its information in different languages is only found by following the link 'How to apply?'

The AAT homepage refers a user to the Translating and Interpreting Service (TIS) and provides advice that the TIS can call the AAT on a 1300 number on behalf of the caller. The CTTT advises – in English – a number to ring to an interpreter service. An inherent problem with websites which only provide a cross-reference to the translation and interpreting services is that someone with insufficient command of English to read the instruction about the location of the services, will be equally unable to read the advice about where to go.

These deficiencies are surprising in Australia where, according to the 2011 census, over a quarter (26 per cent) of the population was born overseas and a further one fifth (20 per cent) had at least one overseas-born parent. It appears many prominent tribunals have not catered effectively for many of those people. That is clearly a metric to which attention should be given by governments, and by tribunal management. The deficiency may in part explain why the statistics in this country[85] and in England have confirmed that only a minority of those disappointed with an initial government decision take the matter further and seek review.[86]

3 *Disability-friendly services*

High on the current national policy agenda is implementation of the National Disability Insurance Scheme (NDIS), decisions under which are to be reviewed by the AAT. Currently, however, the CATS review decisions under state and territory disability discrimination legislation, and in the ACT, Victoria, and to a lesser extent the Commonwealth, under human rights legislation. In combination this legislation imposes standards for treatment of people with disabilities and for provision of services to such people. These standards offer a fertile source for complaints by disabled users and their carers.

For example, governments have legislated to make public buildings disability-appropriate. There are national standards for buildings under the *Disability*

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83 Ibid 20-21.

84 The author examined the websites of the various tribunals to provide this information.

85 Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (2009) Part 1.

86 Hazel Genn, Ben Lever, Lauren Gray, Nigel Balmer and National Centre for Social Research, '*Tribunals for diverse users'* (Department of Constitutional Affairs, Research Series 1/06, 2006) 97, 102.

Discrimination Act 1982 (Cth) spelled out in the *Disability (Access to Premises – Building) Standards* 2010 (Cth) (*Standards*).[87] Aspects of premises to which special attention is due include not just toilets, lifts, size of doorways and doors, but lighting, emergency warning systems, accessways, passing areas, and manoeuvring areas. These standards impose considerable pressures on tribunal management to ensure tribunals are located in access-friendly buildings.

The need for appropriate approaches by staff when dealing with people with disabilities is a more subtle requirement. As part of being 'service-minded' staff and members must manage interactions with disabled applicants, their carers or advocates with tact, sensitivity and awareness of the disabled person's needs. Training may be needed to ensure that people with disabilities and their carers are satisfied with the services they receive. This may pose a considerable challenge in the future, particularly in relation to the applicants under the novel NDIS scheme.

4 *Communication*

A Government report recommended in 2009 that the public sector should use technology to provide better services to Australians.[88] This is a public value and provides a standard for decision-making for and by tribunals. In this digital age tribunals are increasingly being challenged to use technology to expand the accessibility of services. People who use tribunals have come to expect more than tribunals are at present offering. For example, there are calls for an e-filing system and to be able to communicate with tribunals electronically on all aspects of a claim. People also expect to access forms online, lodge documents online, pay fees online, search for the progress of their matter online, and find similar cases to their own online in order to decide whether to make a claim or seek review. Tribunal members too would benefit in their decision-writing by being able to search documents online for that elusive date or figure which might make the difference to the outcome of a matter, rather than spending hours manually searching often voluminous documents to ensure they have not missed some vital information.

For cost reasons, tribunals have only begun to embark on e-communications initiatives. Moreover, it is often only the larger tribunals that can afford to introduce a suite of online services. So it is not surprising that even the AAT and the CATS have been slow to take on e-communication developments. Currently, SAT offers e-lodgement but only for the legal profession and government departments and then only in commercial tenancy cases. VCAT has online services but only for registered users and in tenant and landlord matters. QCAT has e-lodgement for debt disputes only. Alone among the sizeable tribunals, the CTTT provides e-lodgement for applications in all its major areas of work.

Applications to the migration tribunals cannot be made online. Members of the MRT/RRT, however, have access to some documents online. There is no facility for e-lodgement of applications for the VRB, the SSAT, for ACAT, and for the ADT. Use of fax, email and for restricted purposes, SMS, is permitted by some of these tribunals.

