

Northern Territory Law Reform Committee

Report on the Review of Administrative Decisions and an Administrative Tribunal

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DECISIONS AND AN ADMINISTRATIVE TRIBUNAL
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ABBREVIATIONS

AAT (ACT)	Administrative Appeals Tribunal (ACT)
AAT Act (ACT)	<i>Administrative Appeals Tribunal Act 1989 (ACT)</i>
ACT	Australian Capital Territory
ADT (NSW)	Administrative Decisions Tribunal (NSW)
ADT Act (NSW)	<i>Administrative Decisions Tribunal Act 1997 (NSW)</i>
AIJA	Australian Institute of Judicial Administration
Committee, the	The Northern Territory Law Reform Committee
Commonwealth AAT	Administrative Appeals Tribunal (Cth)
Commonwealth AAT Act	<i>Administrative Appeals Tribunal Act 1975 (Cth)</i>
NSW	New South Wales
NT	Northern Territory
SA	South Australia
SAT (WA)	State Administrative Tribunal (WA)
VCAT	Victorian Civil and Administrative Tribunal
VCAT Act	<i>Victorian Civil and Administrative Tribunal Act 1998</i>
WA	Western Australia
WA Taskforce	Western Australian Civil and Administrative Review Tribunal Taskforce

RECOMMENDATIONS

1. That the NT Government legislate for the establishment of a system of Administrative Review similar to models already established in the Commonwealth, the States of Victoria and NSW and the ACT and about to be established in the State of WA.
2. That the basic model for such legislation be the VCAT Act and the WA equivalent.
3. That the NT Government enlist the aid of some person or persons of high experience and standing in one of the established administrative review jurisdictions in Australia, to set up the system in the NT, and advise and confer with those persons who will ultimately serve as its officers in the NT
4. That, otherwise, the Recommendations in the First Report of the Committee of July 1991 be adopted with such variations as appear in this Report (see page 56).

INTRODUCTION

By the present Terms of Reference, the Committee is essentially directed to enquire whether an administrative appeals tribunal regime should be set up in the NT.¹

The Terms of Reference appear in Appendix 1.

This is not the first time that such a question has been asked of the Committee.

In July 1991, the Committee delivered to the then Attorney-General a *Report on Appeals from Administrative Decisions* which we will throughout call “the First Report” (Appendix 2).

In his introductory letter presenting the First Report, the Acting Chairman (Mr M F Horton) stated that:

the Committee proposes a system of administrative review based on the models already operating in Victoria, the ACT and the Commonwealth.

The First Report contained some 54 recommendations directed to the establishment of such a system in the NT.

The First Report and its recommendations were not adopted by the Government of the day or by successive Governments to this date.

Although we have not been able to ascertain precisely why the First Report was not implemented it seems fair to assume that successive Governments had concluded that, taking into account the smaller population in the NT, the fact that many statutes provided some limited systems of review of administrative decisions (though in differing and variegated and often unsatisfactory ways, and without any common underlying philosophy), and the fact that there then appeared no significant public demand, it was felt that the circumstances did not warrant the numerous legislative amendments to various statutes and the not inconsiderable expense in setting up a separate tribunal with judicial and lay members and supporting staff.

Some support for this view may be found in the comments of the current Chief Magistrate (who is a member of the Committee and to whom we are indebted for his experience and ready assistance) that very few appeals from administrative decisions are lodged under the various statutes where such appeals are permitted (usually to the Local Court, though some are to the Supreme Court). The Chief Magistrate informs us that such appeals that

¹ Throughout this Report the terms ‘administrative appeals’ and ‘tribunal’ are used as convenient shorthand to indicate the broad nature of the tribunal we recommend be established. In one sense, they are apt to mislead as such a tribunal will have original and appellate jurisdiction. See further, below.

come before the Local Court are dealt with by that Court without placing any strain upon its resources. Hence it could be argued that there is no present need for a separate system of appeals from Administrative decisions.

This argument, however, is, with respect, illusory and in fact highlights the need for just such a system, precisely because a statutory labyrinth effectively deprives the ordinary citizen of the means of challenging an administrative decision by a simple, direct and inexpensive process.

Reference should be made to Appendix 3 which sets out a table of those NT statutes where some form of appeal is permitted from an administrative decision.

The first obvious comment on this table is the complete lack of uniformity in dealing with such appeals. Some appeals are restricted to “a question of law”, or “a question of law *only*”, (a curious distinction which presumably has some significance). Others are posited on a “rehearing” but that expression is variously set out as

“by way of rehearing”

“the Local Court shall conduct a hearing in such manner as it sees fit”

“a rehearing de novo”

“a hearing de novo”

by way of rehearing “unless the Tribunal otherwise decides”

by way of rehearing “unless the Court otherwise directs”

“in the nature of a rehearing”.

The term “rehearing” is interpreted by the Courts in various ways dependent on such descriptions as above to mean, a “rehearing” confined to the record, a “rehearing” meaning a further reception of all the evidence before the original tribunal, or a complete “rehearing” of all the material before the original tribunal including additional evidence, i.e. a full re-trial.²

To add to this glorious confusion other statutes do not speak of a rehearing but use such phrases as

“conduct a hearing in such manner as (the Local Court) sees fit”

“only on grounds that there has been bias or that facts have been misinterpreted in a material respect”.

² These distinctions continue to occupy the Supreme Court’s time: see, e.g., *Northern Territory v Disciplinary Appeal Board* (2003) 143 NTR 19 (Mildren J).

“only on the grounds that the Board acted improperly, or made an error, or acted with undue severity”

“appeal in the strict sense”

“review “on the merits”.

There are other phrases such as “fact law and natural justice” and various directions that the appeal tribunal is “not bound to follow strict legal procedure”, or may proceed “within [its] discretion” or is “not bound by [the] rules of evidence” and various other phrases which give considerable difficulty to an appeal tribunal, since it must at least commence with the assumption that the multiplicity of phraseology is intended by the legislature to cover a multiplicity of different processes.

In addition, one should add that for at least two centuries able lawyers have spent much time and effort endeavouring to convince a court that a question of fact is really, and in the particular circumstances, a question of law.

Faced with this confusing array of legislative subtlety it is not surprising that many citizens³ may have been dissuaded from launching appeals which may depend on such vagaries of interpretation. More importantly, it emphasises the need for the uniformity and clarity of procedure which seems to be a characteristic of administrative appeals procedures where they have been adopted in the appropriate legislation.⁴

³ This word is used throughout this report but is intended to include corporations and other entities seeking review.

⁴ See further below, under the heading ‘IS THE NORTHERN TERRITORY DIFFERENT?’.

THE POSITION IN 1991

At the time the Committee published the First Report there were only three systems of administrative appeal tribunals in operation.

The first and most significant was the Federal system set up by the Commonwealth AAT Act.

The parliament of Victoria enacted the *Administrative Appeals Tribunal Act 1984*.

In 1989, the Governor-General made an Ordinance for the ACT which is now the AAT Act (ACT).

The First Report noted these Acts and also referred to developments in other States and in New Zealand and the United Kingdom all pointing in the same direction, that is, towards the setting up of administrative appeals systems.

We do not propose to repeat the detailed examination of these various reports and recommendations which can be found in Appendix 2⁵ but it is instructive to summarise the situation as it existed in Australia in 1991 when the First Report was presented. That was as follows:

1. The Commonwealth, ACT and Victoria had legislated for and established a system of administrative appeals tribunals.
2. Similar legislation, with the same broad aims though not always on the same lines as the Commonwealth legislation had been recommended:
 - (a) by the Law Reform Commission of NSW in 1973.
 - (b) by the Law Reform Commission of WA in 1982.⁶
3. The First Report recommended a system for the NT based on the Commonwealth model.

⁵ See First Report, 46-56.

⁶ Note that the recommendations for NSW and WA urged a system within the prevailing court structure rather than a separate body.

DEVELOPMENTS SINCE 1991

Since the date of the First Report the following events have occurred:

- (a) Victoria has replaced the original *Administrative Appeals Tribunal Act 1984* with the VCAT Act which is more comprehensive and is described as “an amalgamation of the Victorian *Administrative Appeals Tribunal Act* and several smaller separate tribunals”.⁷
- (b) NSW has enacted the ADT Act (NSW). This departs from the original recommendation to place the jurisdiction within the existing court framework and, like the Commonwealth, ACT and Victorian legislation, sets up a separate body i.e. the ADT (NSW).
- (c) SA has set up an Administrative and Disciplinary Division of the District Court.⁸
- (d) In Queensland, in 1993, the Electoral and Administrative Review Commission, proposed the creation of an Administrative Appeals Tribunal namely the Queensland Independent Commission for Judicial Review. This proposal has not so far been implemented.
- (e) Tasmania has enacted the *Magistrates (Administrative Appeals Division) Act 2001* and the subsequent *Magistrates Court (Administrative Appeals Division) Consequential Amendments Act of 2001*. This sets up an Administrative Appeals Division of the Magistrates Court which has jurisdiction where the right is specifically conferred by statute.
- (f) In May 2002, the WA Taskforce recommended the establishment of a WA Civil and Administrative Tribunal to be called the SAT (WA). This followed on various reports including the WA Law Reform Commission Report of 1999 recommending such a Tribunal.

There seems no doubt that the WA Government is committed to the scheme and Justice Michael Barker of the WA Supreme Court is proposed as President of the SAT; his Honour is presently working with officials to bring it into existence. It is intended that the SAT will basically follow the model of the VCAT.

⁷ Bacon R ‘Tribunals in Australia – Recent Developments’ (2000) Vol 7 Australian Journal of Administrative Law 77.

⁸ See ss 7 and 8 of the *District Court Act 1991* (SA).

ADMINISTRATIVE TRIBUNALS AND THE OMBUDSMAN

The First Report referred to the position of the Ombudsman compared with that of administrative tribunals.

To that we add the following observations.

Section 14(1)(a) of the *Ombudsman (Northern Territory) Act* provides that the function of the Ombudsman is:

“to investigate any administrative action taken by or on behalf of any department or authority to which this Act applies”.⁹

However, the Ombudsman is not permitted to conduct an investigation into any administrative action in which the complainant has a right of access to a presently constituted tribunal,¹⁰ unless the Ombudsman decides that it would not be reasonable to expect the complainant to resort to that right, or the matter merits investigation in order to avoid injustice.¹¹

Apart, therefore, from what must be regarded as the exceptional case¹², the boundaries between the Ombudsman and an administrative appeals tribunal are clearly delineated.

The powers of the Ombudsman are investigative.¹³ After investigation, he or she may make a report and recommendations for the departmental officers, although the Ombudsman may draw attention to procrastination by forwarding his or her report to higher authorities.¹⁴

An administrative appeals tribunal will have, under its original jurisdiction, the functions conferred on it by the enabling enactment which will usually involve the power to make an enforceable decision on such evidence as is put before it; and, under its review jurisdiction, will have the power to confirm, reverse, vary or set aside the decision under review. Hence it has the power, not only to investigate but to determine. But its powers of investigating depend on an adversary-type situation, i.e. where alternatives are put forward and one is chosen after hearing evidence concerning those alternatives – although the Tribunal, with a semi-inquisitorial approach, has wider powers to determine the matter than is possessed by a court.

The investigatory function of the Ombudsman is much more extensive than a determination of opposing submissions. It can extend to a general survey of

⁹ Note that s 14(1)(b) of the Act gives somewhat wider powers in investigation of police matters.

¹⁰ See s 14(6) of the Act.

¹¹ See s 14(7) of the Act.

¹² Less so presumably if an administrative appeals tribunal were instituted.

¹³ See s 19 of the Act.

¹⁴ Note 3, section 26(5).

administrative procedures, capabilities, efficiency, public relations, and accountability.

In short, the Tribunal's function is determinative; the Ombudsman's function is investigative.

There is no conflict between these functions, and both are important modifiers between the bureaucracy and the citizen. Consequently, both should continue as parallel remedies for the citizen.

ORIGINAL AND REVIEW JURISDICTION

Although we have used the term “administrative appeals tribunal” throughout, because that is a term used fairly generally in much of the legislation in other jurisdictions, it is not an accurate term, because the word “appeals” suggests that the legislation is confined to appeal (or review) of a previous decision. This neglects one of the two functions suggested for the tribunal, that is, original jurisdiction.

Original jurisdiction is that which comes directly to the tribunal for an original decision, for instance, planning Acts in some jurisdictions. The prevailing view also now seems to be that the Tribunal should be charged with the disciplinary functions of various professional organisations leaving those organisations the regulatory and supervisory functions over their members.

The rationale for this is aptly expressed in the report by the WA Taskforce:

We consider a separation of regulatory functions from disciplinary/supervisory functions to be desirable in respect of all disciplinary boards.¹⁵

In short, we believe the public ... today are entitled to expect that decisions of a disciplinary and supervisory kind that may result in the cancellation or suspension of a professional, occupational or business license or a substantial fine are arrived at entirely independently and impartially and for the primary purpose of protecting the interests of the public.¹⁶

The WA Taskforce does, however, consider that minor breaches of discipline resulting only in small fines, and the general responsibility for complaint handling and investigation should remain with the professional body.

The recognition that the Tribunal should have power to deal with original decisions in this way, as well as an appeals or merits jurisdiction, was, no doubt, the reason why the Victorian Parliament provided that its more recent Act be intitled the VCAT Act rather than the earlier title of the *Administrative Appeals Tribunal Act 1984*. Similarly the relevant Act in NSW is called the ADT Act (NSW), and the proposal from the WA Taskforce is that the WA Tribunal should be called the SAT (WA).

The VCAT Act grants to the VCAT both original and review jurisdiction¹⁷ and provides that the original jurisdiction arises from an enabling enactment.¹⁸ The appellate or review jurisdiction of the Tribunal arises from an appeal from, or review of, the decision of a “decision maker” defined in the VCAT Act as “a

¹⁵ *Civil and Administrative Review Tribunal Taskforce Report on the Establishment of the State Administrative Tribunal* (May 2002) 69.

¹⁶ *Ibid*, 70.

¹⁷ See s 40 of the *Victorian Civil and Administrative Tribunal Act*.

¹⁸ See s 43 of the *Victorian Civil and Administrative Tribunal Act*.

person who makes, or is deemed to have made, a decision under an enabling enactment”.¹⁹

The words “enabling enactment” make it clear that the jurisdiction of the Tribunal arises only from specific statutes wherein Parliament expressly grants it. Whether to refer original jurisdiction or appeal jurisdiction to the Tribunal, and in what cases, remains therefore – as it must be – a political decision for the Executive Government and Parliament.

Nevertheless, as a general model we believe that the extensive original and appellate jurisdiction given to the SAT (WA) reflected in its four designated streams ought to be followed:

1. Human rights and equal opportunity
2. Resources and development
3. Commercial and civil
4. Vocational regulation

In addition, the amalgamation and incorporation of all existing NT administrative tribunals – however described – with the proposed Territory tribunal (except perhaps for some very specialist industrial and regulatory tribunals, such as liquor licensing²⁰) ought to be the preferred starting point, both as a matter of principle and as an economy measure.

¹⁹ See s 3 of the *Victorian Civil and Administrative Tribunal Act*.

²⁰ Historically, in many jurisdictions, such licensing decisions have been vested in specialist courts, and liquor regulation in the Territory remains a critical policy issue. However, other licensing functions of the Licensing Commission (or appeals from them) ought to go to the proposed Tribunal.

QUO VADIS NT?

The question for the NT therefore, is which way to go? In view of the developments in other States and Territories the answer seems inevitable.

The Commonwealth and all other States and Territories except Queensland and the NT have established or are in the process of establishing a system of administrative appeals and administrative review. The object is to co-ordinate, in practice and procedure, the various ad hoc and disparate remedies set up by separate Acts. The overall philosophy is that, in an increasing network of ministerial and executive decisions affecting the citizen, the citizen is enabled by quick, effective and inexpensive procedures to challenge the rationale, the efficiency and the justice of those decisions. In the process the citizen or group of citizens must be allowed representation before a properly recognised and impartial tribunal, containing, in appropriate cases, members with expertise and familiarity in the type of decision appealed against. Equally, a properly interested applicant is entitled to seek and be given reasons by an administrative body for the decision or ruling which the applicant questions.

The path has now been well laid out by the Commonwealth AAT, and all other States and Territories (save Queensland and the NT) are following to a greater or lesser degree. It would be strange, therefore, if the NT was to stay behind.

It is, however, natural and proper for the Government of the NT to ask two preliminary questions:

- (a) have these developments in the Commonwealth and other States and Territories been successful?
- (b) are there special circumstances in the NT which preclude the adoption of some similar system?

HAS THE SYSTEM PROVED A SUCCESS?

It is not necessarily always an argument for success that all other Governments have adopted a particular policy. The Queensland Government, for instance, when it was the first to abolish the death penalty was obviously unimpressed, as a test for success, by the fact that all other governments at the time imposed it. Similarly, successive Tasmanian Governments have steadfastly maintained that the uniformity of other Governments in adhering to the preferential system of voting is no argument for abandoning the Hare-Clarke proportional system.

So one must look for other factors. And, there seems no doubt that there has been substantial agreement that the system of administrative appeals tribunals as set up by the Commonwealth and where followed in other States or Territories has been successful. Without overburdening this Report with references, the following are typical of many:

...I should emphasise that, in its twenty years of adjudication, the AAT has not only afforded justice to thousands of applicants by providing review on the merits of administrative decisions which have affected them, but it has also played a significant role in improving administrative decision-making throughout the bureaucracy. ... [B]y enunciating the principles which have guided it in its decision-making, by analysing which are the relevant factors to be taken into account and by making findings of fact in a rational way, basing them upon sufficient evidence, the AAT has led the way. Fair and well-balanced decision-making has been promoted. Idiosyncratic and arbitrary decision-making has been discouraged. These are all outcomes for which the Commonwealth Administrative Review committee aimed. The community is the better for it.²¹

The AAT was charged with the responsibility of blowing the winds of legal orthodoxy through the corridors of administrative power.²²

On 1 July 1976 the Administrative Appeals Tribunal opened its doors for the first time. It was an extraordinarily innovative institution at the time. Twenty years later, the Australian system of administrative review is still regarded as one of the most comprehensive and progressive in the world.²³

²¹ Justice Daryl Davies, Second President of the Commonwealth Administrative Appeals Tribunal cited in: 'The AAT – Twenty Years Forward: Passing a Milestone in Commonwealth Administrative Review', Australian Institute of Administrative Law (1998), 29.

²² Sir Gerard Brennan, First President of the Commonwealth Administrative Appeals Tribunal and subsequently Chief Justice of the High Court, Twenty Years Forward, 11.

²³ Justice Jane Mathews, Third President of the Commonwealth Administrative Appeals Tribunal, Twenty Years Forward, 1.

*In Australia it is generally accepted that the “new administrative law” introduced at the Commonwealth level has been a success.*²⁴

Though it is not always a conclusive test to point to a continuing increase of business as a test of success, it seems appropriate here to observe that the increase in the work of the Commonwealth AAT does indeed reflect the fact that more and more ordinary citizens are resorting to it, that the body of its reported cases available in various reports is substantial, and any casual reading of these cases leaves one with a general appreciation that the decisions arise from usually legitimate concerns which may not otherwise have been aired or might only have been pursued through the more formal and more expensive procedures of the courts. From 1976 to 2004 the numbers of the Commonwealth AAT (including Presidents, Deputy Presidents, Senior Members and Members) have increased from 25 to 42, not a remarkable increase but nevertheless reflecting the workload of the Tribunal,²⁵ and the number of Commonwealth Statutes under which decisions have been referred to the Commonwealth AAT has continually increased to a figure now nearing 400.²⁶

In addition, it would appear that the introduction of the system usually meets with general bi-partisan support in the various Parliaments.²⁷

It can therefore be safely assumed that the system is generally considered successful, is increasing and likely to continue to increase in the various States and Territories in which it has been introduced. Recently, on 8 June 2004 the Attorney-General of the Commonwealth released a paper seeking public comment on an Administrative Appeals Tribunal Amendment Bill 2004 containing “modest reforms that will better enable the Administrative Appeals Tribunal to flexibly manage its workload and ensure that reviews are conducted as efficiently as possible”.

Unlike Swift’s “Modest Proposal”, the “modest reforms” sought here indicate public acceptance and approval.²⁸

²⁴ Justice Michael Barker and Justice Ralph Simmonds in an address to the Australasian Law Reform Agencies Conference, Wellington, New Zealand, April 2004: ‘Delivering Administrative Justice – The Role of Tribunals’, 14.

²⁵ Compare vol 1 of the *Administrative Law Decisions* with vol 75 of the *Administrative Law Decisions*.

²⁶ Justice Garry Downes, President of the Commonwealth Administrative Appeals Tribunal, *Reform* Autumn 2004, No 84, 8.

²⁷ See for instance Victorian *Hansard* 14 May 1998 where the Opposition generally supported the Victorian Civil and Administrative Tribunal Bill, albeit with some relatively minor suggested amendments.

²⁸ See Swift’s satirical 1729 tract: *A Modest Proposal for preventing the children of poor people in Ireland, from being a burden on their parents or country, and for making them beneficial to the public*.

IS THE NORTHERN TERRITORY DIFFERENT?

There are two arguments which can be raised against the NT adopting, at least at this stage, any of the administrative appeals tribunal models in place in the Commonwealth, or in place or foreshadowed in all other constitutional parts thereof, except Queensland and the NT. Both these arguments were no doubt persuasive in influencing successive governments to refrain from adopting the recommendations of the First Report in 1991. Of these two arguments, one is substantial, the other illusory.

The substantial argument can be put very simply. What is or may be appropriate for the Commonwealth, insofar as its Federal jurisdiction allows, to legislate for some 20 million people, or for States such as Victoria or NSW to legislate within their jurisdiction for several millions, may not be appropriate for a Territory with some 200 000. The argument falls down somewhat when it comes to smaller entities such as ACT and Tasmania, but it must be noted that both these regions still have a greater population than the NT (Tasmania 473,000; ACT 322,000). They have also the considerable advantage of being comparatively small in area, so that applicants and Government officials can, without undue difficulty or expense, resort to a tribunal conveniently located. The distance between Hobart and Launceston is 200 kilometres. The distance between Darwin and Alice Springs is 1490 kilometres,²⁹ and there are considerable distances between Darwin and other towns such as Katherine, Tennant Creek and Nhulunbuy. The only practical solution, if it is desired that citizens should have ready and cheap access to a tribunal such as an AAT, is for the tribunal to go “on circuit” to various selected centres, and this necessarily entails extra expense.

The objection as to costs of the enterprise in a Territory with a large area and a small population is a proper objection which must be squarely faced. Nevertheless, this Committee is convinced that the Territory cannot any longer refrain from setting up a coherent system of administrative appeals because, in the light of developments elsewhere, the citizens of the Territory would be significantly disadvantaged if it were not done.

The plain fact is that such a system now prevails or will soon prevail in almost every other part of Australia; save Queensland and the NT; and where it has been set up it has been widely regarded as successful. It follows that, without some similar system being set up in the NT, the citizens of the NT will be denied a right now recognised as fundamental in most other parts of Australia. That is, the right to question rulings of administrative bodies which profoundly affect the citizen personally, and the right to have those decisions considered, reviewed and adjudicated on by an impartial and experienced tribunal, approachable speedily and without undue expense. Such a tribunal will be able to examine the basis of the decision, hear from both the citizen and the

²⁹ There is, not surprisingly, some rivalry between Alice Springs and Darwin (“the Berrimah line”) but it is not perhaps as ferocious as the rivalry between Launceston and Hobart.

public servants responsible for the decision, and give reasons for reversing, upholding or varying it.

The benefits of such a system are clearly set out in the WA Taskforce Report, which we have already referred to. The Report recommends the setting up of a SAT along the lines of the Commonwealth AAT and the factors in favour of this appear at paragraph 17 of the Report³⁰ which is reproduced here because it is one of the later Reports on the subject by a Taskforce which has had the advantage of examining the Commonwealth and State systems already established.

The Taskforce considers the development of the SAT in the manner proposed in this Report will address the deficiencies of the existing ad hoc system, promote better decision-making and secure a number of significant benefits for citizens and public administration alike in this State. In particular:

- (a) *citizens will gain access to a single, one-stop tribunal in place of a variety of existing tribunals;*
- (b) *as a result of access to a single tribunal, there will be an identifiable point of contact for all citizens in respect of most civil and administrative review decisions currently made by a plethora of boards, tribunals, courts, ministers and public officials;*
- (c) *more information will be provided to citizens about the making of applications, about hearings and about the reasons for decisions;*
- (d) *a more flexible and user-friendly system of decision-making will be developed;*
- (e) *the SAT will have available to it a wide range of expert and experienced members (whether full-time, part-time or sessional) to serve on its various panels;*
- (f) *the SAT will be able to keep the exercise of its operations under continuing review and will adopt 'best practice' in all of its functions;*
- (g) *more effective and systematic recruitment and training of members of the SAT will be a feature of the new system;*
- (h) *the SAT will have the capacity to keep abreast of innovation and developments in comparable tribunals throughout Australia;*

³⁰ *WA Civil and Administrative Review Tribunal Taskforce Report on the Establishment of the State Administrative Tribunal* (May, 2002) 63.

- (i) *new and improved information technology will be made available for the efficient handling, without delay, of applications to the SAT;*
- (j) *the existence of a single tribunal will ensure that original decision-making and administrative review decision-making is conducted on a more cost effective basis than at present;*
- (k) *Government and the Parliament will be able to assign administrative review functions in respect of new and developing areas of government regulation directly to an existing and experienced tribunal rather than create one-off ad hoc review bodies; and*
- (l) *the SAT will have the appropriate leadership, expertise, experience and independence from the Government of the day to ensure the people of Western Australia can have the fullest confidence in the workings of the SAT.*

It is recognised that various obligations imposed by government or governmental agencies necessarily impinge upon the rights of individual citizens. The justification is that such obligations are necessary for the good of the community generally. Building regulations, traffic control and supply of power and water are just a few examples where the individual must comply for the overall efficiency and safety of society generally (i.e., the common good). The necessity for rules, standards and proper control of such enterprises cannot seriously be denied.

But the manner of carrying them out may raise questions of unfairness, incorrect methods of administration or unreasonable restraint which the individual citizen must be entitled to question.

We may have passed those happier times in the 18th Century when the famous motion could be moved in the House of Commons that “the power of the Crown has increased, is increasing and ought to be diminished”. But it is essential that we should be able to maintain that “the power of the Crown (i.e. the Government – Federal, State, Territorian or Municipal) has increased, is increasing and ought to be controlled.” That, in effect, is the emphatic justification for the establishment of administrative review tribunals, and Territorians should be entitled in this respect to no less than the rights granted or to be granted in other parts of Australia.

It may be claimed that such a system presently exists, albeit in a rather disorderly way, as evidenced by the statutes set out in Appendix 3.

The answer to this has already been given in the First Report:

As a matter of principle there should always be a right of appeal from an administrative decision. At present, leaving aside the role

*of the Ombudsman, there are two principal methods by which the decision may be reviewed. The first is where a right of appeal is granted by statute and the second where the matter is taken to the Supreme Court by way of judicial review. These methods are seldom utilised because they are costly, time consuming and somewhat lacking in accessibility. In some cases there is no right of appeal against an administrative decision.*³¹

What is taking place throughout the Commonwealth is the recognition that citizens should have the right to question any administrative decision which, they believe, may affect them personally, and to exercise that right by a simple and standardised process of appeal or review, uncomplicated by legal formalities or court interference save for those remedies traditionally granted by the prerogative writs.³²

The Federal Government has over more than a quarter of a century recognised and expanded these rights within the Federal jurisdiction. Similar rights are now being granted elsewhere under State or Territory legislation. It would be regrettable if Territorians remained outside the system.

We also believe that the greater accountability and transparency demanded nowadays of elected and unelected public officials (including anti-corruption measures) is also met in part by such developments in the provision to the citizen of independent merits review of administrative decisions.³³

The second objection, which we consider illusory, is based on the assumption that legislation is not needed because Territorians have access to some form of administrative appeal under various statutes, yet have so rarely sought access that it would be an unwarranted expenditure of resources to set up a separate system which the status quo already deals with adequately.

The answer to this is, first, to point again to the plethora of appeal systems appearing in Appendix 3, and to reflect that potential applicants may well have been discouraged by doubts as to the extent of the power of the particular appellate body designated in the appropriate legislation.

It is not a meritorious stance to congratulate oneself on keeping potential appellants at bay by making it difficult for them to appeal.

More importantly, the field of administrative appeals expands after access to a simple and effective procedure is given. This is evidenced wherever the legislation has been enacted. Indeed it is necessary for the Committee to warn that if the NT enacts similar legislation it would seem that, after an initial quiescence as the impact of the legislation "sinks in", there should be something of a surge of applications which should then plateau out.

³¹ Northern Territory Law Reform Committee, *Report on Appeals from Administrative Decisions*, (July, 1991), 1 ("First Report").

³² i.e., the common law remedies of quashing decisions for breach of the rules of natural justice or for excess or want of jurisdiction.

³³ This is a strong theme, particularly as regards developments reported to us as regards WA.

ALTERNATE MODELS

Paragraph 6 of the Terms of Reference required the Committee to “identify” alternate models in place elsewhere in Australia.

This has been mentioned earlier,³⁴ but it is now appropriate to summarise the situation as it prevails in other parts of Australia, particularly as this leads on to the question also asked in the Terms of Reference as to the costs of the separate systems.

For convenience we will take as established the proposed SAT (WA) because it is clear that this will come into being in the near future. The President designate of the Tribunal, Justice Barker, has been appointed, as has the senior project officer. Justice Barker in his joint paper with Justice Simmonds³⁵ sets out the background from which the project grew and gives an important and instructive summary of what is intended and why it is intended.

The position in Australia is, therefore, as follows:

A. FULL SCALE MODELS

The Commonwealth, the States of NSW, Victoria, WA and the ACT have set up complete systems, in effect providing a full, comprehensive and separate regime of administrative law. The basic model has been the Commonwealth model because of its obvious success, its accumulated experience over a quarter of a century and the broad span of its activities.

The essential characteristics of these “full scale models” are:

- (i) a separate entity (it is preferable not to use the term “court”) known variously as the Commonwealth AAT, the ADT (NSW), VCAT, the SAT (WA) and the AAT (ACT);
- (ii) with some exceptions, administrative decisions (i.e. decisions made under a statutory power), are subject to appeal or review on the merits before this entity (“the Tribunal”). This is achieved by providing in specific Acts that applications may be made to the Tribunal “for a review of decisions made in the exercise of powers given by that enactment.”³⁶
- (iii) the procedure before the Tribunal is a full reconsideration of the administrative decision in which appropriate material can be brought forward by the person appealing or seeking review, and

³⁴See above, under the heading DEVELOPMENTS SINCE 1991.

³⁵See above, fn 24.

³⁶E.g., s 24 of the AAT Act 1989 (ACT).

by the departmental officer seeking to uphold the original decision. Strict rules of evidence are relaxed (the test is rather one of relevance) and there is no prohibition on bringing forward new material provided it is relevant.

- (iv) the Tribunal acts as informally as practicable consistent with decorum so that lay persons may not feel overborne.
- (v) the Tribunal may, and often does, adopt a semi-inquisitorial role, that is, it may make its own enquiries without being bound, as a court, to act only on the evidence or material presented;
- (vi) alternative dispute resolution and mediation are encouraged.
- (vii) the procedures are generally expeditious and inexpensive and costs are not awarded save in extreme cases where the Tribunal considers that there has been unreasonable conduct unnecessarily prolonging time and expense.
- (viii) the President of the Tribunal is a Supreme or Federal Court Judge who in addition to presiding over such hearings as he or she might wish, has the task of allocating the work to other tribunals and determining the personnel of such tribunals. The exception to this is the ACT where the President is a lawyer highly experienced in the field of government administration.

[The majority of this Committee feel that by reason of prestige and the importance of getting the task accepted, the President should be a Supreme Court Judge. However, a minority believe that it is not necessary and the President should be a Magistrate or senior member of the profession.]

- (ix) Deputy Presidents are drawn from the ranks of the Supreme, District or County Court judges or the Federal Court.
- (x) "Senior members" are usually, but not always, drawn from the legal profession, and are permanent appointments.
- (xi) "Members" are taken from all walks of life usually for their expertise in some particular field. They are part-time members paid on a daily rate for attendance.
- (xii) the decision of the Tribunal is enforceable, though it may take the form of a recommendation which, however, is expected to be acted upon.
- (xiii) although not bound to do so, the Tribunal may take into account departmental policy, and will usually do so, so far as is consistent with merits review.

- (xiv) an appeal lies to the Federal or Supreme Court but on questions of law only, or in some cases through the more complex prerogative writs.
- (xv) applicants must be given written reasons for the decision of the Tribunal.

B. OTHER AUSTRALIAN MODELS

In two States there is provision for administrative appeals but within the Court system. SA has an Administrative and Disciplinary Division of the District Court³⁷ and Tasmania has an Administrative Appeals Division of the Magistrates Court.³⁸

The main difference from the “full scale” models is that there is no separate Tribunal. Such jurisdiction as is specifically conferred by various statutes is exercised by any District Court Judge in SA or any Magistrate in Tasmania. There is no President and no separate registry. The philosophy of administrative appeals is preserved insofar as proceedings are more informal and the Court is not bound by the rules of evidence and may inform itself as it thinks fit.³⁹ The SA Act also contains a provision that “the Court must, on an appeal, give due weight to the decision being appealed against and the reasons being appealed against and the reasons for it and not depart from the decision except for cogent reasons”.⁴⁰

As previously mentioned, Queensland and the NT have no specific provisions for administrative appeals and proceed ad hoc as directed by particular Acts.

³⁷ See s 42B of the *District Court Act* (SA).

³⁸ See *Magistrates Court (Administrative Appeals Division) Act* 2001 (Tas).

³⁹ See s 42E *District Court Act* (SA) and s 34 *Magistrates Court (Administrative Appeals Division) Act* (Tas).

⁴⁰ See s 42E(3) of the *District Court Act* (SA).

ADMINISTRATIVE MERITS REVIEW AND JUDICIAL REVIEW

Since SA and Tasmania have vested merits review in existing courts (albeit with relaxed procedures) rather than a separate tribunal, it is perhaps appropriate to remind ourselves of the essential difference between court review (which is usually described as “judicial review”) and “merits review” by administrative tribunals.⁴¹

Sir Gerard Brennan has said:

*Courts declare and enforce existing rights and obligations, administrative decisions create or modify rights and obligations. Courts exercise their power upon findings of fact made on evidence governed by legal rules; the AAT exercises its powers upon findings of fact made by reference to wider sources of information. But courts and the AAT are both bound by, and bound to apply, the law and to apply it precisely. The major distinction between courts and the AAT is that, generally speaking, the courts are not concerned with administrative policy, whilst administrative policy is a core concern in some areas of AAT jurisdiction.*⁴²

The story of the Commonwealth AAT from its inception is continual growth, evidenced by the increasing number of matters referred to it by Commonwealth legislation. There is a clear preference for this remedy rather than for leaving the matter to either a statutory appeal to a court or to judicial review. It seems accepted that the broader methods of the Commonwealth AAT, the easier access for the citizen and the capacity of the Commonwealth AAT to go beyond the confines of curial restraints make it more appropriate to resolve those numerous conflicts where the individual citizen is caught by a policy which may be justified in a general sense but has created hardship or injustice in a particular case.

This is not to denigrate the courts. Properly and traditionally they have maintained that they will not interfere with the exercise of administrative power unless that power can be shown to have been improperly exercised and therefore in effect beyond power. By confining control to the prerogative writs the courts were demonstrating an important constitutional aspect of the separation of powers, namely that it was not for the courts to intrude upon the discretion of the Executive, provided that the Executive acted within the law. To do otherwise would be a serious usurpation of power by one arm of government against another.

This correct position, however, left people often at the mercy of executive decisions which however benevolent in theory, created hardship in particular cases.

⁴¹ Of course, because of constitutional limitations merits review cannot be vested in Federal Courts; this is not a problem for either the States or presumably the Federal Territories.

⁴² Twenty Years Forward, 9.

The legislature, from time to time, created some form of appeal or review in a wilderness of single instances. The Commonwealth AAT system is a consolidation of those instances and fills the gap between legal boundaries on the one hand and unrestrained executive discretion on the other.

It is fair to say that the SA and Tasmanian legislation does not fully recognise the case for a separate system of administrative appeals and review and does not fully achieve that philosophy. Although the desirability of relaxing procedural and evidential rules is acknowledged in the legislation, the scheme remains within the court system and that system may not be appropriate to exercise the broad powers and viewpoint necessary to reach a comprehensive result. As noted, the SA Courts have a specific restriction not to depart from the decision appealed against except for "cogent reasons". One suspects that ultimately both SA and Tasmania will convert to a separate system. In any event, they are further down the road than Queensland and the NT.

THE QUESTION OF COSTS

This Committee is specifically directed by paragraph 7 of the Terms of Reference:

To identify the costs of those models (i.e. alternate models in place in Australia – see paragraph 6) or any other practical model if they were to be put in place in the Northern Territory.

Obviously the more elaborate the model the more expensive it will be. On the other hand there may be advantages in “leap frogging” over earlier experiments tried in other parts of Australia and establishing at once the best features of the systems presently available.

It may, for instance, and without being critical, be reasonable to assume that the approach adopted in SA and Tasmania of leaving the jurisdiction with the established courts will in the process of time, lead to the establishment of a separate tribunal. Following through on that argument it may be thought better to move immediately to that situation rather than taking what might be regarded as intermediate and unnecessarily transitory steps towards it. This may increase the costs immediately but ultimately be less expensive than doubling up.

PROSPECTIVE MODELS AND COST FOR NT CONDITIONS

We now set out a series of models based on the various alternatives presented by the systems presently in place in Australia and some other alternatives which might suit NT conditions. What we have endeavoured to do is to list cost items which would be involved in each of these schemes. We have then attempted, so far as possible, to cost these items and reach an estimate of their total expense.

We must, however, say emphatically that these figures *cannot be more than broad generalised conjectures*. There are too many imponderables to suggest any precise accuracy but it is hoped that they will give enough of a picture to be useful.

We also emphasise that our costings are not “net” figures – that is, they involve no valuation of the benefits (which we believe will be substantial) that should flow from the implementation of a structured and centralised administrative law (merits review) system. In this respect we also emphasise the words of Justice Davies in the passage previously quoted that the Commonwealth AAT “has also played a significant role in improving administrative decision-making throughout the bureaucracy”.

Likewise, we are unable to quantify the cost savings that will flow from the amalgamation and incorporation of existing bodies and administrative practices into any new tribunal. It may be expected that the combined savings in the long run both from improved administration and streamlined appeal processes will substantially offset the cost of establishment and operating costs.

Two particular points should be kept in mind:

- (a) The expenses of “setting up” will be a “one-off” exercise and would be expected to diminish after the foundation costs are expended.
- (b) On the other hand, and in the light of experience in other jurisdictions, it is likely that, in the first years, recourse to the system will be slow because of the unfamiliarity of potential users with it; and this will include legal advisers who might, understandably, be cautious. At some stage, assuming its success with early applications, it might then be expected to grow more rapidly until, eventually “plateauing”. On this basis the growth would be steady but presumably accelerating if first forays proved successful. In this respect we refer to the observations of Justice Garry Downes the current President of the Commonwealth AAT:

The presence of a general review tribunal has promoted the concept of providing for review of administrative decisions

*generally. In practice consideration is given to administrative review in connection with all new pieces of Commonwealth legislation. There are now nearly 400 Acts of the Commonwealth Parliament which confer jurisdiction on the Administrative Appeals Tribunal.*⁴³

Similarly, in Victoria over 150 Acts confer jurisdiction on the VCAT.⁴⁴

The models we have used are therefore as follows:

- (1) A comprehensive model following the pattern set up by the Commonwealth and followed by Victoria, NSW and the ACT, and proposed to be followed by WA.
- (2) The South Australian and Tasmanian model whereby the jurisdiction is given to the District Court and the Magistrates Court respectively, together with a second model if, in accordance with the philosophy of administrative appeals tribunals, lay members were added.
- (3) A model proposed by Mr Horton, a member of this Committee giving the jurisdiction to one independent "arbiter".
- (4) A model whereby the NT Government requests the Commonwealth AAT to act, at least temporarily, as the NT administrative appeals tribunal.

⁴³ Justice Garry Downes, President of the Commonwealth Administrative Appeals Tribunal, *Reform* Autumn 2004, No 84, p8.

⁴⁴ Justice Morris 'The Emergence of Administrative Tribunals in Victoria' a paper delivered by the President of VCAT to the Victorian Chapter of the Australian Institute of Administrative Law, 13 November 2003.

MODEL 1 – COMPREHENSIVE TRIBUNAL SYSTEM

1. REGISTRY

- 1.1 Even if the applications were originally handled in the Supreme Court or Magistrates Court Registries, the volume of work (see below) would ultimately dictate a separate registry and as a matter of efficiency it may be preferable to start separately rather than face an inevitable and untidy severance in the future.

The Registry will be dealing with applications different from those lodged in Supreme Court and Magistrates Court Registries – as a glance at the Victorian “Organisational Structure” will confirm (see Appendix 4). It is more appropriate therefore to have staff properly trained in these procedures.

- 1.1.1 Registry Staff – Minimum of one Registrar, two assistants and two secretarial and counter staff. This almost certainly severely underestimates the growth in applications if growth in other registries is anything to go by.

- 1.2 It is difficult to predict the number of applications with which a NT Tribunal would have to deal. The closest approximation would be with the ACT with a population of 322,000 which in the last financial year (2003-2004) had approximately 150 final applications (excluding mediations). The Committee is informed that this fully occupied the hearing capacity of the Tribunal.

- 1.2.1 Although these can be no more than what some in the Northern Hemisphere would call “ballpark” figures, and obviously many features of the Victorian or the ACT scene would differ from that in the NT it is nevertheless probably safe to assume that, if an administrative appeals tribunal scheme was introduced into the NT, the growth of applications would be gradual but eventually reach a point (perhaps in 2-3 years) when the Tribunal would become fully occupied.

2. APPOINTMENTS

- 2.1 All comparable legislation contemplates the following appointments:⁴⁵

President
Deputy President(s)
Senior Members

⁴⁵ See particularly ss 4 and 5 of the *Administrative Appeals Act* 1989 (ACT) - probably the most relevant legislation for the Northern Territory.

Members

2.1.1 In the Commonwealth, NSW and Victoria the term “Deputy President” does not mean merely a person who stands in when the President is unavailable, but rather a working Deputy carrying out the same functions as the President.

2.2 In the NT, it could well be that, at least at first, the President would take on all active duties with any Deputy merely as a “stand in”. Nevertheless, it is almost certain that the President’s duties would ultimately become full-time, that is, removing him or her from Magisterial or Judicial duties. Thus, though the President would come from the ranks of Magistrates or Judges it would be ultimately necessary for one additional appointment to those ranks.

2.2.1 Hence, the following appointments become necessary for the President’s office.

President – a Supreme Court Judge or a Magistrate;
Associate; and
Secretary.

2.3 The philosophy of administrative appeals tribunal legislation necessarily involves lay persons on the tribunals, acknowledging the desirability of specialised and public interest and contribution. Frequently such members are chosen because of known expertise in some particular area (building, valuation, medical etc).

2.3.1 The members themselves are either full-time or part-time.

2.3.2 It is difficult to assess the number of members necessary to service the tribunals and the tribunals themselves will be set up differently for different applications. (It is the task of the President to pick out appropriate members to form appropriate tribunals).

2.3.3 For example, Victoria has 7 judicial members, 39 full-time members and 148 “sessional” members.

2.3.4 As a matter of practical economy, it would not seem that an administrative appeals tribunal system in the NT would need multiple full-time members at least at first. But it would be necessary to have a fairly wide range of expertise among the part-time members. It would also be necessary to cast the net widely because persons prepared to be part-time members would not always be available to sit because of their own professional duties. It may be better to have a wide range with less involvement in each case. It is extremely difficult to calculate the overall cost of sitting fees for part-time members but we may

postulate the equivalent salaries of 6 full-time members for the employment of part-time members throughout the year.

2.3.5 Such members would require at least some secretarial assistance.

3. PREMISES

3.1 Probably court space could be found among existing court facilities. But there would be further costs of equipping the courts appropriately – or rather inappropriately, since the philosophy is to make the premises more inviting than court premises.

4. RECORDING AND TRANSCRIPTION

4.1 It appears that all administrative appeals tribunals operate under conditions of potential transcription of proceedings so that all proceedings are taped or otherwise transcribed. Hence facilities and expenses for at least one more set of court recording staff would be required.

5. INITIAL EXPENSES

5.1 Some initial expenses of a non-recurring nature would be involved.

5.1.2 Training of staff for duties not previously experienced by them.

5.1.3 Possibly a Registrar or Judge of some experience from another State or Territory may be invited to set up the system.

5.1.4 Alternatively, the proposed President or Registrar of the NT system would obviously be better equipped after spending some time examining a working system in another State or Territory.

6. The Tribunal would need to go on circuit at least to Alice Springs, and preferably to other centres, e.g. Katherine, Tennant Creek and Nhulunbuy.

7. ADMINISTRATIVE REVIEW COMMITTEE

7.1 The First Report recommended the establishment of an Administrative Review Committee being “an independent body to keep under review all of the procedures ... by which administrative decisions may be challenged”.

It added various other functions to the work of this Committee e.g., monitoring procedural aspects, acting as an “educator”, consulting with Departments etc (see recommendations 48 to 54).

- 7.2 The First Report recommended that this Administrative Review Committee should include “community representatives and possibly a member or members of the Legislative Assembly” (recommendation 54).
- 7.2.1 While members of the Legislative Assembly may not need to be paid additional fees it is obvious that “community representatives” would need to be paid.
- 7.3 The recommendation adopts the Commonwealth AAT Act requirement; but a similar body does not seem contemplated in Victoria (VCAT Act) or in the ACT (AAT Act (ACT)). However, it would seem a wise precaution for a developing system.

MODEL 1 – COMPREHENSIVE TRIBUNAL

ESTIMATED ANNUAL TOTAL COSTS

Total Proposed Staffing Profile and related costs ⁽¹⁾	
Supreme Court Judge (OPTION 1)	\$1,847,042.80
or Magistrate – equivalent to Chief Magistrate (OPTION 2)	\$1,800,982.00
Other Operating Expenses ⁽²⁾ (OPTION 1)	\$1,132,058.49
Other Operating Expenses ⁽³⁾ (OPTION 2)	\$1,103,827.68
Total Estimated Costs of operating tribunal (OPTION 1)	\$2,979,101.29⁽³⁾
Total Estimated Costs of operating tribunal (OPTION 2)	\$2,904,809.68⁽³⁾

⁽¹⁾ Refer to ‘Appendix of Model 1 Comprehensive Tribunal’ for a break down of the staffing profile and related costs.