The AAT is moving to permit lodgement by email, and communication on some topics by SMS, but in the case of documents, a hard copy is generally still required. Scanning of documents received into the database has not yet been accomplished. In its new e-Case search facility, case and administrative records and documents may be scanned. This is a feature of the AAT's current electronic services and information management program. Following the progress of a case will then be possible for anyone. Information which is currently available relates to the kinds of documents,

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87 These standards apply from 1 May 2011 to all new buildings or new parts of buildings.

88 *Report of the Government 2.0 Taskforce* (2009) Ch 4, recommendation 4.

listing dates, and names of parties. However, managing information and delivering other services electronically by simple, accessible and effective online services is still some way off.

In this context, a general tribunal portal should be a long-term objective for tribunals. The concept has been effectively introduced by the Australian Tax Office (ATO) in the portal used by tax agents. The portal permits registered users to access documents, to see what stage a matter has reached, and to interact electronically with the ATO. Equally the Federal Court's e-lodgement scheme has significantly improved interaction with the court by applicants and their representatives. However, a tribunal portal with these capabilities has yet to be achieved by any Australian tribunal.

Discussions have also occurred about the development of an online triage system.[89] Co-located tribunals could operate such a system to direct the caller to the relevant tribunal. For amalgamated tribunals, a hotline service would identify for the caller the most appropriate division of the tribunal and advise how to access its services. Moves in this direction may occur with the advent of NCAT if the intention that would-be users need call only one number to be put through to the appropriate location is implemented.[90]

A triage system within a tribunal could also be introduced. Such a system would prioritise applications to the tribunal, placing those with claims which involve significant financial, safety or other personal problems ahead of less urgent matters. In addition, recommendations could be made for resolution of the dispute through ADR rather than a hearing, or that the hearing should be on the papers, to limit costs. Such a system has been introduced in Wales.[91]

These objectives have been discussed by various Australian governments but have not yet materialised. Achievement of these goals will go a long way towards improving the visibility of and access to tribunals, thus facilitating Australian's rights to complain and to achieve a correct or preferable decision in a matter concerning them.

III CONCLUSION

'A commitment to ethics and integrity is at the heart of good government administration'.[92] It is no accident that the APS Values has given prominence to acting with integrity. This is now a core value of public administration within Australia.

Tribunals are a valuable element of public administration in this country and they play an important role in the administrative justice system. The core values of public administration should be followed by tribunals, and this is an expectation of users. They have come to expect when seeking review of decisions adverse to their interests that they will be assisted by a tailored, responsive tribunal system which is operating with integrity.

Some of the steps needed to meet that expectation were noted by Leggatt:

> Administrators should strive to improve the speedy and efficient throughput of cases from dissatisfaction with an initial adjudication by department or agency to the conclusion of the ultimate appeal. That should be achieved by skilful listing, by

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89 Administrative Justice & Tribunals Council (AJTC), *Putting it Right – A Strategic Approach to Resolving Administrative Disputes* (2012) 39. Triage is one of the 'mapping factors' developed by the AJTC.

90 Ibid 36.

91 Ibid 39.

92 Australian Public Service Commission, *State of the Service Report 2011* (2011) 9.

> enlightened case management, by keeping users informed in all their dealings with the tribunal, by ensuring that standards are met, and by learning lessons by taking heed of complaints.

As he went on:

> It should never be forgotten that tribunals exist for users, and not the other way round. No matter how good tribunals may be, they do not fulfil their function unless they are accessible by the people who want to use them, and unless the users receive the help they need to prepare and present their cases.[93]

Fidelity to the purposes for which tribunals were established and the values enshrined in their legislation, in standards of good administration, and in the measures and commitments tribunals' profess on their websites and in their annual reports are the principal sources of the standards against which the integrity of decision-making about and by tribunals will be judged. In some instances, these objectives are being met; in others, improvements are under way; in others still, there is work to be done. Integrity in decision-making, although a demanding tool, is a feature of modern public administration and provides the yardsticks against which continual improvement can be measured. Making those improvements is the challenge for tribunals over the next decade.

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[93] Leggatt, above n 80, 6, 14.