⁽²⁾ Refer to ‘Appendix – Table of Employee Expenses of Tribunals in other jurisdictions’. This table outlines staffing/employee costs as ratio to total costs for the calculation of the percentage used for determining the figure for ‘Other Operating Expenses’ used above (i.e. staffing costs estimated at 62%, and other operating costs estimated at 38%).

⁽³⁾ These figures do not take into consideration the initial expenses as set out in the description of the model. Total costings do not represent a net figure as the costs savings that will flow from the amalgamating and incorporation of existing bodies and administrative practices into a new tribunal are unable to be quantified at this stage.

APPENDIX MODEL 1 – COMPREHENSIVE TRIBUNAL SYSTEM

ESTIMATED ANNUAL STAFFING COSTS

Proposed Staffing Profile (and related costs)

President	\$ 237,100.00 (1)
Supreme Court Judge (OPTION 1)	
or Magistrate – equivalent to Chief Magistrate (OPTION 2)	\$ 198,716.00 (2)
Deputy President (Magistrate)	\$ 176,635.00
Associate (AO4)	\$ 42,198.00
2 x Secretary (AO4)	\$ 84,396.00
Senior Members (Part-time)	
Members (Part-time)	
All Members equivalent to 6 Full-Time Members (6 x EO1)	\$ 491,610.00
Registrar (EO1) – Supreme Court Registrar equivalent	\$ 81,935.00
2 x Assistant (AO3)	\$ 74,520.00
2 x Counter Staff (AO2)	\$ 66,390.00
3 x Recording Staff (AO2)	\$ 99,585.00
3 x Administrative Review Committee Representative (2 members x 25 hours p/representative x \$30 p/hour)	\$ 1,500.00
Sub Total – Staffing (OPTION 1)	\$ 1,355,869.00 (1)
or	
Sub Total – Staffing (OPTION 2)	\$ 1,317,485.00 (2)
Plus 20% on costs for personnel (OPTION 1)	\$ 271,173.80 (1)
or	
Plus 20% on costs for personnel (OPTION 2)	\$ 263,497.00 (2)
Plus operational costs @ \$10,000 per position	\$ 220,000.00
Sub Total – on costs/operation costs (OPTION 1)	\$ 491,173.80 (1)
or	
Sub Total – on costs/operation costs (OPTION 2)	\$ 483,497.00 (2)
TOTAL (OPTION 1)	\$ 1,847,042.80 (1)
or	
TOTAL (OPTION 2)	\$ 1,800,982.00 (2)

Circuit costs – Tribunal would be expected to travel to Alice Springs regularly and intermittently to at least Katherine, Tennant Creek and Nhulunbuy.

MODEL 2A – TRIBUNAL BASED ON SOUTH AUSTRALIAN & TASMANIAN SYSTEM

1. REGISTRY

1.1 No separate Registry.

2. APPOINTMENTS

2.1 The relevant legislation in SA (*District Court Act 1991*) and Tasmania (*Magistrates Court (Administrative Appeals Division) Act 2001*) contemplates a judge or magistrate sitting alone without lay members.

3. PREMISES

3.1 Proceedings will presumably be held in court buildings, although some effort will be made to locate sittings in the least formal of court rooms.

4. RECORDING AND TRANSCRIPTION

4.1 Additional (but somewhat marginal) expenses would be incurred on top of existing court recording costs.

5. INITIAL EXPENSES

5.1 Some initial expenses of a non-recurring nature would be involved.

5.2 Training of staff for duties not previously experienced by them.

6. Costs would increase as appointments increase. It is difficult to predict, but one can suggest a sliding scale as court time is increasingly occupied.

7. However note that if applications increase, such applications may ultimately involve the full time attention of a Judge or Magistrate and at that stage, the model would revert for practical purposes to Model 1.

MODEL 2A BASIC TRIBUNAL – BASED ON SOUTH AUSTRALIA & TASMANIAN SYSTEM

ESTIMATED ANNUAL TOTAL COSTS

Total Proposed Staffing Profile and related costs Single Member Tribunal ⁽¹⁾	Nil
Other Operating Expenses ⁽²⁾	Nil
Total Estimated Costs of operating tribunal	Nil⁽³⁾

⁽¹⁾ As noted in the description of the model, there will no additional appointments required as an existing judge or Magistrate would be presiding over the Tribunal as the model is based on the Tribunal forming part of the existing court structure and using existing court resources (i.e. staff).

⁽²⁾ In other models, other operating expenses are based on a proportion of staffing and related costs, since there are not staffing costs and other related costs, this figure is unable to be calculated.

⁽³⁾ This figure does not take into consideration initial expenses as set out in the description of the model. Total costings do not represent a net figure as the costs savings that will flow from the amalgamating and incorporation of existing bodies and administrative practices into a new tribunal are unable to be quantified at this stage.

MODEL 2B* – TRIBUNAL BASED ON SOUTH AUSTRALIAN & TASMANIAN SYSTEM BUT WITH ADDITION OF PART-TIME MEMBERS

*As for Model 2A but allowing the Tribunal to have lay members sitting with Judge or Magistrate on a part-time basis and chosen for expertise in a particular field.

1. REGISTRY

1.1 No separate Registry.

2. APPOINTMENTS

2.3 The philosophy of administrative appeals tribunal legislation necessarily involves lay persons on the tribunals, acknowledging the desirability of specialised and public interest and contribution. Frequently such members are chosen because of known expertise in some particular area (building, valuation, medical etc).

2.3.1 The members themselves are part-time.

2.3.2 It is difficult to assess the number of members necessary to service the tribunals and the tribunals themselves will be set up differently for different applications. (It is the task of the President to pick out appropriate members from appropriate tribunals.)

2.3.3 As a matter of practical economy, it would not seem that an administrative appeals tribunal system in the NT would not need full-time members at least at first. But it would be necessary to have a fairly wide range of expertise among the part-time members. It would also be necessary to cast the net widely because persons prepared to be part-time members would not always be available to because of their own professional duties. It may be better to have a wide range with less involvement in each case. It is extremely difficult to calculate the overall cost of sitting fees for part-time members but we may postulate the equivalent salaries of six full-time members for the employment of part-time member throughout the year.

2.3.4 Such members would require at least some secretarial assistance.

3. PREMISES

- 3.1 Proceedings will presumably be held in court buildings, although some efforts will be made to hold proceedings in the least formal of court rooms.

4. RECORDING AND TRANSCRIPTION

- 4.1 It appears that all administrative appeals tribunals operate under conditions of record so that all proceedings are taped or otherwise transcribed. Hence facilities and expenses for at least one more set of court recording staff would be required.

5. INITIAL EXPENSES

- 5.1 Some initial expenses of a non-recurring nature would be involved.
 - 5.1.2 Training of staff for duties not previously experienced by them.
 - 5.1.3 The main additional expenses would be the part-time members.
- 6. Costs would increase as appointments increase. It is difficult to predict, but one can suggest a sliding scale as court time is increasingly occupied.
- 7. However note that if applications increase, such applications may ultimately involve the full time attention of a Judge or Magistrate and at that stage, the model would revert for practical purposes to Model 1.

**MODEL 2B – TRIBUNAL BASED ON SOUTH AUSTRALIAN &
TASMANIAN SYSTEM BUT WITH THE ADDITION
OF PART-TIME MEMBERS**

ESTIMATED ANNUAL TOTAL COSTS

Total Proposed Staffing Profile and related costs ⁽¹⁾		\$	446,241.20
Single Member Tribunal with part-time members			
Other Operating Expenses ⁽²⁾		\$	273,502.67
Total Estimated Costs of operating tribunal		≈ \$	719,743.87 ⁽³⁾

⁽¹⁾ Refer to ‘Appendix of Model 2B Basic Tribunal’ for a break down of the staffing profile and related costs.

⁽²⁾ Refer to ‘Appendix - Table of Employee Expenses as % of Total Expenses of Tribunals in other jurisdictions’. This table outlines staffing/employee costs as ratio to total costs for the calculation of the percentage used for determining the figure for ‘Other Operating Expenses’ used above (i.e. staffing costs are estimated at 62%, and other operating costs estimated at 38%).

⁽³⁾ These figures do not take into consideration the initial expenses as set out in the description of the model. Total costings do not represent a net figure as the costs savings that will flow from the amalgamating and incorporation of existing bodies and administrative practices into a new tribunal are unable to be quantified at this stage.

APPENDIX MODEL 2B – BASIC TRIBUNAL BASED ON SOUTH AUSTRALIAN & TASMANIAN SYSTEM BUT WITH THE ADDITION OF PART-TIME MEMBERS

ESTIMATED ANNUAL STAFFING COSTS

Proposed Staffing Profile (and related costs)

Senior Members (Part-time) Members (Part-time) All Members equivalent to 3 Full-Time Members (3 x EO1)	\$	245,805.00	
2 x Secretary (AO4)	\$	84,396.00	
Sub Total – Staffing		330,201.00	
Plus 20% on costs for personnel	\$	66,040.20	
Plus operational costs @ \$10,000 per position	\$	50,000.00	
Sub Total – on costs/operation costs		116,040.20	
 TOTAL			\$ 446,241.20

MODEL 3 – SOLE ARBITER

1. REGISTRY

- 1.1 Even if the applications were originally handled in Supreme Court or Magistrates Court registries, volume of work (see below) would ultimately dictate a separate registry and as a matter of efficiency it may be preferable to start separately rather than face and inevitable and untidy severance in the future.

The Registry will be dealing with applications different from those lodged in Supreme Court and Magistrates Court Registries – as a glance at the Victorian “Organisational Structure” will confirm (see Appendix 4). It is more appropriate therefore to have staff properly trained in these procedures.

- 1.1.1 Registry Staff – Minimum of one Registrar, two assistants and two secretarial and counter staff. This is almost certainly severely underestimated if the growth in applications shows anything like the growth in other registries.

- 1.2 It is difficult to predict the number of applications with which a NT Tribunal would have to deal. The closest approximation would be the ACT with a population of 322,000 which in the last financial year (2003-2004) had 149 applications (excluding mediations). The Committee is informed that this involved the full time attention of the Tribunal.

- 1.2.2 Although these can be no more than what some in the Northern Hemisphere would call “ballpark” figures, and obviously many features of the Victorian or ACT scene would differ from that in the NT. It is probably safe to assume that, if an administrative appeals tribunal scheme was introduced into the NT, growth of applications would be gradual but eventually reach a point (perhaps in 2-3 years) when the Tribunal would become fully occupied.

- 1.2.2 In this case, a separate Registry would be required.

2. APPOINTMENTS

- 2.1 Under this scheme an arbiter would be appointed with status and salary of Judge or Magistrate and would necessarily need at least an Associate and Secretary as support staff.

2. Since he or she would be the sole arbiter or decision maker it would not be necessary to appoint members, but it is envisioned that, at least on some occasions, the sole arbiter would wish to call in assessors – not to have any say in the final decision but merely to assist the arbiter in understanding technical matters.

Since the assessors would not be required for the whole hearing their appearance would be limited and they could be paid on an hourly basis.

3. **PREMISES**

- 3.1 Accommodation for hearing before Arbiter would need to be found in Darwin and other venues but much of this may be available in conference rooms of Government offices – since the proceedings will be less formal than court hearings.

4. **RECORDING AND TRANSCRIPTION CORRECT AS ABOVE**

- 4.1 It appears that all administrative appeals tribunals operate under conditions of record so that all proceedings are taped or otherwise transcribed. Hence facilities and expenses for at least one more set of court recording staff would be required.

5. **INITIAL EXPENSES**

- 5.1 Some initial expenses of a non-recurring nature would be involved.
- 5.1.2 Training of staff for duties not previously experienced by them.
- 5.1.3 Possibly a Registrar or Judge of experience from another State or Territory may be invited to set up the system.
- 5.1.4 Alternatively the proposed President or Registrar of the NT system would obviously be better equipped after spending some time examining a working system in another State or Territory.

6. The Tribunal would need to go on circuit at least to Alice Springs, and preferably to other centres, e.g. Katherine, Tennant Creek and Nhulunbuy.

7. **ADMINISTRATIVE REVIEW COMMITTEE CORRECT AS NECESSARY FROM ABOVE**

- 6.1 The First Report recommended the establishment of an Administrative Review Committee being “an independent body to keep under review all of the procedures ... by which administrative decisions may be challenged”.

It added various other functions for this Committee e.g. monitoring procedural aspects, acting as an “educator”, consulting with departments etc (Recommendations 48 to 54).

- 6.2 The First Report recommended that this Administrative Review Committee should include “community representatives and possibly a member or members of the Legislative Assembly” (Recommendation 54).
- 7.2.1 While members of the Legislative Assembly may not need to be paid additional fees it is obvious that “community representatives” would need to be paid.
- 7.3 The recommendation adopts the Commonwealth AAT Act requirement; but a similar body does not seem contemplated in Victoria (VCAT Act) or in the ACT (AAT Act (ACT)). However, it would seem a wise precaution for a developing system.

MODEL 3 – SOLE ARBITER**ESTIMATED ANNUAL TOTAL COSTS**

Total Proposed Staffing Profile and related costs ⁽¹⁾			
Sole Arbitrer			
Supreme Court Judge (OPTION 1)	\$	922,123.20	
or Magistrate - equivalent to Chief Magistrate (OPTION 2)	\$	876,062.40	
Other Operating Expenses ⁽²⁾ (OPTION 1)	\$	565,172.28	
Other Operating Expenses ⁽²⁾ (OPTION 2)	\$	536,941.47	
Total Estimated Costs of operating tribunal (OPTION 1)	≈ \$	1,487,295.48	⁽³⁾
Total Estimated Costs of operating tribunal (OPTION 2)	≈ \$	1,413,003.87	⁽³⁾

⁽¹⁾ Refer to 'Appendix of Model 3 Sole Arbitrer' for a break down of the staffing profile and related costs.

⁽²⁾ Refer to 'Appendix - Table of Employee Expenses as % of Total Expenses of Tribunals in other jurisdictions'. This table outlines staffing/employee costs as ratio to total costs for the calculation of the percentage used for determining the figure for 'Other Operating Expenses' used above (i.e. staffing costs estimated at 62% and other operating costs estimated at 38%).

⁽³⁾ These figures do not take into consideration the initial expenses as set out in the description of the model. Total costings do not represent a net figure as the costs savings that will flow from the amalgamating and incorporation of existing bodies and administrative practices into a new tribunal are unable to be quantified at this stage.

APPENDIX MODEL 3 – SOLE ARBITER

ESTIMATED ANNUAL STAFFING COSTS

Proposed Staffing Profile (and related costs)

Sole Arbitrer			
Supreme Court Judge (OPTION 1)	\$	237,100.00	(1)
or			
Magistrate - equivalent to Chief Magistrate (OPTION 2)	\$	198,716.00	(2)
Associate (AO4)	\$	42,198.00	
Secretary (AO4)	\$	42,198.00	
Panel of Assessors Sitting Fees (*)	\$	89,400.00	
Registrar (EO1) - Supreme Court Registrar equivalent	\$	81,935.00	
2 x Assistant (AO3)	\$	74,520.00	
2 x Counter Staff (AO2)	\$	66,390.00	
1 x Recording Staff (AO2)	\$	33,195.00	
3 x Administrative Review Committee Representative (2 members x 25 hours p/representative x \$30 p/hour)	\$	1,500.00	
Sub Total - Staffing (OPTION 1)	\$	668,436.00	(1)
or			
Sub Total - Staffing (OPTION 2)	\$	630,052.00	(2)
Plus 20% on costs for personnel (OPTION 1)	\$	133,687.20	(1)
or			
Plus 20% on costs for personnel (OPTION 2)	\$	126,010.40	(2)
Plus operational costs @ \$10 000 per position	\$	120,000.00	
Sub Total - on costs/operation costs (OPTION 1)	\$	253,687.20	(1)
or			
Sub Total - on costs/operation costs (OPTION 2)	\$	246,010.40	(2)
TOTAL (OPTION 1)			\$ 922,123.20 (1)
TOTAL (OPTION 2)			\$ 876,062.40 (2)

* Figure based on estimate of 149 applications (number of applications in the ACT Administrative Appeals Tribunal in last financial period 2003-2004) x 3 hours (approximate) per application x \$200 per hour for sitting fee for assessor.

MODEL 4A – INVITE THE FEDERAL ADMINISTRATIVE APPEALS TRIBUNAL TO EXERCISE NT JURISDICTION

The Federal Administrative Appeals Tribunal already operates in the NT under the Commonwealth AAT Act.

With the consent (expressed legislatively) of the Commonwealth, a NT Act could give the Tribunal jurisdiction over such administrative appeals and reviews as the Territory Government wished and leave the whole machinery and procedure to be absorbed into the Federal procedures.

In view of the small numbers of cases initially perhaps this could be done at little or no expense to the Territory but on the understanding that at a certain point either the NT would make some contribution or the system would revert to the NT.

**MODEL 4B – INVITE FEDERAL ADMINISTRATIVE APPEALS
TRIBUNAL TO EXERCISE NT JURISDICTION
WITH NT OFFICER**

As detailed in Model 4A however, the NT could consider appointing its own officer but working in the Federal system.

APPENDIX MODELS 4A & B – COMMONWEALTH ADMINISTRATIVE APPEALS TRIBUNAL SYSTEM

ESTIMATED ANNUAL STAFFING COSTS

Proposed Staffing Profile (and related costs)

Northern Territory appointed AAT Officer Magistrate - equivalent to Chief Magistrate	\$ 198,716.00	
Associate (AO4)	\$ 42,198.00	
Secretary (AO4)	\$ 42,198.00	
Registrar (AO8)	\$ 71,321.00	
2 x Assistant (AO3)	\$ 74,520.00	
2 x Counter Staff (AO2)	\$ 66,390.00	
3 x Recording Staff (AO2)	\$ 99,585.00	
3 x Administrative Review Committee Representative (2 members x 25 hours p/representative x \$30 p/hour)	\$ 1,500.00	
Sub Total - Staffing	\$ 596,428.00	
Plus 20% on costs for personnel	\$ 119,285.60	
Plus operational costs @ \$10 000 per position	\$ 140,000.00	
Sub Total - on costs/operation costs	\$ 259,285.60	
TOTAL		\$ 855,713.60*
ACTUAL COST TO NT		NIL

* costs to be borne or funded by the Commonwealth as the Administrative Appeals Tribunal falls within the Commonwealth's jurisdiction

APPENDIX – TABLE OF EMPLOYEE EXPENSES AS A % OF TOTAL EXPENSES IN OTHER JURISDICTIONS

	Cth*	NSW*	VIC*	Tas ¹	SA ²	ACT ³
Employee Expenses	\$14,194,000.00	\$1,484,898.00	\$16,930,000.00	\$5,169,000.00	-	-
Total Expenses	\$26,284,000.00	\$3,040,757.00	\$22,730,000.00	\$7,233,000.00	-	-
Employee expenses as % of total expenses	0.5400024349	0.488331688	0.74483062	0.714641228	-	-

Average proportion of employees' expenses as % of total expenses 0.621956971 ≈ 62%

Average % of other operating expenses 0.378043029 ≈ 38%

* Each figure is based on the Annual Report for each Tribunal for the financial period 2002-2003.

¹ Tas – figures are based on the total expenses from Magistrates Courts' Financial Statement (2002-2003) as the Administrative Appeals Division falls within the structure of the Magistrates Court and costs have not been broken down for the Administrative Appeals Division

² SA – unable to make reasonable calculation as the financial reports are prepared for Court Administration Authority which administers all the Courts in SA, and the Administrative and Disciplinary Division forms part of the structure of the District Court only.

³ ACT – annual reports are not made publicly available thus calculations based on financial statement figures cannot be ascertained.

MODELS – PROS AND CONS

There are various advantages and disadvantages to be seen in each of these models and, there is scope for some merging of the suggested alternatives.

The comprehensive model is clearly the ideal and, so far as we can ascertain, is working successfully in the Federal sphere and in Victoria, NSW and the ACT. The best indicators of success are shown by the acceptance in Victoria that their original *Administrative Appeals Tribunal Act 1984* should be expanded to the more comprehensive VCAT Act, and the decision of WA to adopt SAT legislation after a thorough examination of its operation elsewhere.

The argument that it is too expensive a luxury to be adopted by the NT with its small population is to some extent negated by the example of the ACT with a population of 322,000. We are informed that the ACT system, based on the Commonwealth system, is working full-time with a President and auxiliary staff and a separate registry; so there is some reasonable expectation that, after a few years, the same situation would apply in the NT. However, it is appreciated that costs would be greater because the ACT has the advantage of a tribunal located within easy ready of all its citizens, whereas the NT would need to provide circuits.

As we have previously mentioned it is not a valid argument to predict that applications would be few merely because they have been few in the past under a conglomeration of heterogeneous Acts.

The SA and Tasmanian model has the advantage that a separate entity does not have to be set up; yet many would say that is precisely its disadvantage because its capacity to grow and develop its own special rules and strengths must be inhibited if it remains within the court structure. Furthermore, if, as previously pointed out, it can be seen as an intermediate step towards a separate system, then the obvious comment is, why procrastinate? If all roads lead to Rome, why build a house half-way along the Appian Way? The best example here for the NT is the ACT which took the giant step with apparent success.

The idea of a single arbiter (albeit with assessors) has the attraction of pragmatism but, in effect, would seem no more than a rather restricted administrative appeals tribunal.

The concept of conveying Territory jurisdiction to the Commonwealth AAT has the advantage of bringing into the NT, a tried and working system with experienced personnel. It is, of course, dependent on the consent of the Commonwealth and, if that is forthcoming, then an agreement between the NT and the Commonwealth satisfactory to both. However, the reality of a NT Government ceding any jurisdiction might cause some comments on how seriously the NT wishes to move along the road to Statehood and independence.

This opposition might be modified if specific time limits are imposed.

THE WAY AHEAD

The pragmatic answer, and one which will not entail much immediate expense would be as follows:

- A. Set up immediately the legislation required for a comprehensive tribunal patterned on the existing legislation of the Commonwealth, Victoria, NSW, ACT and the legislation proposed by WA.
- B. Appoint a Judge or Magistrate from the present judiciary or magistracy as President. This does not entail removal from other duties but merely gives this person the special jurisdiction.
- C. Set up a separate registry which at first would need to be staffed only by a Registrar and an assistant.
- D. The legislation will provide for the whole panoply of Deputy-Presidents, Senior Members and Members⁴⁶, but, apart from a few part-time members there would be no necessity to implement this until workload so dictates.
- E. We emphasise that this is a gradual process and that apart from the initial expenses of setting up the system, there may be very little use made of it at first. Hence, the cost would be minimal, perhaps for some years. In short, the policy being used is one of gradualism.
- F. Gradually refer jurisdiction by appropriate legislation to the Tribunal.

The advantage here is that the structure is immediately set up so that it can be implemented as needed. But, as already observed, the initial growth will probably be slow, so that for some time the President will be able, without great inconvenience, to carry out his or her functions under the Act along with his or her other judicial or magisterial duties. Meanwhile it would be hoped that the President would become well acquainted with the philosophy of the administrative appeals tribunal system and its significant differences from the judicial system.

Experience gained in these initial stages would enable the President to “fine tune” the legislation if any special Territory conditions so dictate.

Apart, therefore, from the cost of setting up a Registry, there would be no additional costs until circumstances arose which required them. Meanwhile the structure remains in place with full potential for gradual and future implementation until the case-load indicates the need for final separation.

Ultimately, of course, there will be need for the type of expenditure set out in Model A but, by that time, it would be hoped that the success of the scheme would more fully justify it. If, however – and contrary to all examples elsewhere – the scheme is not seen as filling a proper and developing need it could, without much difficulty be dismantled.

⁴⁶ Compare the AAT Act 1989 (ACT).

THE FIRST REPORT

RECOMMENDATIONS

The Terms of Reference require this Committee to “have regard to its previous Report on Appeals from Administrative Decisions (Report No. 14 June 1991)”.

We have referred to the Report of June 1991 as “The First Report”. That Report contained some 54 Recommendations see Appendix 2.

It would be tedious and prolix to repeat this material further in this present Report. We have chosen rather to add such observations as we consider relevant to expand or modify them in the light of events since 1991.

Occasionally we will take the liberty of adopting the approach of a well-respected Judge⁴⁷ of past times who, when reminded by counsel of certain observations (favourable to counsel’s case) which he had made in an earlier judgment, replied tersely, “*that case does not appear to me now as it appears to have appeared to me then*”. Otherwise, we affirm our agreement with the reasons given in the First Report, many of which we have also referred to, though we note that some “Recommendations” are rather “observations”, though no less pertinent for that.

The thrust of both Reports is, however, strongly in favour of the establishment for the citizens of the NT of appropriate mechanisms to provide, through a tribunal system, for the comprehensive making and review of administrative decisions.

⁴⁷ Bramwell, Sir George William Wilshere, (1808-1892) 1st Baron Bramwell (1882). Lord Justice of Appeal, 1876-1881, Privy Council, 1876.

SUMMARY OF FIRST REPORT RECOMMENDATIONS AND REASONS

(Recommendations themselves are generally summarised)

(For full details refer to Appendix 2)

1. Courts inappropriate for review of administrative decisions.

Agreed. To the reasons already given we add those given by the WA Taskforce Report.

2. Inadvisability of Ministers reviewing decisions of their own Department.

Agreed. But this does not preclude Ministerial discretion to correct apparent errors on terms satisfactory to the complainant before they reach the Tribunal. Indeed this is to be encouraged.

3. General Appeals Tribunal.

Agreed. But Tribunal should also have original jurisdiction in some cases. Compare s 40 of the VCAT Act.

4. Who should constitute the Tribunal.

Agreed. But apart from the appointment of President and Registrar other appointments may be made more gradually, and consideration should be given to appointing a Supreme Court Judge as President to give greater weight and authority to the Tribunal. This is the case in the Commonwealth, Victoria and NSW, though not in the ACT where the President is a lawyer of considerable experience.

5. Constitution of Tribunal.

The recommendation is that the Tribunal should only be constituted in the manner it sets out, namely:

- “(i) Judicial member plus 2 members;*
- (ii) Judicial member sitting alone;*
- (iii) In conference only a Judicial member, the Registrar or a single member sitting alone”.*

It would be unwise to confine the constitution of the Tribunal in this manner.

Other combinations may be acceptable (e.g. two members), and a legal (rather than judicial) member sitting alone would often be appropriate. Preference should be for a multi-disciplinary Tribunal in significant cases.

6. Reviewable decisions should include decisions of an administrative character which:

- (i) alters rights and imposes liabilities;

- (ii) has a practical effect although not altering rights and imposing liabilities;
- (iii) is a failure or refusal for whatever reason to take a decision or perform an act.

Agreed and particularly so in light of the judgment of Justice Lockhart cited therein.

- 7. All decisions under an enactment should be reviewable by the General Appeals Tribunal subject to specified exceptions.

If the Government agrees to set up an AAT, then the Second Reading Speech in Parliament should emphasise the broad scope of the proposed legislation.

The Registrar should have the power to decide whether applicants have exhausted their internal remedies, but his or her decision should itself be reviewable. Legislation should specifically give this power to the Registrar.

Otherwise, agreed.

- 8. Decisions excluded from review should be because of their nature and special requirements.

Agreed but emphasise the phrase "only where there is a special case". The philosophy should be that generally all administrative appeals should come before the general AAT.

- 9. Review de novo.

Agreed. It is one of the most important features that Tribunal should have full power to review.

- 10. Government policy relevant but not determinatant.

Agree and see cases quoted. See also the discussion by Justice Davies.⁴⁸

- 11. Right of any properly interested persons or organisation to apply.

Agree and emphasise.

- 12. Tribunal can give advisory opinions.

Agree and refer to s 125 of VCAT Act.

- 13. Provision for joinder of parties with joint interests.

Agreed.

- 14. Representative actions encouraged.

Agreed.

⁴⁸ Davies, above fn 42, 44-47.

15. Right of Attorney-General to intervene.

Agreed – but if Attorney-General's intervention causes extra costs Attorney-General should bear them.

16. Reasons must be given for administrative decisions if requested.

Agree and emphasise.

17. Reasons for administrative decision should be in writing and should be proper, relevant and accurate.

Agreed. And persons affected should be entitled to apply to the Tribunal for a direction that proper reasons be given by the Administrative decision maker.

18. Time limit of 28 days for giving of reasons. Extension or abridgment can be ordered in special circumstances.

Agreed that Tribunal can exercise its discretion in special circumstances and give directions as to time limits.

19. Exemptions from requirement to give reasons.

Agreed. But emphasise special circumstances. In matters involving criminal or quasi-criminal events the Director of Public Prosecution should be consulted.

20. Ex parte application that reasons be given within a specified time.

Query need for ex parte application. Appropriate clause would be:

"Such application may be made ex parte or otherwise as circumstances dictate".

21. Adequate notice of an administrative decision and the right to review should be given.

Agreed – emphasise "adequate". Details of the body to which appeal can be made should be given in the notice.

22. Information about the Tribunal should be readily available.

Agreed.

23. Applications to be in standardised form but with discretion to allow variations.

Agreed.

24. Modest fee should be charged for lodging appeals.

Conditionally agree. Some categories should be specified as requiring no fee.

25. Time limits generally as to all procedures but with discretion in Tribunal.

Agreed.

26. Prior internal review processes should be encouraged.

Agreed. In fact, there should be a presumption that agencies should have internal complaints mechanisms in place and a presumption that such mechanisms have been utilised.

27. Once application is lodged Tribunal should have full control e.g. no withdrawal without leave and settlements converted to consent orders.

Agreed.

28. Tribunal should have power to grant preliminary relief and stays.

Agreed, but should be limits on length of stay granted.

29. Tribunal should encourage but control conferences.

Agree and suggest adopting the pattern set out in detail in Division 5 of Part 4 of VCAT Act. Main objects of the Act should be set out as in s 3A of the AAT Act (ACT).

30. Telephone conferences should be available if parties agree.

Agreed, but add video conferences or any other modern form of communication if available and practicable.

31. Procedures at a conference should be informal.

Agreed.

32. Confidentiality of conferences.

Agree, providing the parties themselves agree and specify precisely which matters they desire to be kept confidential; and subject to Recommendation 33.

33. Evidence from the conference could be introduced at the hearing only by consent of all the parties.

Agreed.

34. Settlement at a conference should be approved and registered by the Tribunal.

Agree and emphasise. Once the Tribunal is seised of a matter it should retain it. This is in no way to discourage the parties from conferring and hammering out their own agreements. But the agreement itself should be scrutinised by the Tribunal to satisfy itself that the areas of dispute have been properly covered. Ambiguities or omissions may otherwise become the source of further applications in which the whole dispute may be regurgitated. If the agreement is registered or embodied in a formal order of the Tribunal, any further applications will normally then be confined to seeking the Tribunal's or court's interpretation of the agreement or order, rather than a resurrection of the original dispute in its full vigour voraciousness and (sometimes) venom.

Note, for instance, s 93 and s 130 of the VCAT Act. The VCAT Act also recognises that enforcement of orders of the Tribunal becomes a matter for the civil courts and ss 121 and 122 provide that, on filing the order in the “appropriate court” (s 121), or the Supreme Court (s 122), the order must be taken to be an order of that court and “may be enforced accordingly”.

These provisions should be extended to agreements approved by and registered with the tribunal.

35. Notice of hearing and procedural information to be supplied.

Agreed.

36. Undue formality and technicality to be avoided.

Agreed.

37. The decision-maker should lodge material documents prior to the hearing.

Agreed, and refer also to Recommendation 39.

38. Proceedings “broadly adversarial” but using inquisitorial powers where appropriate.

Agreed.

In June 2004 the “Notes from the President” of the AIJA contain a reference to progress of an AIJA research project that “explores what it means for a tribunal to operate in an inquisitorial fashion and what are the legislative indicators and best practice directions that ensure that a tribunal operates in an inquisitorial fashion”.

Perhaps the term “quasi-inquisitorial” should be employed to dispel the ghost of Torquemada.⁴⁹

39. Tribunal to have power to seek and require any relevant evidence not otherwise before it.

Agreed. This is a corollary of Recommendation 38. See also Recommendation 42.

40. Public Hearings.

Agreed. Any other course, however well intentioned, will inevitably give rise to “Star Chamber” accusations. However the Tribunal should have power to direct private hearings in certain cases.

Compare s 101 of the VCAT Act. Such power should be used sparingly.

41. Contempt proceedings available.

Agreed. Compare ss 137 and 148 of the VCAT Act.

⁴⁹ Tomas de Torquemada, First Grand Inquisitor of Spain, 1420-1498.

42. Tribunal not bound by rules of evidence.

Agreed.

43. All parties should have right to representation.

Agree with the general principle but right should be by leave of the Tribunal which can refuse leave if it considers the circumstances do not warrant it. Alternatively, if the circumstances warrant it, the Tribunal should request Legal Aid if it appear that an unrepresented party cannot afford representation and would be disadvantaged without it.

44. Non-legal representation allowed.

Agree, with some hesitation but only on the basis that the representation should appear competent.

45. Powers of Tribunal to affirm, reverse, set aside, vary, remit etc.

Agreed. Compare s 51 of the VCAT Act.

46. Costs in exceptional cases.

Agreed. Compare s 109 of the VCAT Act.

47. Appeal only on point of law.

Agreed.

FURTHER RECOMMENDATION
ARISING OUT OF THE FIRST REPORT AND SUBSEQUENT
EVENTS

As this present Report sets out, there has been much activity in the field of Administrative Law since the First Report of 1991. All indications are that throughout Australia there has been and will continue to be a steady increase in this area. This has been recognised by the creation or extension of some form of administrative body either within or without the existing court structure of various States and Territories, except Queensland and the NT. While the Committee would not presume to speak for Queensland, it seems inevitable that some form of general administrative tribunal needs to be set up in the Territory to replace the wilderness of single instances presently existing.

Such a tribunal will, no doubt, develop its own procedures consistent with local conditions, but will also have the advantage of adopting or adapting procedures tried and tested elsewhere. It will join the mainstream of the Commonwealth, State and Territory bodies already established, and assist and be assisted in developing the broad principles suitable to the field in which all are participating.

If, therefore, a new tribunal is to join the ranks of those already established it would be both unfortunate and irrational if lessons already learned in earlier ventures were neglected, and mistakes already made and corrected elsewhere were needlessly repeated here. It would also be needlessly expensive. The sensible solution is to seek help from those already experienced in the field.

It should not be too difficult to find either a retired Judge, Senior Member, or Registrar from another jurisdiction, or one still in office who would be prepared, subject to being granted the appropriate leave from his or her Government, to be asked to set up the system in the NT and given the authority to do so. While this would entail some immediate expense, that would be amply repaid by the institution of a workable system based on a successful model already operating and introduced by those already skilled in its procedures. Such a person or persons would work with those nominated by the NT Government to take over once the system has been established. In this way the NT would inherit the best of the learning and expertise of a developed organisation.

APPENDIX 1**TERMS OF REFERENCE**

1. To identify and provide details of all present Northern Territory statutory provisions conferring a right of appeal from administrative and executive acts to a court or appellate body other than a court.
2. To report on the law as it applies to those appeals and as to the rules of practice, procedures and evidence relating thereto, in particular as to the consistency of the law in that regard.
3. To consider and report on whether or not in each case the power to make an administrative or executive decision, from which an appeal lies, has been conferred on the person or body most appropriate to make that decision.
4. To consider and report as to whether or not in each case it is appropriate that the appeal lie to a court or appellate body other than a Court body.
5. To consider and report whether or not in each case it is appropriate that a further appeal should lie from the decision of the court or appellate body other than a Court body.
6. To identify alternate models in place elsewhere in Australia.
7. To identify the costs of those models or any other practical model if they were to be put in place in the Northern Territory.
8. To consider and report whether or not it would be appropriate to establish a Tribunal or Tribunals to which such appeals could lie and, if so, the law and rules of practice, procedure and evidence which ought to apply.

In considering these Terms of Reference, the Northern Territory Law Reform Committee shall have regard to its previous Report on Appeals from Administrative Decisions (Report No.14 June 1991).



NORTHERN TERRITORY OF AUSTRALIA

**Report on
Appeals from Administrative Decisions**

Northern Territory Law Reform Committee

Northern Territory Law Reform Committee

G.P.O. BOX 1535 DARWIN.
N.T. 5794 AUSTRALIA.
TELEPHONE

Hon. Daryl Manzie M.L.A.
Attorney General
N.T. House
Mitchell Street
DARWIN NT 0801

My dear Attorney,

I have pleasure in presenting the Report on Appeals from Administrative Decisions which was adopted by the Committee on 28 June.

The Committee proposes a system of administrative review based on the models already operating in Victoria, the A.C.T. and the Commonwealth.

The first element of the proposed reforms is a requirement for a person who makes a decision of an administrative character pursuant to the statutory power to give reasons for that decision if required. The provision of reasons is often a sufficient answer to a person's concerns about a decision.

We consider the right to reasons for a decision should be independent of the right of review, though both rights should be subject to a number of exclusions.

The second element is the creation of a general appeals tribunal which will have power to review those decisions, unless the power of review is excluded, or is conferred on a more appropriate body.

The final element of the proposed reforms is the establishment of an Administrative Review Committee to examine the process of administrative review on a continuing basis and advise the Government accordingly.

The Committee is aware of a present review of the Commonwealth Administrative Appeals Tribunal, and it may be that its recommendations should be considered in light of the matters arising out of that review.

M F. HORTON
ACTING CHAIRMAN

3 July 1991

WIPR254

The Northern Territory Law Reform Committee is:-

Chairman: Justice Brian Martin
Justice Sir William Kearney
(until 28th September 1990)

Members of the Committee as at the date of this report:-

Jim Dorling
Harry Giese*
Max Horton*
Judith Kelly
Peter McNab*
Ian Maughan*
Margaret Orwin*
Sally Thomas*

Members co-opted for this reference:-

Bob Eadie (Ombudsman)
David Hawkes (Public Service Commissioner)

Sub-Committee for this reference:

Harry Giese (Chairman)
Bob Eadie
David Hawkes
Judith Kelly
Peter McNab
Ian Maughan

Executive Officer:-

Stephen Herne
Linda Weatherhead (Acting 1March - 16 November 1990)

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Australia.

* Members present when the Report was adopted.

Wipr248

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1. INTRODUCTION

The increasing complexity of society has resulted in increasing regulation. The State impinges on just about everything we do and the rights of individuals depend increasingly on decisions made by delegated officers within public Departments. A democracy requires accountability. The decisions made must be reasoned and open, to challenge.

Other jurisdictions within Australia have addressed review of administrative decisions as part of a system of administrative review which includes Freedom of Information legislation, improved models of Judicial Review and the setting up of specific tribunals for review on the merits of administrative decisions.

Access to review of administrative decisions has benefits for the decision-maker and those affected by the decision equally. The decision-maker will have the guidance provided by the review process and the precedents established which will improve the quality of decision making. The person affected will have access to written reasons for the decision and the opportunity to review it, increasing confidence in and accountability of, the decision making process.

As a matter of principle there should always be a right of appeal from an administrative decision. At present, leaving aside the role of the Ombudsman, there are two principal methods by which the decision may be reviewed. The first is where a right of appeal is granted by statute and the second where the matter is taken to the Supreme Court by way of judicial review. These methods are seldom utilised because they are costly, time consuming and somewhat lacking in accessibility. In some cases there is no right of appeal against an administrative decision.

The Attorney-General has asked the Committee to examine and report to him on whether the present system for dealing with appeals from administrative decisions needs reform: Appendix "A1" sets out the full terms of the reference, as well as the manner in which the Committee has conducted the reference.

The Committee, in making its proposals for a new system of administrative, review has worked from the assumptions that this system should be relatively:

- Accessible
- Informal
- Independent.
- Quick
- Inexpensive

Other jurisdictions have set the pace in establishing processes for administrative review which review a decision on its merits. The Committee agrees that review on the merits is desirable and concurs with the comments of the Kerr Committee:-

"The basic fault of the entire structure (of an appeal system) is, however, that review cannot as a general rule, in the absence of special statutory provisions, be obtained on the merits - and this is usually what the aggrieved citizen is seeking" (Commonwealth Administrative Review Committee Report, Parliamentary Paper No. 144 of 1971, p. 58).

The use of a right of review on the merits would change the emphasis of the present appeal system. The emphasis would shift from asking - "is this decision wrong in law?" or "was it unreasonable for the decision-maker, on the material before him or her, to have arrived at this decision?" to asking - "is this the correct or preferable decision to make on the material before the Tribunal?"

The Committee has addressed the issue of providing a right to obtain reasons for an administrative decision as an essential first step to the right of appeal against the decision. However, the Committee considers that the right to reasons is so fundamental to both public accountability and proper decision making practices that it may be appropriate to entrench this right independently of any system of administrative review.

2. BACKGROUND

(a) What is an administrative decision:

For the purpose of the Committee's enquiry, an administrative decision is a decision made under a statutory power, such as a decision by the Registrar of Motor Vehicles to cancel a driving instructor's licence.

Administrative decisions are made by persons and bodies such as ministers, tribunals, and public servants. Decisions cover many matters including town planning approvals, licensing of occupations, employment, discipline and the grant of permits.

(b) Classifying administrative decisions

Part of the problem with present rights of appeal is, that there is no consistency in approach. There is sometimes, but not always an appeal. It may be to an individual, a Board, a Tribunal or a Court and it maybe a full appeal or restricted to particular areas.

The classification of administrative decisions is often determinative of the nature of appeal. For example decisions related to industrial relations matters usually go to a non- judicial body comprising employer and employee representatives. Professional licensing usually is under the control of the particular profession involved subject to Government approval of professional standards. Activity licensing (e.g. licence to drive a taxi) is often reviewed in the Local Court.

(c) How can you challenge an administrative decision?

An administrative decision may be challenged to two ways:

- Appeal
- Judicial review

Appeal

The right to appeal against a decision is a right conferred by statute Unless an Act provides for such an appeal, there can be no appeal. Accordingly, all aspects of a right of appeal must be set out in the Act or in regulations made under it. These include the scope of the decision that may be appealed against, time limits within which to appeal, and the powers of the appellate body. This type of review is a review on the merits.

Judicial Review

Judicial Review is the procedure by which a person who is dissatisfied with an administrative decision asks the Supreme Court to rule that the decision-maker has made a legal error concerning the jurisdiction or procedure that has been used to make a decision. The Court does not have a right to substitute its view on the merits of the decision.

The function of judicial review is to, determine the legality of administrative decisions.

Judicial review is a right that only exists at common law in the Territory, that is, it is independent of statute. The law and procedure concerning judicial review is not being considered by the Committee.

(d) What is the Role of the Ombudsman?

The Ombudsman may investigate any "administrative action" taken in any Department or authority but may not investigate any action which may be challenged by statutory appeal or judicial review unless in the Ombudsman's opinion it is "unreasonable" to resort to the formal remedy or "the matter merits investigation to avoid injustice": Ombudsman (Northern Territory) Act s.14(1) (a), (6) and (7).

On completion of an investigation, the Ombudsman reports to the principal officer of the Department and the Minister and, may recommend various courses of action. For example, the report may record that the administrative decision "was wrong" and that the Department should "rectify" the decision (s . 26); it may further request that notification be given within a specified time of any action taken to give effect to recommendations made. Where the Ombudsman is not satisfied with the steps taken, a report on the position may be furnished to the Minister; who "shall" table the report within 3 sitting days.

There is no right of appeal against a refusal by the Ombudsman to investigate a complaint though the grounds on which investigation may be refused are specified (s. 18) .

3. OVERVIEW

Administrative decisions, often made by Ministers, statutory authorities or public servants, are difficult to challenge. When a decision has been made affecting the interests of an individual or group, those affected:-

- (i) should receive notice of the decision' and ,reasons for it; and
- (ii) should have effective means of challenging it if they think it is unfair or unreasonable.

It is with these objects in mind that the Committee has made recommendations for the reform of "Appeals from Administrative Decisions".

Providing information about the decision and the means to challenge it ensures greater compliance and acceptance of the decision and improvements in the quality of decision making.

A key element of the proposed reforms is the requirement of a decision-maker to give reasons for a decision, whether or not the person affected wishes to apply to have the decision reviewed. The provision of reasons is often a sufficient answer to a person's concerns about a decision.

If the reasons do not provide an adequate answer to those concerns a person affected by the decision may apply to an appropriate tribunal for review of that decision. Central to the recommendations of the Committee is the establishment of a "General Appeals Tribunal" to review most administrative decisions. There is an opportunity for limited further appeal to the. Supreme Court from the decision of the Tribunal.

The advantages of such a tribunal are:

- (a) most administrative appeals, subject to a few exceptions, would go to the one body, overcoming the confusion as to whether there is an appeal and if so, where does it go to;
- (b) it would be more independent and appropriate than some presently constituted administrative appeal bodies;
- (c) it would be accessible; applying would be easy, the procedures would be well publicised, and use of the Tribunal would not be expensive;
- (d) it would be informal.; the atmosphere would be very different from that of a court;
- (e) it would be quick and efficient; the Tribunal would ensure that unnecessary delays do not occur and that information gathering would take place in ways that would limit the time necessary for hearings and personal attendance; and
- (f) it would review decisions on the merits of that

decision and would not be restricted to a review of questions of law.

The Tribunal would have the expertise to deal with the many areas that involve administrative decisions because it would draw its members from a pool which would include specialists in various fields, where appropriate.

To oversee the operation of this new system an Administrative Review Committee will be set up. This committee will have a role in guiding the decision-making process, ensuring that the procedures of the tribunal achieve its aims of accessibility, and publicising the role of the Tribunal and information on how to apply to the Tribunal.

A list of the recommendations made in this Report is contained at Appendix "C".

4. A GENERAL APPEALS TRIBUNAL

(a) The use of courts(Recommendation 1)

The use of courts is inappropriate in the review of administrative decisions on the merits because of formality, costs and delays associated with their procedure.

The formality and costs of court proceedings are closely related. The formality derives from the evidence-gathering process; the costs derive from the fact that, as the procedures are so far removed from the experience of an individual, it is necessary for a citizen to engage an expert (a lawyer) to conduct the case on his or her behalf. The costs of so doing can be prohibitive.

b) Use of Ministers(Recommendation 2)

The use of Ministers to review decisions of their own Department should be avoided.

- In 1932 a Committee on Ministers Powers (Donoughmore Committee) put forward two major arguments in favour of transferring appellate jurisdiction from Ministers to a tribunal. The first was "that it was inappropriate for a quasi-judicial function to be performed by a Minister who as a politician may either be influenced or appear to be influenced by political considerations" and the second that it was wrong that an appeal made from the decision of a person appointed by the Minister or subject to his or her direction should finally be determined by the Minister.
- The appellate authority should both be independent and be seen to be independent.

(c) Use of tribunals

(Recommendation 3)

A separate tribunal, a general appeals tribunal, should be established to specialise in appeals from administrative decisions.

The use of tribunals as a means of reviewing government decisions has the advantage of accessibility and independence. In most cases, what people are seeking in administrative review is a review on the merits. A tribunal, vested with statutory jurisdiction, can provide such a review.

A general appeals tribunal is less formal and more flexible than a court.

A general appeals tribunal will consolidate and rationalise existing appeal structures and create a coherent system whereby those appeals are determined according to a consistent pattern of procedures by a body independent of government.

5. ORGANISATION OF TRIBUNAL

(a) Composition

(Recommendation 4)

The General Appeals Tribunal should consist of:

- (i) A Chairperson who is the Chief Magistrate or another Magistrate nominated by the Chief Magistrate;
- (ii) Judicial members being other Magistrates;
- (iii) Members being those persons appointed by the Attorney-General; and
- (iv) A Registrar appointed specifically to manage the Tribunal, to perform ancillary duties and to exercise the jurisdiction of the Tribunal where specified.

The Committee noted that the Commonwealth and Victorian AATs are both chaired by a judicial officer at least equal to an intermediate court -judge. The Committee considers such a person is necessary to assess the likely issues and the appropriate composition of the General Appeals Tribunal for a particular appeal.

The Committee concluded it was appropriate to appoint Magistrates to this position for five reasons:-

- (i) A judicial officer was considered to possess the necessary legal and administrative skills.
- (ii) Of the 47 existing rights of appeal it was proposed to assign to the General Appeals Tribunal, 27 were already assigned to the Local Court or a body constituted by a Magistrate.
- (iii) Based on existing statistical information, the volume of appeals does not appear sufficient to cause disruption to the workload of Magistrates.
- (iv) The judges of the Supreme Court were generally committed to hearings of higher priority and longer duration and were unlikely to be readily available.
- (v) The recommendation is consistent with the cost consideration of the Terms of Reference.

The Attorney-General should appoint the panel of members from which the Chairperson should constitute the Tribunal in each case. The Act would not require any particular process to be observed in the nomination of members.

The legislation should provide for a term of office sufficient to allow non-judicial members time to develop experience and provide continuity; for the disclosure of interests of such members, and for the removal from office of such members.

(b) Constitution

(Recommendation 5)

The General Appeals Tribunal should be constituted. only in the following manner:

- (i) Judicial member plus 2 members;
 - (ii) Judicial member sitting alone; or
 - (iii) In conference only, a Judicial member, the Registrar or a single member sitting alone.
- The Committee noted that both the Commonwealth and Victorian AAT could be constituted by a member sitting alone.
 - It would be for the Chairperson to determine the appropriate composition in each case. The Committee considered the establishment of divisions not justified by the likely volume of appeals, particularly having regard to the fact that the process required to create and maintain divisions would inevitably introduce time-consuming complications.

6 JURISDICTION

(a) What is a decision?(Recommendation 6)

A decision reviewable by the Tribunal should include a decision of an administrative character which:-

- (i) alters rights or imposes liabilities;
- (ii) has a real practical effect although not altering rights or imposing liabilities;
- (iii) is a failure or refusal, for whatever reason, to take a decision or perform an act.

The above formulation is based in part on the judgment of Lockhart J in Director-General of Social Services v. Hales (1983) 5 ALN No 116.

"Decision" as defined in the Commonwealth AAT Act includes a reference to:-

- (i) making; suspending, revoking or refusing to make an order or determination;
- (ii) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
- (iii) issuing, suspending, revoking , or refusing to issue a licence, authority or other instrument;
- (iv) imposing a condition or restriction;
- (v) making a declaration, demand or requirement;
- (vi) retaining, or refusing to deliver up, an article; or
- (vii) doing or refusing to do any other act or thing.

The definition should make it clear that decisions which could be classed as:-

- judicial (eg a decision by the Supreme Court)
- legislative (eg a decision to make regulations) would not be subject to review. Consideration might also be given to confining decision to those made by a class of public official.
- It is desirable that any definition adopted should not be restrictive. The Tribunal should not be bogged down in jurisdictional questions but should make every effort to exercise jurisdiction where it appears there is a meaningful dispute to be settled.

- The Committee initially saw merit in adopting a procedure on the lines of section 10 of the Ombudsman Act 1976 (Cth) which enables the Commonwealth Ombudsman to issue a "certificate of unreasonable delay". The effect of such a certificate is that a decision is deemed to have been taken not to do the act or thing in question. However, in the opinion of the Northern Territory Ombudsman (who also acts as agent in the Territory for the Commonwealth Ombudsman) such a procedure appears unnecessary in the Territory context since, in exercise of his general powers under the Ombudsman (Northern Territory) Act he is invariably able, without cost to the applicant, to persuade a Government agency to take the decision or other action in question (albeit not necessarily a decision or action favourable to the applicant), or at the very least to formally refuse to take it.
- The Ombudsman has also pointed out that neither he nor his staff are aware of any case ever having arisen in the Territory in relation to a Commonwealth Government agency in which the section 10 certification procedure has been used.
- Having regard to the Ombudsman's view, and to the desired objective of devising a system which will operate informally and inexpensively, the Committee has decided not to recommend the adoption of a certification procedure such as that presently existing in the Commonwealth sphere.

(b) Decisions to be reviewed by the General Appeals Tribunal

(Recommendation 7)

All decisions under an enactment should be reviewable by the General Appeals Tribunal subject to certain specified exemptions.

- In the Territory there are presently 5 different types of appellate bodies: At the date of this paper there are 117 statutory rights of appeal against administrative decisions Of these:-
 - 24 appeals go to the Supreme Court;
 - 31 appeals go to the Local Court;
 - 35 appeals . go to 32 . different specialist tribunals;
 - 9 appeals go to 9 different individual's;
 - 16 appeals go to 9 different ministers.
- The growth of specialist tribunals is an indication of an attempt to provide the most appropriate appellate structure. The Committee has not approached the problem of reform of the administrative appeals system by starting from the position that there are "too many" tribunals. It has, however, considered consistency of appeal mechanism a priority. In most cases the appropriate structure for appeal will be the

General Appeals Tribunal given that the Tribunal may be constituted to draw on specialist expertise.

Options for Reform

- The question of which administrative decisions are to be subject to review is essential, to any reform to any reform of the administrative appeal system. There appear to be two primary policy options for reform:

A: opt out

B: opt in.

The first option starts from the position that every administrative decision should be reviewable unless it is specifically exempted. The second option requires that the only administrative decisions that will be reviewed are those that are specifically identified.

Whichever policy option is adopted, a decision to include or exclude a particular administrative decision should be made on a consistent policy basis. The matter should not be determined on an ad-hoc basis, or as a result of individual departmental decision making in accordance with unspecified criteria.

A: Opt Out

The Committee has recommended that every administrative decision made under an enactment be reviewable by the Tribunal except the following:-

- those where an existing right of appeal lies to another more appropriate body (see Recommendation 8)
- those exempted for reasons of policy.

For reasons of policy, we believe the following decisions should be excluded:-

- (a) decisions by the Administrator
- (b) decisions by Cabinet or a Minister to enter into an agreement with the Commonwealth or a State or Territory
- (c) decisions of the Parliament or of a Committee of Parliament, or decisions pursuant to standing orders of the Parliament
- (d) recommendations of the Electoral Distribution Committee under the Electoral Act
- (e) decisions relating to the administration of criminal justice
- (f) decisions in connection with the institution or conduct of proceedings in a civil court, including decisions that relate to or may result in, the bringing of such proceedings
- (g) decisions in connection with the enforcement of judgments or orders for the recovery of moneys
- (h) decisions in connection with the prevention or settlement of industrial disputes, or otherwise relating to industrial matters
- (i) decisions in connection with personnel management (including recruitment, appointment or engagement, promotion and organisation discipline and dismissal) with respect to the Public Service, the Police Force or Teaching Service or any office created by statute
- (j) decisions by the Treasurer or Auditor-General under the Financial Administration and Audit Act

Policy Basis for Exclusions

- Exclusions (a), (b) and (c) relate to fundamental decisions of executive and legislative policy. It would not be appropriate to provide a right of appeal against these decisions, given the availability of judicial review to ensure the legality of the decision - making process.
- Exclusion (d) relates to a decision by an independent Committee whose function it is to recommend electoral boundaries to the Legislative Assembly. The Committee considers the availability of judicial review sufficient to ensure the legality of the decision - making process.
- Exclusions (e), (f) and (g) relate to decisions involving the freedom of government to commence civil or criminal proceedings. Suitable precedents

exempting such decisions can be found in the ADJR Act, schedule 2, items (e), (f) and (m).

- Exclusions (h) and (i) relate to the management and dispute resolution procedures of the public sector. The policy basis for exclusion is contained in the commentary relating to Recommendation 8.
- Exclusion (j) relates to decisions about the financial management of the public sector. To the extent that such decisions involve solely matters of government policy (such as a decision on the amount of an appropriation) the Committee considers it inappropriate to provide a right of appeal, given the availability of judicial review. To the extent that such decisions involve day to day financial decisions, the committee considers the existing "checks and balances" structure of
 - the Auditor - General,
 - the Public Accounts Committee of the Assembly,
 - the Ombudsman, and
 - judicial review

to be a more appropriate method of ensuring proper decision - making, than that provided by a right of appeal

B: Opt In

- The Committee has recommended against this option. However, if it were to be adopted, a suitable precedent could be found in the Administrative Appeals Tribunal Act 1975 (Cth) s.25.

(c) Decisions excluded from review by the General Appeals Tribunal

(Recommendation 8)

Those decisions that should be excluded from review by the General Appeals Tribunal should be excluded because of their nature and special requirements on appeal. Most would fall within the general categories of industrial relations and professional matters.

- Exclusions from the jurisdiction of the Tribunal should be made only where there is a special case for the exclusion.
- Decisions in industrial relations matters could be excluded. These decisions often go to a body consisting of persons nominated by the employee and the employer.
- Specialisation in this area is desirable because of

the sensitivity of issues and a discrete body of law that supports these decisions.

- Decisions related to professional licensing matters could also be excluded. These decisions most usually go to a body containing members drawn from that occupation. The involvement of occupational members is desirable e.g. in determining appropriate qualifications.
- It is important that all statutory decisions in these general areas are considered to determine whether an exclusion is appropriate.

(d) Scope of Review

(Recommendation 9)

The General Appeals Tribunal should have power to review de novo (i.e. afresh) the whole decision and should not be confined to matters raised before the original decision maker.

- The statutory provisions as to the scope of the appeal provided for, vary widely. The appeal may be limited to the evidence and arguments put before the decision maker or the appellate body may rehear the matter, i.e. it is not confined to the evidence and arguments before the decision maker. For example, an appeal to the Local Court against a refusal to grant a land agent's licence can only be made on specific grounds; an appeal against a refusal to grant a radiographer's licence can be made on any grounds.
- The widest possible power of review should be given to ensure that all issues raised before a General Appeals Tribunal can be dealt with. Any limit on the power of the review may also be a limit on the ability to do justice in the particular case.

(e) Government Policy

(Recommendation 10)

No special provisions should be made in respect of the way that the General Appeals Tribunal reviews decisions involving Government policy.

- There is a concern that an AAT would have to interfere with the policy of the elected Government when deciding administrative questions.
- Victoria has dealt with the policy question by, in effect, providing that if the policy is published in the Government Gazette it is binding on the AAT.
- The Committee considers the Victorian approach a reasonable response to the problem, but considers the better approach involves two more basic propositions.

Firstly, the decision to create a right of appeal against an administrative decision in itself involves a decision to subject the application of Government policy to review. Secondly, existing methods of review involve consideration of the application of Government policy.

- The Committee considers that the common law approach as applied to the operation of the Commonwealth AAT Act, is appropriate. This approach is reflected in the judgment of Bowen CJ and Deane J in Drake v. Minister for Immigration and Ethnic Affairs (1979) 2 ALD 60 reviewing a decision under the Commonwealth AAT Act as follows:-

"If the original decision-maker has properly paid regard to some general government policy in reaching his decision, the existence of that policy will plainly be a relevant factor for the Tribunal to take into account in reviewing the decision. On the other hand, the Tribunal is not, in the absence of specific statutory provision, entitled to abdicate its function of determining whether the decision made was, on the material before the Tribunal, the correct or preferable one in favour of a function of merely determining whether the decision made conformed with whatever the relevant general government policy might be."

- This approach was taken further by Brennan J, presiding over the AAT in Re Drake and Minister for Immigration and Ethnic Affairs (No. 2) (1979) 2 ALD 634 who stated that the Tribunal ought to apply Ministerial policy unless there are cogent reasons to the contrary. It would, however, be a cogent reason if the policy would work an injustice in a particular case.

7. APPLICANTS FOR REVIEW

(a) Who may apply?

Any person, group or organisation whose interests are affected by a decision should be able to apply for the decision to be reviewed by the General Appeals Tribunal.

- Parties need not have a direct personal stake in proceedings.
- The right to apply should extend to 'third parties' where they have an interest, or where there is a matter of public interest involved. These third parties may be individuals or groups.
- A similar provision to that contained in the Commonwealth AAT Act (s.27) in relation to persons who may apply should be adopted. Standing under that Act is attributed to a person or persons whose interests are affected, including an organisation or

association of persons where the decision relates to a matter included in the objects or purposes of the organisation or association.

(b) Decision makers

(Recommendation 12)

A decision-maker should be able to apply for an advisory opinion from the Tribunal where provision is made for this under an enactment.

- Where decisions are complex, affect large numbers of people raise a novel problem or require application of legal principles the decision maker should be encouraged to apply to the Tribunal for guidance.
- An advisory opinion should not bind the decision-maker.

(c) Joinder of parties(Recommendation 13)

Joinder of parties should be consistent with the criteria for those who can apply i.e. any person, group or organisation whose interests are affected may be joined in proceedings.

- Any person, group or organisation whose interests are affected by a decision may apply to be joined in proceedings. Re-litigation of the same issues is to be discouraged.

(d) Representative actions(Recommendation 14)

A group of persons or an organisation should be able to act by a representative where similar issues and similar relief would arise if individual actions were taken.

- Representative proceedings ensure a single decision on issues in which all members of a group have the same interest without the necessity to litigate each member's case individually.

(e) Right of the Attorney-General to-intervene(Recommendation 15)

The Attorney-General should have a right to intervene in proceedings.

- In matters of law the Attorney-General could assist the Tribunal by fully arguing points for the benefit of the Tribunal. In matters of government policy the Attorney-General could argue the content and appropriateness of government policy in its application to a particular case. The Attorney-General should bear the costs of intervention.

8. REASONS FOR DECISIONS

(a) Entitlement to reasons(Recommendation 16)

There should be an entitlement to reasons for an administrative decision. That right should be independent of the right to apply for review, however it should be subject to the same exclusions as the right of review.

Reasons for a decision should be given on request where no application for review has been made to the Tribunal, and automatically on the making of an application to the Tribunal.

A request should be made within 28 days of the decision, or such longer period as the Tribunal allows.

Those persons whose interests are affected by a decision should have standing to obtain reasons for that decision, subject to the exclusions provided to the entitlement above.

- There is no general common law duty to give reasons for an administrative decision (Public Service Board of New South Wales v. Osmond (1986) 159 CLR 656).
- A statutory requirement to give reasons has the following advantages : -
 - (i) Public scrutiny encourages rational decision making consistent with existing law and policy;
 - (ii) It instils public confidence in the decision making process and supports the principle of accountability of those vested with the power to make decisions;
 - (iii) It enables the applicant to realistically assess whether a decision should be challenged, whether by judicial review or administrative review and may be an effective prerequisite, to their use;
 - (iv) Grounds of challenge can be defined and particularised prior to review saving time and money before the reviewing body;
 - (v) It allows proper supervision of the decision making process, assists in the maintenance . of consistency, and draws attention to wrongful application of policy.

In formulating the entitlement to reasons for an administrative decision, there appear to be two primary policy options: to link the entitlement to the right to apply for review, or to make it independent.

- It would be consistent to apply the same list of exclusions to the requirement to give reasons as well as to the right of review.
- A decision not to apply the list of exclusions from the right of review to the entitlement to reasons may achieve little practical effect except to add unnecessarily to administrators burdens. It should be borne in mind that the Ombudsman already has power to look into complaints about failure to give reasons for decisions, and to make recommendations accordingly. (Ombudsman (Northern Territory) Act, section 26(1) (9e) and (2) (e)).
- An administrative decision adversely affecting a

person may be either subject to an appeal/application to the Tribunal and, if not, may be amenable to judicial review. If the entitlement to reasons for decisions were to be limited to those matters for which the Tribunal has jurisdiction, it would preclude a person adversely affected by a decision from receiving reasons for the decision and may prejudice his or her ability to obtain relief by way of judicial review.

- We have recommended that the entitlement to reasons should be independent of the right of review that we have proposed in Recommendation 7 although subject to the same exclusions. However, if option B to Recommendation 7 were to be adopted, and the right of review confined to specific decisions, then it would be still appropriate to consider whether this second right should be more extensive bearing in mind the derivation of the list (i.e., in the main Schedule 2 to the Commonwealth ADJR Act, which lists the specific exclusions from the requirement under that Act to furnish reasons for decisions).

Confining duty to the exercise of specific statutory powers to make decisions

- An alternative approach is to impose a duty to give reasons for specific decisions or a specific class of decisions. This approach has been adopted in New South Wales. (see the Health Legislation (Reasons for Decisions) Amendment. Act 1987).
- On this approach, there would be a duty to give reasons for an administrative decision only if the particular Act expressly provided such a duty. However, the Committee does not favour this approach.

(b) Form and adequacy of reasons(Recommendation 17)

Reasons for decisions should be in writing and should be proper and adequate and deal with the substantive issues raised;

In the reasons should set out the findings and refer to the evidence or other material on which those findings were based. Relevant documentary material should be provided with the reasons.

Where reasons are inadequate the applicant should be able to make further application to the Tribunal for an order that the decision-maker provides for further and better particulars of the reasons for the making of the decision.

- The provision of reasons should be expected to meet a standard sufficient to answer the questions "Why was that decision made?" and "What factors were taken in to account?"

(c) Time limits

Reasons for decisions should be given within 28 days of request. In special circumstances an extension or abridgement of this time may be ordered.

- Time limits ensure that all the material on which the decision is based is still available and enables the challenge of a decision to proceed without delay.
- Any limitation period on the lodging of an action should not commence until the reasons are provided where a request for reasons has been made.

(d) Exemptions

Exemptions from the requirement to give reasons should only be available on the following grounds:-

- (i) Where the decision could be the basis for a claim in a judicial proceeding that the information should not be disclosed; and
 - (ii) For security, defence and international relations reasons and for documents of Cabinet, Executive Council and committees of Cabinet, on certification and specification of grounds of exemption by the Attorney-General.
- Recommendation 19 is based on the Commonwealth AAT Act (s.28). It would be appropriate to bear in mind the provisions of s.42C of the Evidence Act (N.T.) and s.22 of the Ombudsman Act (N.T.) in applying this exemption.

- Application is to be made to the Tribunal for exemptions. Only in the case of (ii) would these exemptions be granted automatically on production of certification.

(e) Effect of failure to give reasons

Where there is a failure to give reasons on request or where the reasons are inadequate the requesting party may apply to the Tribunal for an ex-parte order that reasons be given within a specified time.

A party who fails to comply with an order to give reasons within a specified time would be in contempt of the Tribunal and may be punished accordingly.

- The requirement to give reasons must be capable of being enforced.
- The Ombudsman under the Ombudsman Act (NT) can investigate failure to give reasons by a Department or agency and make a report to the responsible Minister to the effect that reasons should be given. If the matter is not satisfactorily resolved the Minister is required to table the report, in the Legislative Assembly.
- When decision-makers have been late with a statement of reasons it has usually been because, in a bulk jurisdiction, they have been over-worked and under-resourced. What is normally done in the Commonwealth AAT is to set down such matters for a directions hearing and to cajole rather than coerce. Penalties of one kind and another are, perhaps best left out of a system of administrative law, where an atmosphere of cooperation is preferable. Accordingly, it is envisaged that the contempt power would only be used in the most exceptional circumstances.

9. INITIATION OF REVIEW(a) Notice of decision(Recommendation 21)

Notice of the decision and the right to review should be given by the decision-maker.

- The first step to a review of a decision is receipt of the decision itself.
- Adequate notice must be given of the decision.
 - Where a decision directly affects a person's rights personal notice of that decision should be given.
 - Where the exercise of the power of general effect is involved public notice should be required.

(b) Information about the Tribunal(Recommendation 22)

Information about the Tribunal, its jurisdiction and procedures should be readily available.

- The Administrative Review ' Committee should have responsibility for the education and publicity functions relating to the Tribunal.
- The right to review by the Tribunal should be set out in the relevant statute under which the decision is made as well as in a specific General Appeals Tribunal statute.
- Officers of community agencies and government departments should be provided with information and training on the processes of the Tribunal so that they too can provide assistance.

(c) Form of the application(Recommendation 23)

The application should generally be by way of standard form which should be made available widely. However, other methods of application, including oral application, should be accepted.

- A standard form requesting basic information only, e.g. name and address of the applicant, who the decision maker was and why the decision should be reviewed, should be the usual form of application.
- The form should alert the applicant to his or her entitlement to reasons and the procedures providing for request and supply.
- The form should be printed in all common community languages and assistance in filling it out should be provided by the staff of the Tribunal and through information brochures and a telephone information service if resources permit.
- The form should be available through community agencies, government departments, local councils and post offices as well as from the Tribunal itself.
- Use of the form should not be a strict procedural requirement. Written applications and applications by phone should all be accepted and confirmed by the Tribunal. Only in exceptional circumstances would an oral application not be accepted.

(d) Fees(Recommendation 24)

A fee which constitutes a modest contribution towards administrative costs should be payable on lodging of the appeal.

- The imposition of a fee is intended to discourage applications which are frivolous or vexatious.
- The Registrar of the Tribunal should have power to waive fees in cases of hardship.
- The fee should be set by the Tribunal.

(e) Time limits and delays(Recommendation 25)

Time limits should apply to the lodging of an application, the filing of material relevant to the application, any response by the respondent and the setting down of the

preliminary conference. An application to the Tribunal for review of an administrative decision is to be made within 28 days of the date of:-

- (i) the applicant receiving notice of the decision; or
- (ii) where a request has been made for a statement of the reasons for decision., the applicant receiving such a statement.

A discretion should be given to the Tribunal to accept applications outside this period.

- Included in the aims of a General Appeals Tribunal are the expeditious and efficient disposal of administrative appeals.
- Delays may impact on the functioning of the Tribunal and the processing of complaints within the system..
Delays may:-
 - (i) discourage the potential applicant from ;
applying;
 - (ii) affect the flow of information;
 - (iii) inflict serious hardship on those the
decisions affect; and
 - (iv) create problems in terms of
relevant evidence.
- Injustice may result, however, if there is n o
discretion to vary time limits.

(f) Internal review

(Recommendation 26)

Internal review processes prior to the lodging of an application with the Tribunal should be encouraged.

- Internal review provides an opportunity for the decision-maker or the body responsible for the decision to reconsider the decision.

- The provision of internal review or the opportunity to reconsider a decision within a department has the advantage of providing a quick resolution of a complaint and saving the costs incurred in the hearing of the matter by a tribunal.
- It is less likely to harm the future relationship between the parties, for example where an applicant is required to have further dealings with the Department making the decision.

(g) Settlement or withdrawal

(Recommendation 27)

Once an application has been lodged with the tribunal withdrawal should be by leave of the Tribunal and settlement of the matter should be by consent order.

- Once an application is before the Tribunal it has exclusive responsibility for the matter and is obliged to come to a decision.

Withdrawals should always come to the attention of the

- Tribunal. A withdrawal may result in one party gaining an unfair advantage, e.g. where pressure is brought to bear by the other party, or the applicant feels intimidated by the process of the Tribunal.
- Settlements should be registered with the Tribunal to ensure that the settlement is fair and so that others affected by the decision may receive, in effect, the flow-on benefits where the decision is changed.

(h) Preliminary applications and stays

(Recommendation 28)

The General Appeals Tribunal should have the power to grant interim relief and stays.

- The Commonwealth AAT is empowered to "make such order or orders staying or otherwise affecting the operation or implementation of the decision to which the relevant proceeding relates or part of that decision as the Tribunal considers appropriate."
- The review process can be used unfairly to "buy time" and advantage a party. Delays can be lengthy. It is important that the Tribunal have the power to adjust, in an interim way the rights of the parties from the time of the application where the circumstances warrant it.

(i) Conferences

Conferences

(Recommendation 29)

The Tribunal should have power to conduct the review by use of conferences either at its direction, or by agreement of the parties.

- A compulsory conference prior to the hearing gives the parties an opportunity to come to their own solution rather than have a decision imposed on them. Under these circumstances the parties are more likely to accept the decision and the future relationship between the parties may not be jeopardised. It assists the parties in talking to each other with the possibility, of settling before incurring the financial and emotional costs of a full hearing.
- The conference should aim at narrowing the issues and identifying common ground. This allows the Tribunal to take control of proceedings at an early stage and to make sure the parties are prepared for the hearing and all relevant documents are filed. It allows a hearing to be scheduled and an estimate to be given as to the length of time of the hearing.
- While one conference before the hearing may be compulsory, the parties or the Tribunal may consider it necessary to schedule other conferences or hearings or to determine interim applications.

Telephone conferences

(Recommendation 30)

Telephone conferences should be available if the parties agree.

- There may be problems associated with the requirement to attend a conference in person.

Telephone conferences (as are widely used in some other tribunals) should be utilised to minimise cost and improve accessibility, but only where the parties agree.

Procedure

(Recommendation 31)

Procedures at a conference should be kept informal.

- Parties should feel free to fully discuss all of the issues at the conference stage and costs should be kept to a minimum.
- Informality, the lack of presence of a full tribunal, and the use of mediation techniques are expected to assist these processes.

Privacy and confidentiality

All conferences should be held in private and confidentiality of admissions and discussions relating to the merits of the dispute should be preserved, subject to the recommendation below relating to evidence.

- This guarantee of confidentiality enables full and frank discussion of the issues.

Evidence

(Recommendation 33)

Evidence from the conference could be introduced at the hearing only by consent of all the parties.

- Where agreement has been reached between the parties or the issues in dispute have been narrowed the material from the preliminary conference should be able to be introduced thereby saving the parties and the Tribunal time and money at the hearing stage.

Settlements(Recommendation 34)

Settlement reached at a conference should be approved and registered by the Tribunal.

- Parties should be protected in the settlement process. To ensure a settlement does not significantly disadvantage either party the Tribunal should be involved in the settlement process.

(j) Notice of hearing(Recommendation 35)

The Tribunal should give sufficient notice of the hearing to the parties and should provide procedural information about the hearing with that notice.

- Providing adequate notice and procedural information, assists in the efficient operation of the Tribunal by preparing the parties-for the hearing and facilitating the smooth running of the hearing.

10. PROCEDURE AT HEARING

(a) Procedure(Recommendation 36)

- (i) The Tribunal should be free to determine its own procedure in a way which avoids undue formality and technicality while dealing with matters in an expeditious manner.
- The Tribunal should have sufficient flexibility to tailor procedures to the specific circumstances of the individual case. It must, however, be kept in mind that the Tribunal should strive to avoid lack of uniformity and inequality of treatment.
 - The problem of procedures becoming overly formalised is a difficult one to guard against and is dependent on other factors such as legal representation, composition of the Tribunal and the issue involved.

(Recommendation 37)

- (ii) The decision-maker should lodge material documents with the Tribunal prior to hearing.
- Lodging of documents narrows the issues, gives the parties an indication of the matters likely to be raised at hearing, and assists the Tribunal which has no previous knowledge of the matter.

(Recommendation 38)

- (iii) The Tribunal should conduct proceedings in a broadly adversarial manner but using "inquisitorial" powers where appropriate.
- A strict adversarial procedure has its limitations because reliance is placed on the parties to adduce all the evidence. Inquisitorial powers allow the Tribunal to play a greater role.

(Recommendation 39)

- (iv) The Tribunal should at any time be able to subpoena witnesses, examine witnesses on oath, and request production of further information.
- The Tribunal should have the power to compel evidence to be produced where relevant information is not before it.

(Recommendation 40)

- (v) The Tribunal should generally conduct its hearings in public.
- Where the Tribunal is satisfied that the proceedings should be closed or publication or disclosure of evidence should be restricted for cogent reasons such as an intrusion on personal privacy, exceptions will be made. .

(Recommendation 41)

- (vi) Contempt provisions should apply to the operation of the Tribunal.
- Persons who interrupt the proceedings of the Tribunal, create disturbances, wilfully delay proceedings, ignore an order of the Tribunal or generally do any act or thing which would constitute contempt of a court of record should be in contempt of the Tribunal.

(b) Rules and forms of evidence(Recommendation 42)

The Tribunal should not be bound by rules of evidence but should be free to inform itself on any matter in such manner as it thinks appropriate.

- It is not always appropriate to adopt the strict rules of evidence for the General Appeals Tribunal because:
 - (i) some relevant matters may be excluded from the Tribunal's review of the decision;
 - (ii) it may serve to increase costs; or

(iii) it may create unnecessary technicalities in the Tribunal's procedure.

- Except to the extent that is dictated by natural justice the Tribunal should be able to maintain flexibility as to reception of evidence and how it is to be adduced.
- Evidence may be introduced in a variety of methods including written submissions, affidavits, or oral evidence. The Tribunal may consider it appropriate to receive telephone evidence at the hearing or the parties may agree to the introduction of evidence from the preliminary conference. Persons could be authorised by the Tribunal to take evidence on its behalf.

(c) Representation

(Recommendation 43)

(i) All parties should have a right to representation before the Tribunal.

- It is important that all the evidence is presented before the Tribunal and that this burden should not rest on the individual.
- The respondent agency is likely to have expertise and experience in these matters and therefore the applicant should also have representation.

(Recommendation 44)

(ii) Representation should not be restricted to legal representation.

- Representatives other than lawyers, such as paralegals, friends, family or related professionals, may also have a role before the Tribunal and may overcome some of the objections to legal representation such as cost and formality.
- The ability of a Tribunal to identify inequalities in representation and take an active role in "levelling the playing-field" may eliminate some of the problems associated with legal representation. The General Appeals Tribunal will be able to use its inquisitorial powers to ensure all information necessary for the review is before the Tribunal.

11. POWERS OF TRIBUNAL

(Recommendation 45)

The Tribunal should be empowered to:-

(a) Affirm the decision under review;

- (b) Vary the decision under review; or
- (c) Set aside the decision under review; and
 - (i) make a decision in substitution for the decision so set aside; or
 - (ii) remit the matter for reconsideration in accordance with any directions or recommendations of the Tribunal.
- (d) Make such order or orders as appropriate including, without limiting the generality of this power, a power to order identification and notification of persons who are or are likely to be affected.
- (e) Award compensation (but not damages).

A decision of the Tribunal should be binding on all parties.

- The widest possible powers are necessary to ensure justice in each case.
- The power to award compensation would be a wide power, largely in the discretion of the Tribunal, to award "just compensation for loss arising from the effects of the original decision". This would not be the same as a general power to award damages.

(Recommendation 46)

The Tribunal should not be empowered to award costs, except -

- (i) in favour of the person applying for review if-
 - that person has been put to unnecessary or unreasonable expense because of the actions of the decision maker in the conduct of the application for review (whether the person is ultimately successful in the action or not); or
 - the appeal is successful and the costs are reasonable having regard to the nature of the dispute and complexity of that matter.

- (ii) In favour of a Department if the person applying for review has acted vexatiously or frivolously or otherwise not in good faith in applying for a review of a decision.
- A power to award costs may deter potentially meritorious cases and possibly influence the running of other cases on the basis of financial considerations rather than on the grounds of merit. In addition, as individual decision-makers do not meet costs personally they may not be directly influenced by costs awards or deterred from pursuing unmeritorious actions likely to "starve" the applicant.
 - Costs awards coupled with the allowance of legal representation could lead to formality, delay, unnecessary steps being taken in the proceedings and increased costs all around.
 - Awards of costs merely based on success in the application may penalise the party acting in good faith and lead to financial hardship.
 - Determining the quantum of costs can contribute to overall cost and delay.
 - In adversarial proceedings Legal representation for applicants will be desirable if not necessary. In such circumstances costs should normally be recoverable by successful applicants and in exceptional, clearly defined circumstances, by successful agencies.
 - In the case of commercial disputes, particularly in the area of review of tax assessments, consideration, may need to be given to the imposition of a traditional costs-indemnity rule.
 - Such a rule should be coupled with the introduction of procedures for dealing with frivolous and vexatious proceedings by providing for their summary disposal and, with a provision for costs to be awarded against applicants in these circumstances, either during or at the conclusion of proceedings.

12. APPEALS(Recommendation 47)

An appeal from the General Appeals Tribunal to the Supreme court on a point of law only should be available from the decision of the General Appeals Tribunal. Similar appeal rights should be applicable to every other appellate tribunal. .

- A general appeal or review on the merits should not lie to a court since, in most cases, it will constitute an appeal from a body expert in a particular subject to a body without specific experience. Decisions which fall within the Tribunal's special competence, because of the qualifications and experience of its members or of its procedures (e . g. the decisions on matters of fact, policy and discretion), should be left intact. By contrast, the Supreme Court is the body with the relevant experience and skills to determine disputes on questions of law.

13. THE ADMINISTRATIVE REVIEW COMMITTEE(a) The role of the Committee(Recommendation 48)

An independent body to be known as the Administrative Review Committee should be -created by statute to keep under review all of the procedures, including those of the Courts and other bodies, by which administrative decisions may be challenged.

- The recommendations of this report are aimed at improving the quality of administrative decision making and ensuring that easy access is available to a review system. Setting up a General Appeals Tribunal only goes part of the way towards achieving these aims; it is, limited to the nature of the appeals within its jurisdiction and the individual matters that come before it. The Tribunal forms part of a system that needs to be monitored, reviewed, assessed and supervised by a body independent of the Government and the Tribunal itself.
- Several common law jurisdictions have sought to fill this role by the creation of permanent institutions seeking to encourage widespread improvement in the administrative process across jurisdictional lines. These bodies include:-
 - (1) The Administrative Review Council (Commonwealth)
 - (2) The Council on Tribunals (UK)
 - (3) The Electoral and Administrative Review Commission (QLD).
- Both the Administrative Review Council and the Electoral and Administrative Review Commission (EARC) have wide-ranging and comprehensive functions. EARC is a relatively new body and has broad scope for innovation. The Administrative Review Council is responsible for ascertaining and keeping under review all classes of administrative decisions, the adequacy of law and practice relating to the review or lack of review of administrative decisions; the suitability of bodies and procedures of bodies conducting these reviews, and the making of suggestions to improve the review system. It is a similar role to that envisaged for the Advisory Committee.

(b) The appropriate forum

(Recommendation 49)

The Administrative Review Committee should be empowered to review existing legislation to recommend whether a right of review should be created or to ensure that future rights of

appeal or review lie to the most appropriate appellate tribunal.

- There are many cases where- legislation does not provide a specific right of review by a Tribunal. In the light of recommendations in this document consistent means of review should be provided for all decisions under an enactment.
- The bodies established to adjudicate on particular classes of cases should be specially designed to fulfil their particular role. The wide variations in procedures and constitutions which now exist. are much more the result of ad hoc decisions and historical accident than of the application of general and consistent principles.

(c) Decision-making process

(Recommendation 50)

The Committee Should have a role in reviewing procedures, formulating guidelines, and consulting with Departments with respect to the decision-making process.

- There is no recognised standard to which various administrative decision-making procedures or appellate procedures have to conform. Although there are legal restraints on the procedure which an administrative decision-maker may adopt in making a decision, by and large there are no formal guidelines on how the decision maker should go about deciding an issue.

(d) Internal review

(Recommendation 51)

The Administrative Review Committee should perform a reviewing and advisory function in relation to internal reviews including their effectiveness, independence **and** consistency.

- The Committee should give encouragement and guidance in setting up internal review processes. Their effectiveness and appropriateness should be monitored.

(e) Maintenance of informal procedures and accessibility of the General Appeals Tribunal

(Recommendation 52)

The Administrative Review Committee should, monitor the procedural aspects of the operation of the General Appeals Tribunal to ensure that it maintains accessibility and that informality is preserved. .

- Tribunals often develop procedure to such an extent that it mimics that of the Courts. It is important that the procedure of the Tribunal continues to support its aim of accessibility and informality.

(f) Dissemination of information

(Recommendation 53)

The Committee should have a further role as an educator in promoting awareness of the administrative review system and providing information to decision makers and applicants alike. Its reports will be public documents and should be tabled in the Legislative Assembly. Close links with parliamentary committees should be maintained.

- Legislation in itself is ineffective when not accompanied by promotion and review. These functions are best carried out by a body removed from the day-to-day operations of the Tribunal.

(g) Composition of the Committee

Recommendation 54)

The Administrative Review Committee should include community representatives and possibly a member or members of the Legislative Assembly. ,

- The Administrative Review Council of the Commonwealth consists of three ex-officio members:-

- the President of the Administrative Appeals Tribunal;
- the Commonwealth Ombudsman; and
- the Chairperson of the Law Reform' Commission;

and ten other members . who have had extensive experience "at a high level of industry, commerce, public administration, industrial relations, practice of a profession or the service of a Government or of an authority of Government or an extensive knowledge of administrative law or public administration" (s.50 AAT Act)

14. OTHER MATTERS

There are a number of specific issues which have not been addressed by the Committee in this document. Our recommendations are intended to provide the basis for a general system of administrative review on the merits.

The area of administration of the Tribunal is one of these issues. It was thought this matter could be left to Government and Parliamentary Counsel.

The importance of security of tenure of members of Administrative Tribunals in particular is an issue that has been recently raised by the Administrative Review Council. The recommendations of the Council should be taken into account when implementing this report. (1990 Admin Review, 25)

Various other issues including:-

- (i) Questions not required to be answered before the Tribunal ;
- (ii) the manner in which questions are to be decided;
- (iii) limitations on time for appeals from decisions;
- (iv) the availability of stays and applications on appeal from the Tribunal;
- (v) reference of questions of law from the Tribunal to the Supreme Court; and
- (vi) the protection of members, representatives and witnesses;

are all dealt with successfully under the two AAT systems already operating in Victoria and the Commonwealth.

APPENDIX "A"A1: TERMS OF REFERENCE

I, the Honourable JAMES MURRAY ROBERTSON, Attorney-General, refer to the Northern Territory Law Reform Committee, the following terms of reference:

1. To identify and provide details of all present Northern Territory statutory provisions conferring a right of appeal from administrative and executive acts to a court, or appellate body other than a court.
2. To report on the law as it applies to those appeals and as to the rules of practice, procedure and evidence relating thereto.
- 2A. To consider and report on whether or not in each case the power to make an administrative or executive decision, from which an appeal lies, has been conferred on the person or body most appropriate to make that decision.
3. To consider and report as to whether or not in each case it is appropriate that the appeal lie to a court or body.
4. To consider and report whether or not in each case it is appropriate that a further appeal should lie from the decision of the court or body adjudicating on such an appeal.
5. To consider and report whether or not it would be appropriate to establish a Tribunal or Tribunals constituted by a Magistrate or a Judge of the Supreme Court of the Northern Territory to which such appeals could lie and, if so, the law and rules of practice, procedure and evidence which ought to apply.

In considering these Terms of Reference and when making its recommendations, the Committee is asked to bear in mind that it is unlikely that the Northern Territory Government would be prepared to establish any fresh system of appeal from administrative or executive acts which are not specifically provided for by statute nor any which would, in the ordinary course, lead to a requirement for additional resources.

Note

The Attorney-General directed that the words underlined be added to the Reference on 26 May 1987.

The Attorney-General directed that paragraph 2A be added to the Reference on 27 April 1989.

A2: CONDUCT OF REFERENCEWorking Papers: Appellate Structure

In February 1987, the Executive Officer tabled a working paper on Appeals from Administrative Decisions. A

subsequent volume was tabled in February 1988. The papers listed each Act or regulation in the N.T. which conferred a right of appeal from an administrative decision. It provided information on the composition of the body making the administrative decision, the composition of the appellate body, the time limit for appeal and the decision from which the appeal lay.

Questionnaire

On 4 November 1987, the Committee sent a questionnaire to the Local Court and all appellate bodies other than courts which the Committee had identified as being authorised to hear appeals from the administrative decisions.

The questionnaire sought details of

1. The person making the administrative decision; These decision-makers were subsequently contacted for the purpose of obtaining statistical information.
2. The appellate tribunal, in particular
 - its membership
 - the appeal provision . .
 - appeal procedure
 - decision making obligations (eg: is there a duty to give reasons for the decision?) .
 - powers of appellate body to deal with an appeal
3. Rights of further appeal.

Follow-up

These bodies to which the questionnaire was sent were subsequently contacted for the purpose of obtaining statistical information, once in 1988 and once in 1989.

Subcommittee

Taking into account all of the information gathered in the process described above, the Committee concluded that the establishment of a specific tribunal along the lines of an AAT was appropriate. A subcommittee was established in August 1989 to consider the structure of the Tribunal. The sub-committee reported to the Committee in September and their report was adopted with one amendment. The report attempted to identify and provide details of all present Northern Territory statutory provisions conferring a right of appeal from administrative and executive acts to a court, or appellate body other than a court. The report was circulated extensively for comment (Discussion Paper on Appeals from Administrative Decisions: Appellate , Structure, December 1989).

Responses

The responses to the Discussion Paper were considered by the

Committee and changes were made to the paper in the light of these responses.

(Subcommittee)

The sub-committee considered the issues raised in the working paper, and as a result of consultations on the Discussion Paper, and reported to the Committee in November 1990. The Sub-committee's report was circulated for comment to a number of people identified by the Committee as having expertise in the area of law under review. These comments were taken into account and a draft Report was tabled by the Sub Committee at the April meeting of the Committee.

Report

Subject to a number of changes, the Committee adopted the report of the sub-committee and agreed to present it to the Attorney General on 28 June 1991.

REFORMS ELSEWHERE

1. Australia

Commonwealth

In 1971 the Commonwealth Administrative Review Committee published a report known as the Kerr Report. Among other things the Committee recommended that an Administrative Review Tribunal be established. The Committee expressed the view that the Tribunal should be presided over by a Judge, and in addition that there should be two other members, one of whom should come from the Commonwealth Department or authority responsible for administering the decision under review, the other being a lay member drawn from a panel of persons chosen for their character and experience in practical affairs.

In 1975 the majority of the Committee's recommendations were put into effect by the enactment of the Administrative Appeals Tribunal Act.

The Commonwealth machinery for appeals from administrative actions is outlined in detail by Professor Dennis Pearce in his book "Commonwealth Administrative Law".

Composition of Appellate Tribunal

The Administrative Appeals Tribunal Act 1975 established the Administrative Appeals Tribunal ("the AAT"). The AAT is a general appeals tribunal but sits in divisions (general, valuation, compensation and such others as are prescribed). The Act provides for the appointment of presidential members who have qualifications for federal judicial appointment, and non-presidential members who have qualifications relevant to the particular categories of matters that 'come before the AAT.

Divisions

The Tribunal is divided into the following divisions:

- (a) General Administrative Division;
- (b) Medical Appeals Division;
- (c) Valuation and Compensation Division;
- (d) Such other divisions as are prescribed.

At the time of writing, the Veterans' Appeals and Taxation Divisions are the only additional divisions that have been prescribed. Non-presidential members must be assigned to a particular division or divisions of the Tribunal, and can sit only in that division.

Powers of Appellate Tribunal

The AAT has powers to review the merits of decisions made under specific enactments and to affirm or vary the decision under review, substitute its own decision, or remit the

matter to the decision-maker for reconsideration. The Act includes detailed provisions concerning the procedure of the AAT.

The most significant feature of the AAT, and that which distinguishes it from previous review bodies, is that it is empowered to substitute its decision for that of the primary decision-maker and to exercise all his powers in determining what decision should have been made under an enactment. The Tribunal does not exist simply to hear argument on whether the original decision was wrong.

It listens to the applicant and to the decision-maker and determines what it considers to be the best decision in the circumstances. In arriving at its decision, the Tribunal is entitled to have access to all documents that are relevant to the decision. Other review bodies may have limitations imposed upon the material to which they are to have access, but there are no such limitations on the Tribunal (or the parties before the Tribunal).

Australian Capital Territory

In 1989 the Governor-General made Ordinances for the Australian Capital Territory, which has since achieved self-government, providing for a separate AAT for the A.C.T. which, in all material aspects, is identical with the Commonwealth AAT.

Victoria

Victorian administrative law appellate machinery has been reformed along the lines of the Commonwealth model.

The Administrative Appeals Tribunal Act 1984 established an Administrative Appeals Tribunal very similar to the Commonwealth's AAT. However, the actual appellate jurisdiction conferred on the Victorian AAT is (at this stage) relatively small.

Composition of Appellate Tribunal: The President of the tribunal must be a County Court judge. Deputy Presidents may be County Court judges or persons qualified to hold such office. Other members of the tribunal must be legally qualified or persons with special knowledge or skills in respect of which decisions may be made. Although lay members may be appointed, it is understood that as yet no such persons have been appointed to the tribunal. The constitution of the tribunal for sittings is regulated solely to the extent that only a legally qualified member of the tribunal may preside over its hearings: s.21.

Divisions

The tribunal comprises a General Division, a Taxation Division and such other Divisions as may be prescribed: s.19. It embraces decisions relating to -

- freedom of information requests
- taxation assessment

- crimes. compensation, motor accident compensation
- superannuation benefits
- adoption appeals
- estate agents' licences
- town planning (added in 1987)

Powers of Appellate Tribunal

The powers are identical to the Commonwealth AAT except as follows:

Where,

- (a) the Minister administering the Act creating the right of appeal certifies that there was in existence at the time of making of the decision a statement of policy applying to decisions made Under the Act, '
 - (i) the applicant was aware of the statement of policy;
 - (ii) persons who may apply for review could reasonably have been expected to be aware of the statement of policy; or
 - (iii) the statement of policy had been published in the Government Gazette; and
- (c) the person by whom the decision was made stated, when giving reasons for the decision, that the person relied on that statement of policy when making the decision -

The Tribunal, in reviewing a decision shall, to the extent that the statement of policy is within power, apply that statement of policy.

South Australia

The 1984 Report of the Law Reform Committee of South Australia Relating to Administrative Appeals made recommendations along the lines of the Commonwealth model. The Committee also envisaged the possible creation of an Administrative Division of the. Supreme Court. The Report has not been implemented.

The principal recommendations were:

- The establishment of a General Appeals Tribunal to hear most administrative appeals.
- The enactment of a procedural code for such a tribunal.
- The retention of specialist appeal tribunals in the cases of bodies within specialised fields of discourse, but with amendments to prevent failures of natural justice or inadequate ' hearing or . review procedures.
- Questions of law should be identified and isolated where possible for decision by the Supreme Court as speedily as is compatible with the other work of the

Court. This may necessitate the creation of an administrative division of the Supreme Court.

- The establishment of an Administrative Review Committee. .

New South Wales

The Report of the Law Reform Commission of New South Wales on Appeals in Administration in 1973 recommended the establishment of a Public Administration Tribunal presided over by a Supreme Court Judge and including non-judicial members. The Report has not been implemented, but an Administrative Law Division of the Supreme Court has been created.

Composition of Appellate Tribunal

The Commission recommended that the Tribunal be presided over by a Supreme Court Judge and that members of the Tribunal, other than judicial members, should be selected from a panel of persons having special experience in administration, commerce, industry or administrative law.

Powers of Appellate Tribunal

The Tribunal was intended to have two functions, namely to hold inquiries into the official actions of public authorities and to hear appeals. In the case of inquiries, it was proposed that where a public authority takes official action, objection may be made to that official action by the Attorney-General or by any person who claims to be adversely and substantially affected by the official action.

In some cases, the Tribunal might in its discretion decide that it would or would not inquire. It was recommended that the Tribunal might allow an objection to an official action:

- where the official action was beyond the power of the public authority concerned; or
- where the Tribunal was satisfied that the official action was harsh, discriminatory or otherwise unjust.

The Tribunal might then set the official action aside or remit it to the public authority concerned for action in accordance with the directions of the Tribunal.

The Commission recommended that rights of appeal to the Tribunal should be conferred by legislation other than the Act setting up the Tribunal. The Commission held the view that the greater part of the jurisdiction of the Supreme and Local Courts to hear and determine administrative appeals could be transferred to the Tribunal, together with the jurisdiction of a number of ad hoc bodies which are not utilised enough to gain specific expertise in their field.

Subsequent developments

Section 53(3B) of the New South Wales Supreme Court Act 1970 to 1981 created an Administrative Law Division of the Supreme Court. This Division has jurisdiction to hear a number of appeals relating to administrative decisions. It also has jurisdiction to hear proceedings involving a public body or

a public officer where mandamus, prohibition, certiorari, injunction or declaration is being sought.

Western Australia

The administrative law machinery recommended by the Law Reform Commission in Western Australia is very different from the Commonwealth model. Unlike the Commonwealth model which involved the creation of the AAT as a general appeals tribunal, the thrust of the proposals in Western Australia is to graft an administrative appeals system onto the present structure comprising the Supreme Court, Local Court and specialist appellate tribunals.

The recommendations are contained in the Law Reform Commission's Report on Review of Administrative Decisions: Appeals, Project No. 26 - Part I (January 1982).

The main thrust of Part I of the Report can be summarised under the following headings:

(i) An Administrative Appeal System

The Commission recommended that an administrative appeal system should be developed which should consist of -

- an Administrative Law Division of the Supreme Court;
- an Administrative Law Division of the Local Court; and
- a limited number of specialist appellate bodies.

Where there is an appeal in the first instance to the Administrative Law Division of the Local Court or to a specialist appellate tribunal there should be a further appeal on points of law to the Administrative Law Division of the Supreme Court. There should be provision for points of law to be considered and determined by the Full Court of the Supreme Court.

(ii) Criteria for Recommendations as to Appropriate Appellate Body

The matters proposed for the Administrative Law Division of the Supreme Court are:

- all those rights of appeal presently conferred on the Supreme Court and the District Court; and
- appeals relating to the licensing, registration or disciplining of people in various professions, occupations, livelihoods or commercial activities which involve rights, benefits or privileges of such an important or complex nature that it would be appropriate to have the appeal determined by a Supreme Court Judge.

The matters proposed for the Administrative Law Division of the Local Court are:

- matters in which there were present rights of appeal to the Local Court, Courts of Petty Sessions or a Stipendiary Magistrate; and
- a number of other matters which should be transferred to this Division from certain appellate bodies because they should be within the jurisdiction of the ordinary court system but are not of such importance or complexity as to require determination by the Supreme

Court.

Certain specialised appellate bodies (e.g. Land Valuation Tribunals, Town Planning Appeal Tribunal, Licensing Court) should be retained if the cases in which the decision in question is of such a specialised nature that a better decision is unlikely to be obtained on appeal unless the body designated to hear the appeal has expertise in the matter the subject of the appeal. Of the many existing specialist appellate tribunals, the Commission specified only 7 that should be retained.

(iii) Lay Members

The Commission recommended that provision should be made for the appointment of lay members to the Administrative Law Divisions in appropriate cases. While in other jurisdictions there is provision for appointment of lay members to administrative tribunals, this proposal to appoint lay members to the Local Court and the Supreme Court seems novel, even though the appointment would be for a limited purpose.

(iv) Powers of the Appellate Body

The Commission recommended that the various appellate bodies in the administrative appeal system should have power to exercise all of the powers and discretions conferred on the original decision-maker and should have power to -

- affirm the decision;
- vary the decision; or
- set the decision aside and make a decision in substitution for the decision so set aside, or remit the matter for consideration in accordance with any direction or recommendation of the appellate body.

A Judge of the Administrative Law Division of the Supreme Court should have power, either on his own motion or on application of a party to an appeal, after giving the parties an opportunity to be heard in chambers, to remit a matter from the Administrative Law Division of the Supreme Court to the Administrative Law Division of the Local Court or vice versa.

(v) costs

The Commission recommended that each party to an appeal should bear their own costs, unless there are special reasons for the appellate body to order one party to pay the costs of the other.

(vi) A Code of Procedure for Appellate Bodies

The Commission recommended that a code of procedure for the appellate bodies in the administrative appeal system should be developed.

(vii) Ongoing Review

An ongoing body should be established to review rights of administrative appeal and the appeal process.

Part II of the Report recommends:

- reform of the procedures for judicial review; and

- a requirement, subject to exceptions, that, on request, administrative decision-makers give the reasons for their decisions to, persons affected by them.

Queensland

The Electoral and Administrative Review Commission (E.A.R.C.) was set up by statute in 1989 and provides reports to the Premier and the Legislative Assembly on the achievement and maintenance of "honesty, impartiality and efficiency in public administration of the State" (Electoral and Administrative Review (Qld) s.2.9)

The functions of the Commission include to investigate and report in relation to : "the whole or part of the public administration of the State, including any matters pertaining thereto specified in the report of the Commission of Inquiry, or referred to the Commission by the Legislative Assembly, the Parliamentary Committee or the Minister" and "all or any of the matter specified in the Schedule to the Act".

The relevant matters in the Schedule are as follows:

9. Elimination of inappropriate considerations from -
 - (a) decisions made by or on behalf of the Government;
 - (b) advice tendered to the Governor-in-Council;
 - (c) discharge of functions and exercise of powers by units of public administration.
10. Availability to the public of information concerning -
 - (a) decisions made by or on behalf of the Government;
 - (b) discharge of functions and exercise of powers by units or public administration.
14. Administrative appeals and judicial review of administrative decisions and actions."

EARC has already produced reports on Freedom of Information and Judicial Review with the latter including a detailed section on "reasons for decisions". A report on review on the merits is expected soon.

2. New Zealand

(i) The Orr Report

In 1964, G.S. Orr prepared a report entitled Administrative Justice in New Zealand. The report recommended the establishment of an Administrative Court, the jurisdiction of which would include most appellate functions of the Supreme Court and Magistrates Courts in respect of tribunals and other administrative authorities, and in addition that a right of appeal should be granted from tribunals where none already existed. It was further suggested that the jurisdiction of the proposed Court need not be confined to hearing appeals from administrative tribunals, and that a right of appeal to the Court should be granted from some decisions of officials and administrative authorities other than tribunals.

(ii) P.A.L.R.C.

In July 1966, the New Zealand Minister of Justice set up the Public and Administrative Law Reform Committee. The body ceased functioning in 1986. The matters which were referred to it included appeals from administrative tribunals, the constitution and procedure of such tribunals and the

judicial control of administrative acts.

First Report: Composition of Appellate Body

In its First Report (1968) the principal recommendation was for the setting up of an Administrative Division of the Supreme Court to hear appeals from specified administrative tribunals and to exercise the existing jurisdiction of the Court in the field of administrative law. Although it recommended the creation of an Administrative Division, it did not assume that it ought to be the appellate body for all tribunals. The Committee studied the functions, powers and procedures of each tribunal separately and subsequently made such recommendations as to appeals, and on procedure as was appropriate to the particular tribunals.

For example, in its First Report, the Committee recommended that the jurisdiction of- the Land Valuation Court, the Transport Licensing Appeal Authority and the Trade Practices Appeal. Authority should be absorbed by the Administrative Division, and that there be an appeal, with leave, to the Division from decisions of the Town and Country Planning Appeal Boards. It considered the Transport Charges Appeal Authority and the Price Tribunal were not appropriate to be absorbed by the Administrative Division, or that there ought to be a right of appeal to the Division from these decisions.

Fourteenth Report: Right to Compensation

The Committee in its Fourteenth Report (1980) recommended that -

". . .whenever a new statute confers powers that, if exercised unlawfully will cause economic loss, consideration should be given to the inclusion of a provision relating to compensation for losses flowing from any unlawful decisions given by the donee(s) of the power.. . We would propose that new statutes be examined with the aid of the following guidelines for the Committee and others concerned:

- (a) how great is the risk that innocent persons will suffer loss as the result of legally erroneous decisions taken in good faith . . .
- (b) . . .
- (c) whether the common law already provides an adequate remedy? In such a case, it is unlikely that we would recommend the imposition of statutory liability.
- (d) whether the imposition of liability in the particular instance is seen as analogous to circumstances where liability already exists."

Nineteenth Report: Government Directions to Statutory Bodies

In its Nineteenth Report (1986) the Committee recommended -

- Directions to administrative decision-makers on what policy they should apply should be given only by a Minister. Authority to give policy directions should be excluded from any power of delegation.
- Directions should be given in writing.
- Directions should be published in the Gazette and laid

before the House of Representatives as . soon as . practicable after they are given. Exception to this should be made only where the public interest does not require immediate publication and publication would be inimical to economic or commercial interests.

- Directions should be restricted to considerations of policy, and should not be given where .they might interfere with:
 - (i) the duty of independent tribunals to act judicially; or
 - (ii) the determination of individual applications, allegations, or cases which relate to a particular person or organisation.
- Before a policy direction is given, . the Government should, wherever practicable, consult with individuals and organisations likely to be affected by the direction.

3. England

(i) Franks Committee

The Committee on Administrative Tribunals and Enquiries (the Franks Committee) in 1957 recommended that there should be:

- an appeal on fact, law and merits from a tribunal of first instance to a specialist appellate tribunal, except where the tribunal of first instance was "exceptionally strong and well qualified"; and
- an appeal on a question of law to the courts, except in the case of a limited number of specified tribunals.

The Franks Committee considered, and rejected, the option of creating a general administrative appeal tribunal, giving as reasons that, in its view;

- a general tribunal could not have the experience and expertise in particular fields which should be a characteristic of tribunals;
- the establishment of a general appellate body would involve a departure from the principle whereby all adjudicating bodies in England, whether inferior courts or tribunals are in matters of jurisdiction subject to the control of the superior courts; and
- final determinations on points of law would be made by the general administrative tribunal in relation to tribunals but by the superior courts in relation to matters decided by the courts, and this would create two systems of law, "with all the evils attendant by this dichotomy".

(ii) Law Commission

A major reform in the field of administrative law flowed from the 1976 Law Commission recommendation that there should be a form of procedure to be entitled "an application for judicial review" under which an applicant could apply to the Court for any of the five separate remedies covered by judicial review. This recommendation was partially put into effect in 1977 in the Supreme Court Rules, Order 53.

This method of judicial review has, however, indirectly led to the creation of an Administrative Law Division in the High Court. With the removal of technical constraints in applications for judicial review, the number of applications materially increased.

"A specialised administrative court - albeit one which lacks the distinctiveness and constitutional status of a body like the French Conseil d'Etat has been established, even if it has been achieved by administrative stealth rather than by the democratic process of legislation"

Apart from recommending a more simplified procedure to apply to judicial review, the Law Commission made recommendations that the Court be entitled to award damages in appropriate cases. The Commission recommended that where the Court, having decided on an application for judicial review that illegality had occurred (in respect of which a claim for damages has been joined with the application), is satisfied that such a claim is in law maintainable, and that there is no dispute that the damage resulted from the illegality or as to the fact or extent of damage or as to the quantum of damages, it should be able to make a formal award of damages and if there is dispute as to any of these matters the Court should have power to give appropriate directions for their separate determination. Illegality in this sense includes orders made beyond power, mala fides, in breach of the rules of natural justice or by detournement de pouvoir.

(iii) JUSTICE - All Souls Review

In 1988 a Committee of Review established by the organisation JUSTICE and All Souls College, Oxford, published a report, "Administrative Justice: Some Necessary Reforms". This wide-ranging report deals with a number of topical issues, including reasons for decisions, judicial review, review on the merits, standing, and compensation for loss caused by defective administrative action.

APPENDIX "C"SUMMARY OF RECOMMENDATIONS4. THE USE OF COURTS(a) The use of courts(Recommendation 1)

The use of courts is inappropriate in the review of administrative decisions on their merits because of formality, costs and delays associated with their procedure.

(b) Use of Ministers(Recommendation 2)

The use of Ministers to review decisions of their **own** Department should be avoided.

(c) Use of tribunals(Recommendation 3)

A separate tribunal, a general appeals tribunal-, should be established to specialise in appeals from administrative decisions.

5. ORGANISATION OF THE TRIBUNAL(a) Composition(Recommendation 4)

The General Appeals Tribunal should consist of:

- (i) A Chairperson who is the Chief Magistrate or another Magistrate nominated by the Chief Magistrate;
- (ii) Judicial members being other Magistrates;
- (iii) Members being those persons appointed by the Attorney-General; and
- (iv) A Registrar appointed specifically to manage the Tribunal to perform ancillary duties and to exercise the jurisdiction of the Tribunal where specified.

(b) Constitution(Recommendation 5)

The General Appeals Tribunal should be constituted only in the following manner:

- (i) Judicial member plus 2 members;
- (ii) Judicial member sitting alone; or
- (iii) In conference only, A Judicial member, the Registrar or a single member sitting alone.

6. JURISDICTION

(a) What is a decision?

(Recommendation 6)

A decision reviewable by the Tribunal should include a decision of an administrative character which -

- (i) alters rights or imposes liabilities;
- (ii) has a real practical effect although altering rights or imposing liabilities;
- (iii) is a failure or refusal, for whatever reason, to take a decision or perform an act.

(b) Decisions to be reviewed by-the General Appeals Tribunal(Recommendation 7)

All decisions under an enactment, should be reviewable by the General Appeals Tribunal subject to certain, specified exemptions.

(c) Decisions excluded from review by the ~general Appeals Tribunal(Recommendation 8)

Those decisions that should be excluded from review by the General Appeals Tribunal should be excluded because of their nature and special requirements on appeal. Most would fall within the general categories of industrial relations and professional matters.

(d) Scope of Review(Recommendation 9)

The General Appeals Tribunal should have power to review de novo (i.e. afresh) the whole decision and should not be confined to matters raised before the original decision maker.

(e) Government Policy(Recommendation 10)

No special provisions should be made in respect of the way that the General Appeals Tribunal reviews decisions involving Government policy.

7. APPLICANTS FOR REVIEW

(a) Who may apply?(Recommendation 11)

Any person, group or organisation whose interests are affected by a decision should be able to apply for the decision to be reviewed by the General Appeals Tribunal.

(b) Decision makers(Recommendation 12)

A decision-maker should be able to apply for an advisory opinion from the Tribunal where provision is made for t h i s

under an enactment.

(c) Joinder of parties
(Recommendation 13)

Joinder of parties should be consistent with the criteria for those who can apply i.e. any person, group or organisation whose interests ' are affected may be joined in proceedings.

(d) Representative actions
(Recommendation 14)

A group of persons or an organisation should be able to act by a representative where similar issues and similar relief would arise if individual actions were taken.

(e) Right of the Attorney-General to intervene
(Recommendation 15)

The Attorney-General should have a right to intervene in proceedings.

8. REASONS FOR DECISIONS

(a) Entitlement to reasons
(Recommendation 16)

There should be an entitlement to reasons for an administrative decision. That right should be independent of the right to apply for review, however it should be subject to the same exclusions as the right of review.

Reasons for a decision should be given on request where no application for review has been made to the Tribunal, and automatically on the making of an application to the Tribunal.

A request should be made within 28 days of the decision, or such longer period as the Tribunal allows. Those persons whose interests are affected by a decision should have standing to obtain reasons for that decision subject to the exclusions provided to the entitlement above

(b) Form and adequacy of reasons
(Recommendation 17)

Reasons for decisions should be in writing, should be proper and adequate and deal with the substantive issues raised.

In particular, the reasons should set out the findings and refer to the evidence or other material on which those findings were based. Relevant documentary material should be provided with the reasons.

Where reasons are inadequate the applicant should be able to make further application to the Tribunal for an order that the decision-maker provides for further and better particulars of the reasons for the making of the decision.

(c) Time limits

(Recommendation 18)

Reasons for decisions should be given within 28 days of request. In special circumstances in extension or abridgement of this time may be ordered.

(d) Exemptions
(Recommendation 19)

Exemptions from the requirement to give reasons should only be available on the following grounds:-

- (i) Where the decision could be the basis for a claim in a judicial proceeding that the information should not be disclosed or .
- (ii) For security, defence . and international relations reasons and for documents of Cabinet, Executive Council and committees of Cabinet, on certification and specification of grounds of exemption by the Attorney-General.

(e) Effect of failure to give reasons
(Recommendation 20)

Where there is a failure to give reasons on request or where the reasons are inadequate the requesting party may apply to the Tribunal for an ex-parte order that reasons be given within a specified time.

A party who fails to comply with an order to give reasons within a specified time would be in contempt of the Tribunal and may be punished accordingly.

9. INITIATION OF REVIEW

(a) Notice of decision
(Recommendation 21)

Notice of the decision and the right to review should be given by the decision-maker.

(b) Information about the Tribunal
(Recommendation 22)

Information about the Tribunal , its jurisdiction and procedures should be readily available.

(c) Form of the application
(Recommendation 23)

The application should generally be by way of standard form which should be widely available. However, other methods of application, including oral application, should be accepted.

(d) Fees
(Recommendation 24)

A fee which constitutes a nominal contribution towards administrative costs should be payable on lodging of the appeal.

(e) Time limits and delays
(Recommendation 25)

Time limits should apply to the lodging of an application, the filing of material relevant to the application, any response by the respondent and the setting down of the preliminary conference. An application to the Tribunal for review of an administrative decision is to be made within 28 days of the date of:-

- (i) the applicant receiving notice of the decision; or
- (ii) where a request has been made for a statement of the reasons for decision the applicant receiving such a statement.

A discretion should be given to the Tribunal to accept applications outside this period.

(f) Internal review
(Recommendation 26)

Internal review processes prior to the lodging of an application with the Tribunal should be encouraged.

(g) Settlement or withdrawal
(Recommendation 27)

Once an application has been lodged with the Tribunal, withdrawal should be by leave of the Tribunal and settlement of the matter should be by consent order. .

(h) Preliminary applications and stays
(Recommendation 28)

The General Appeals Tribunal should have the power to grant interim relief and stays.

(i) Preliminary conferences
(Recommendation 29)

The Tribunal should have power to conduct the review by use of conferences either at its direction, or by agreement of the parties.

Telephone conferences

(Recommendation 30)

Telephone conferences should be available if the parties agree.

Procedure

(Recommendation 31)

Procedures at a conference should be kept informal

Privacy and confidentiality
(Recommendation 32)

All conferences should be held in private and confidentiality of admissions and discussions relating to the merits of the dispute should be preserved, subject to the recommendation below relating to evidence.

Evidence

(Recommendation 33)

Evidence from the conference could be introduced at the hearing only by consent of all the parties.

Settlements

(Recommendation 34)

Settlement reached at a conference should be approved and registered by the Tribunal.

(j) Notice of hearing

(Recommendation 35)

The Tribunal should give sufficient notice of the hearing to the parties and should provide procedural information about the hearing with that notice.

10. PROCEDURE AT HEARING

(a) Procedure

(Recommendation 36)

- (i) The Tribunal should be free to determine its own procedure in a way which avoids undue formality and technicality whilst dealing with matters in an expeditious manner.

(Recommendation 37)

- (ii) The decision-maker . should lodge material documents with the Tribunal prior to hearing.

(Recommendation 38)

- (iii) The Tribunal should conduct proceedings in a broadly adversarial manner but using "inquisitorial" powers where appropriate.

(Recommendation 39)

- (iv) The Tribunal should at any time be able to. subpoena witnesses, examine witnesses on oath, and request production of further information.

(Recommendation 40)

- (v) The Tribunal should generally conduct its hearings in public.

(Recommendation 41)

- (vi) Contempt provisions should apply to the operation of the Tribunal.

(b) Rules and forms of evidence
(Recommendation 42)

The Tribunal should not be bound by rules of evidence but should be free to inform itself on any matter in such manner as it thinks appropriate.

(c) Representation
(Recommendation 43)

(i) All parties should have a right to representation before the Tribunal.

(Recommendation 44)

(ii) Representation should not be restricted to legal representation.

11. POWERS OF THE TRIBUNAL

(Recommendation 45)

The Tribunal should be empowered to:-

- (a) Affirm the decision under review;
- (b) Vary the decision under review; or
- (c) Set aside the decision under review; and
 - (i) make a decision in substitution for the decision so set aside; or
 - (ii) remit the matter for reconsideration in accordance with any directions or recommendations of the Tribunal.
- (d) Make such order or orders as appropriate including, without limiting the generality of this power, a power to order identification and notification of persons who are or are likely to be affected.
- (e) Award compensation (but not damages)

A decision of the Tribunal should be binding on all parties.

(Recommendation 46)

The Tribunal should not be empowered to award costs, except: -

- (i) in favour of the person applying for review if-
 - that person has been put to unnecessary or unreasonable expense because of the actions of the decision maker in the conduct of . the application for review (whether the person . is ultimately successful in the action or not); or
 - the appeal is successful and the costs are reasonable having regard to the nature of the dispute and complexity of that matter.
- (ii) in favour of a Department if the person applying

for review has acted vexatiously or frivolously or otherwise not in good faith in applying for a review of a decision.

APPEALS

(Recommendation 47)

An appeal from the General Appeals Tribunal to the Supreme Court on a point of law only should be available from the decision of the General Appeals Tribunal. Similar appeal rights should be applicable to every other appellate tribunal.

13. THE ADMINISTRATIVE REVIEW COMMITTEE

(a) The role of the Committee

(Recommendation 48).

An independent body to be known as the Administrative Review Committee should be created by statute to keep under review all of the procedures including those of the Courts and other bodies, by which administrative decisions may be challenged.

(b) The appropriate forum

(Recommendation 49)

The Administrative Review Committee should be empowered to review existing legislation .to recommend whether a right of review should be created or to ensure that future rights of appeal or review lie to the most appropriate appellate tribunal.

(c) Decision-making process

(Recommendation 50)

The Committee should have a role in reviewing procedures, formulating guidelines, and consulting with Departments with respect to the decision-making process.

(d) Internal review

(Recommendation 51)

The Administrative Review committee should perform a reviewing and advisory function in relation to internal reviews including their effectiveness, independence and consistency.

(e) Maintenance of informal procedures and accessibility of the General Appeals Tribunal

(Recommendation 52)

The Administrative Review Committee should monitor the procedural aspects of the operation of the General Appeals

Tribunal to ensure that it maintains accessibility and that informality is preserved.

(f) Dissemination of information

(Recommendation 53)

The Committee should have a further role as an educator in promoting awareness of the administrative review system and providing information to decision makers and applicants alike. Its reports should be public documents and should be tabled in the Legislative Assembly. Close links with parliamentary committees should be maintained.

(g) Composition of the Committee

(Recommendation 54)

The Administrative Review Committee should include community representatives and possibly a member or members of the Legislative Assembly.

APPENDIX 3 – TABLE OF APPEALS*

*This table identifies most of the appeals in Northern Territory legislation of an administrative nature, however is not indicative of all appeals and should not be relied upon as such.

<u>No.</u>	<u>Act</u>	<u>Administrative Decision Body or Board or Tribunal or Court</u>	<u>Original or Appellate Jurisdiction</u>	<u>Appeal or Review or Application</u>	<u>Procedure on Appeal or Review</u>	<u>Final Decision</u>
1.	<i>Adoption of Children Act</i>	Minister Minister Panel LC	Original Appellate Appellate Appellate	A person/couple may <u>apply</u> to the Minister for the purposes of adopting a child (s17). Minister then determines suitability to adopt a non-citizen child (s21). A person/couple may apply to the Minister for <u>review</u> of that decision on the ground assessment was incorrect (s22). Minister must then constitute a Panel conducts an <u>inquiry</u> , constituted by a chair person (legal practitioner) and 2 other persons (s23). Panel <u>recommends</u> to the Minister whether the decision should be varied (s24). <u>Application</u> to LC for an order	Procedure for conduct of inquiry shall be determined by the Panel (s24(2)). Panel to act without regard to technicalities and legal form, is not bound by the rules of evidence and may inform itself on any matter as it thinks fit (s24(3)). Parties that may attend and	Minister LC

			(confirms decision of Minister)	of adoption conducted through proceedings. Where Minister is satisfied that a person or persons who wish to adopt a child are suitable, the person or persons may <u>apply</u> to the LC for an order for the adoption of the child (s38).	appear before the LC (s40), LC to be satisfied as to certain matters (s41). LC can make interim order (s42).	
2.	<i>Agents Licensing Act</i>	Agents Licensing Board of NT (s6) LC Registrar of Land and Business Agents LC	Original Appellate Original Appellate	Decision to grant or refuse a licence (s29), decision not to renew a licence (s32). <u>Appeal</u> to LC against decision of Agents Licensing Board (s85). <u>Apply</u> to LC to review determination of Registrar on application for compensation arising from defalcation or misappropriation (s101).	Appeal to LC on any of following grounds decision was wrong in law, against weight of evidence, Board improperly exercised its discretion or acted unlawfully, Board had not acted in good faith, or acted contrary to principles of natural justice (s85(1)). LC may affirm, set aside or vary a determination, give such judgment which seems proper, and make such other decision as justice requires (s85(3)). Appeals in accordance with LC Rules of procedure (s85(7)).	LC
3.	<i>Animal Welfare Act</i>	Animal Welfare Authority (s26)	Original	Application to Authority for licence (s30), renewal of	-	LC

		LC	Appellate	<p>licence (s35), variation of licence (s36), cancellation or suspension of licence (s38).</p> <p>A person aggrieved by a decision of Animal Welfare Authority, to vary, cancel, suspend, or refuse to renew or vary a licence may <u>appeal</u> to the LC (s40(1)).</p>	<p>Appeal to LC appeal de novo (s40(2)). In determining an appeal, the LC may make the orders it considers appropriate, including affirming, varying or setting aside the decision of the Authority, substituting its own decision or orders relating to costs (s40(3)).</p>	
4.	<i>Anti-Discrimination Act</i>	<p>Anti-Discrimination Commissioner</p> <p>LC</p>	<p>Original</p> <p>Appellate</p>	<p>Commissioner may make various decisions or orders.</p> <p><u>Appeal</u> to LC against decision or order of Anti-Discrimination Commissioner (s106).</p>	<p>Appeal on a question of law or law and fact (s106(2)) In accordance with the rules of LC (s106(3)).</p>	LC
5.	<i>Annual Leave Act</i>	Commissioner	Original	<p>Authorised person may conduct <u>investigation</u> and report to Minister (s17).</p>	-	Minister
6.	<i>Architects Act</i>	<p>NT Architects Board</p> <p>SC</p>	<p>Original</p> <p>Appellate</p>	<p><u>Appeal</u> to the SC against a determination of the Board (s15A).</p> <p><u>Appeal</u> to the SC against a</p>	<p>-</p> <p>Appeal in the nature of a rehearing but SC may have regard to material that was before the Board (s15A(2)).</p>	SC

				decision of the Board to remove name of person, partnership or company from the Register (s23).	Appeal in the nature of a rehearing, but SC may have regard to the material that was before the Board (s23(3)).	
7.	<i>Associations Act</i>	Commissioner of Consumer Affairs LC	Original Appellate	Declaration by Commissioner that a person is disqualified from being an officer of an incorporated association (s40(1)). Commissioner may make various decision under the Act eg application for incorporation of association to Commissioner (s8), application for change of name (s17) etc. <u>Appeal</u> to LC against the making of the declaration under s40(1) (s114). <u>Appeal</u> to LC against a decision of the Commissioner under the Act (s115).	- On the hearing of the appeal under s114, the LC must decide whether the person is a fit and proper person to be an officer of an incorporated association and may make its decision only on the evidence given by a party to the appeal (s114). LC on hearing the appeal under s115, may vary or reverse decision or uphold	LC

					the decision of the Commissioner (s115(4)).	
8.	<i>Australasian Railway (Third Party Access) Act</i>	Regulator/Arbitrator SC	Original Appellate	<u>Appeal</u> to SC NT or SA from an award, or a decision not to make an award (s37).	Appeal on question of law only. SC may vary, revoke or make an award or decision that should have been made in the first instance (s37).	SC
9.	<i>Auctioneers Act</i>	Minister LC	Original Appellate	<u>Appeal</u> to LC against refusal of Minister to grant or renew an auctioneers license (s8).	LC may affirm the Minister's refusal to grant licence or if satisfied appellant is a fit and proper person deliver a certificate to that effect under seal of the Court and may make such orders as to costs as it thinks fit (s8A).	LC
10.	<i>Births, Deaths and Marriages Act</i>	Registrar of Births, Deaths and Marriages SC	Original Appellate	Person dissatisfied with a decision of the Registrar may apply to SC for <u>review</u> of decision (s.48).	SC may confirm, vary or reverse the Registrar's decision and make consequential and ancillary orders and directions (s48(2)).	SC
11.	<i>Brands Act</i>	Registrar of Brands LC	Original Appellate	<u>Appeal</u> to LC against refusal of Registrar of Brands to	- -	LC

				register any brand, transfer or cancel (s24).		
12.	<i>Building Act</i>	Building Practitioners Board (s12)	Original			
		LC	Appellate	<u>Appeal</u> to LC against action of Board (s35).	Appeal by way of a review of the evidence before the Board and no fresh evidence or information may be given unless special reasons prevented its presentation to the Board. Decision of LC is final and is not subject to appeal. Chief Magistrate may rule under the LC Act in relation to appeals under s35 including rules in relation to costs (s35).	LC
		Building Certifier / Director or Building Control	Original	<u>Appeal</u> to the Builders Appeal Board against the determination of a building certifier or Director of Building Control (established under s7) in relation to protection works (s82).	Appeal to Appeals Board in accordance with Part 11. Appeals Board unless prescribed, determine its own procedures, hearings to be conducted with as little formality and technicality and with as much expedition as the requirements of the Act/Regs, and the proper	Building Appeals Board
		Building Appeals Board (s17)	Appellate	<u>Apply</u> to the Builders Appeal Board for determination of the question and the amount		

				<p>of compensation payable (s99).</p> <p><u>Appeal</u> to the Builders Appeal Board (in accordance with Part 11) against the order or against a refusal of the Director of Building Control to make a report than an emergency order has been complied with (s104).</p> <p><u>Appeal</u> to the Builders Appeal Board (in accordance with Part 11) against a building order (s124).</p> <p><u>Appeal</u> to the Builders Appeal Board (in accordance with Part 11) against an order of Director of Building Control (s125).</p>	<p>consideration of the matters before the Appeal Board permit, and is not bound by the rules of evidence, but may inform itself of any matter in such matters as it thinks fit (s135).</p> <p>Appeal to Appeals Board shall be dealt with as a fresh hearing, fresh evidence or fresh information may be given (s136).</p> <p>Appeals Board may make any decision or take any action that the person making the original decision could have made or taken in relation to the matter (s137).</p> <p>Decision of the Appeals Board in an appeal, referral or application is final (s138).</p> <p>Enforcement of determinations (s142), adjournments (s143), hearings to be open (s144), rights of representation (s145), attendance of</p>	
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					witnesses (s146), witness to answer questions (s147), oaths (s148), costs (s149).	
13.	<i>Business Tenancies (Fair Dealings) Act</i>	Commissioner	Original	Application to Commissioner for determination or a retail tenancy claim (s86). Part 11 (Dispute Resolution for Retail Tenancy Claims).	Proceeding to be conducted by either the Commissioner, delegate of Commissioner or other person appointed by the Commissioner (s89). Part 11 sets out the stages of hearing of a retail tenancy claim and procedures eg preliminary conference (s92), conciliation conference (s93), procedure for conference (s94), inquiries (s98), procedures of inquiries (s99) etc.	
		LC	Appellate	Party to an application under Part 11 may <u>appeal</u> to the LC against a retail tenancy order made in respect of that application (s119).	Appeal to LC against a retail tenancy order is to be an appeal de novo (s119(2)). LC is not bound by the rules of evidence and may inform itself in any manner it thinks fit (s119(3)). LC may confirm, vary or quash order or make an order that should have been made or make any ancillary or incidental orders (s119(4)).	LC or SC
		SC	Appellate	S119 does not prevent SC from hearing an appeal against a decision of the LC (s119(7)).		

14.	<i>Commercial Arbitration Act</i>	Arbitrator SC	Original Appellate	 <u>Appeal</u> to SC arising out of any award (s38).	- Appeal on question of law (s38), procedures outlined s38.	SC or NTCA (if NTCA grants leave)
15.	<i>Commercial and Private Agents Licensing Act</i>	Commissioner of Consumer Affairs LC	Original Appellate	<u>Applications</u> for licence to Commissioner (s7). <u>Appeal</u> against refusal to grant licence, may apply to LC appeal against Commissioner's decision (s17). <u>Appeal</u> to the LC against decision of Commissioner to vary, cancel, or suspend a licence (s17N). <u>Appeal</u> to LC against refusal of Commissioner to approve a person as a manager under Reg 7 or revoke a person's approval under Reg 9 (Reg 10).	- Appeal (under s17(2)) to be by way of rehearing. Appeal (under s17N) to be by way of rehearing. Appeal under Reg 10 is to be by way of rehearing, LC has all the powers of the Commissioner (Reg 10(2)) and may make any order as to costs (Reg 10(3)).	LC
16.	<i>Commercial Passenger (Road) Transport Act</i>	Director of Commercial Passenger (Road) Transport (s5)	Original	Make various decisions which may be appealed against, refer below for decisions, Director subject to the directions of the Minister (s5A).	-	Minister

		LC	Appellate	<p><u>Appeal</u> to LC against the following decisions of Director (s77):</p> <ul style="list-style-type: none"> • refusing an application for accreditation or licence or the renewal of accreditation or a licence or, where allowed, the transfer of a licence, or imposing or varying a condition of accreditation or a licence; • cancelling or suspending any accreditation or licence; or • refusing an application for approval under section 71 or revoking such an approval, or imposing a condition on such an approval. 	LC may confirm the decision, substitute or make any further orders (s77(7)), and the procedure of an appeal shall be made in accordance with the rules of the LC (s77(8))	LC
17.	<i>Community Welfare Act</i>	Minister	Original	Minister may provide notice of decision to transfer home order to State under s62C (s62F).	-	Family Matters Court
		Family Matters Court	Appellate	Person may apply to FMC for <u>review</u> of the Minister's decision (s62G).	Application for review may be on merits or particular grounds specified in application (s62G(2)). FMC	

		SC	Appellate	<u>Appeal</u> against decision of review by FMC to SC (s62S).	may confirm, vary or reverse decision (s62G(4)). Procedure of appeal (s62T).	SC
18.	<i>Consumer Affairs and Fair Trading Act</i>	LC	Original	<u>Appeal</u> to LC against failure on part of reporting agency to amend inaccurate or incomplete information (s119(5)).	-	LC
		Commissioner of Consumer Affairs	Original	Various decisions, those appealable detailed below.	-	
		LC	Appellate	<u>Appeal</u> to LC against decision of Commissioner of Consumer Affairs to refuse motor vehicle dealers license (s139(3)) or to revoke or suspend the license (s151) appeal to Local Court against decision of Commissioner to refuse travel agents license or impose conditions or varies conditions (s206(1)) or to suspend or cancel license or impose disqualification (s206(2)).	Appeal to LC under s139(3) appeal by way of rehearing, LC has the same powers as the Commissioner (s139(4)). Appeal to LC under 151 by way of rehearing, LC has the same powers as the Commissioner (s151(2)). Determination by LC of appeal under s206(2) set out in s207 and s208. Powers of LC in making orders against a reporting	

					agency or trader set out in s122.	
19.	<i>Co-operatives Act</i>	Registrar SC	Original Appellate	Person/co-operative may <u>appeal</u> to SC against a decision of the Registrar: <ul style="list-style-type: none"> • to refuse to approve the draft disclosure statement or a failure to approve the statement (s29); • to refuse to approve the rules or a failure to approve the rules (s30); • to refuse to register the co-operative or failure to register the co-operative (s31); • to refuse to approve an alteration of its rules or a failure of the Registrar to approve an alteration of its rules (s111 and s112). 	Registrar to comply with determination of SC under Division 7 (appeals) (s32). Registrar to comply with determination of SC under Part 5 (s113).	SC
20.	<i>Crime Victims Advisory Committee Act</i>	Crime Victims Advisory Committee (established by s4)		-	-	-
21..	<i>Crimes (Victims Assistance) Act</i>	LC or Judicial Registrar		<u>Appeal</u> from Judicial Registrar to LC (s15A).	LC Rules	LC
22..	<i>Crown Lands Act</i>	Minister/Valuer-General Land and Valuation Tribunal	Original Appellate	An objector who is dissatisfied with a decision of the Minister or Valuer-General may request the Minister or V-G to <u>refer</u> the	Objection is limited to the grounds stated in the objection (s84(3)). Tribunal has all the powers	LVT

				decision to the Land and Valuation Tribunal (s84).	of the original decision maker (s85(1)).	
23.	<i>Cullen Bay Marina Act</i>	Management Corporation/owner/unit Corporation LC	Original Appellate	<u>Application</u> may be made to LC by either Management Corporation, the Owner of a lot or unit, or a unit Corporation (s12B).	Application is to be made in accordance with the <i>Small Claims Act</i> & the Small Claim Rules (s12C) Powers of LC to resolve dispute (s12E) Interim orders (s12F).	LC
24.	<i>Dangerous Goods Act</i>	Chief Inspector LC	Original Appellate	Subject to the direction of the Minister (s9). <u>Appeal</u> to LC against decision of Chief Inspector (s38)	- LC may conduct a hearing in such a manner as it thinks fit (s38(3))	LC
25.	<i>Darwin City Council By-Laws</i>	Authorised person LC	Original Original	Authorised person may seize animal (By-law 75(1)(a)). Authorised person may <u>apply</u> to the LC to have an animal destroyed (By-law 75(1)(b)).	Under the Rules of the LC	LC
26.	<i>Darwin Rates Act</i>	Minister LC	Original Appellate	If Minister does not allow an appeal against the omission of a person's name from the rate book, he shall <u>refer</u> it to the LC (s20).	LC may conduct a hearing in such a manner as it thinks fit (s22).	LC
27.	<i>Darwin Port Corporation Act</i>	Darwin Port Corporation No appeal or review but Corporation is "subject to the	Original	A person may <u>apply</u> to DPC for licence to carry on business of a stevedore within Port (s38).	-	Minister

		written directions of the Minister (s15)		Minister may direct DPC to suspend, cancel, or vary licence (s39).		
28	<i>Desert Knowledge Australia Act</i>	Board of DKA		Board subject to the written directions of the Minister (s9).	-	Minister
29.	<i>Education Act</i>	Secretary Minister Board of Studies (s10B) Education Advisory Councils (s11) College Councils	Original Appellate Advisory Advisory	<u>Appeal</u> to Minister by (s68): <ul style="list-style-type: none"> an applicant for registration of an educational institution who is dissatisfied with a determination under section 64(1) of the Secretary, or the public officer of a registered educational institution who is dissatisfied with a decision under section 65(1) or (3) of the Secretary. 	Minister may affirm, set aside or vary the decision of the Secretary and make such order as the Minister thinks fit (s68(5)).	Minister
30.	<i>Electoral Act</i>	Electoral Commissioner SC	Original Appellate	Decisions of the Electoral Commissioner are set out in Schedule 2 (s225). An affected person for an appealable decision may <u>appeal</u> against the decision to SC (s228).	SC may confirm or vary the appealable decision, set the decision aside and substitute its own decision, or set the decision aside and remit the matter to the Commission with the directions it considers appropriate, the Court may make such orders as it considers appropriate (s231)	SC

31.	<i>Electricity Reform Act</i>	Utilities Commission / Electricity Safety Regulator / Authorised Officer / Electricity Officer Relevant Regulator SC	Original Appellate Appellate (2 tier appeal, 1 st level to relevant regulator, and 2 nd level to SC)	Applicant may apply to the relevant regulator to <u>review</u> the decision to grant or vary the conditions of a licence, review of a decision of the Utilities Commission, or review of the decision to give a direction by the electricity safety regulator or an authorised officer, or the decision for review of the decision of an authorised officer or an electricity officer to disconnect an electricity supply or to disconnect a cathodic protection system (s83(1)). Applicant dissatisfied with the decision of the relevant regulator may <u>appeal</u> to SC (s84).	Appeal may only be made on grounds that there has been bias or that facts have been misinterpreted in a material respect (s84(2)) Minister may intervene in a review or appeal on any question relevant to the public interest (s85).	SC Minister
32.	<i>Electricity Networks (Third Party Access) Act</i>	Regulator (Utilities Commission) SC	Original Appellate	An <u>appeal</u> lies to SC in respect of a determination or approval of the Regulator (s14).	Appeal to SC may only be made on ground that there has been bias or misinterpretation of facts (s14(3)). If there has been arbitration under the Network Access Code (Part 4), an appeal	SC

					lies to the SC only on a question of law (s18).	
33.	<i>Electricity Workers and Contractors Act</i>	Electricity Workers and Contractors Licensing Board LC	Original Appellate	<u>Appeal</u> to LC against decision of Electrical Workers and Contractors Licensing Board (s47).	Appeal only on ground that the Board acted improperly, or made an error or acted with undue severity. grounds of appeal (s48) jurisdiction (s49).	LC
34.	<i>Energy Pipelines Act</i>	Minister Lands and Mining Tribunal (established by the Lands and Mining Tribunal Act)	Original Appellate	Various decisions by Minister (s5 application for permit to enter land), (for licensing, and general management of the Act). In the event of a dispute about compensation payable under this section, the holder of the permit or licence or the owner or occupier or registered native title body corporate to whom compensation may be payable may <u>refer</u> the dispute to the Tribunal (s67B(6)).	-	LMT Minister
35.	<i>Exotic Diseases (Animals) Compensation Act</i>	Chief Inspector of Stock SC or LC	Original Appellate	<u>Appeal</u> to SC or LC, if within jurisdictional limit, against refusal of Chief Inspector to certify claim for compensation (s8(3)).		LC or SC

36.	<i>Fences Act</i>	LC	Original	<u>Application</u> to LC on orders to fence.	LC has jurisdiction to hear and determine an application made under this Act as an action under the <i>Local Courts Act</i> , and an order made under this Act may be enforced accordingly as a judgment of that court (s17).	LC
37.	<i>Fines and Penalties (Recovery) Act</i>	Fines Recovery Unit (s27)	Original	Application to FRU for further time to pay (s25).	Decision of FRU final and may not be appealed against, reviewed or called into question by any court or tribunal (s25(5)).	FRU
		Court of Summary Jurisdiction	Appellate	Applicant may apply to have original application for annulment <u>determined</u> by CSJ (s46).	CSJ to determine application in accordance with Division.	CSJ
38.	<i>First Home Owner Grant Act</i>	Commissioner of Taxation	Original / Appellate (ie review own decision)	Applicant who is dissatisfied with the Commissioner's decision may lodge an <u>objection</u> with the Commissioner (s24).	LC Rules Appeal to LC limited to grounds stated in the applicant's objection (s26(4)).	LC
		LC	Appellate	Applicant who is dissatisfied with the Commissioner's decision on the objection may <u>appeal</u> to LC (s26).		
39.	<i>Firearms Act</i>	Commissioner of Police	Original	Firearms Appeal Tribunal (s50) considers <u>appeals</u>	Appeal to the Tribunal is in the nature of rehearing	FAT

		(Licensing) Firearms Appeal Tribunal Firearms Advisory Council (Advisory only)	Appellate Advisory	against decisions or action of the Commissioner (s51). - No review of certain functions of the Commissioner (s93F).	(s52). Tribunal has all the powers, authorities, duties, functions and discretions that the Commissioner has in relation to the decision or action the subject of the appeal (s52(2)). Tribunal is to determine an appeal by confirming the decision or action or substituting its own decision (s54). Obtaining information by Tribunal (s53) and attendance of persons before Tribunal (s53A).	Commissioner Commissioner
40.	<i>Fire and Emergency Act</i>	Director of Fire and Rescue Service Chief Executive Officer	Original Appellate	Where Director gives notices to occupier to take action, a person aggrieved by a notice to take action under s25(2) may request the CEO to <u>review</u> the notice or a requirement set out in the notice (s26).	A decision of the CEO is final (s26(5)).	CEO
41.	<i>Fisheries Act</i>	Director of Fisheries LC	Original Appellate	<u>Apply</u> to LC to <u>review</u> decision of the Director of Fisheries to refuse a license or to cancel or suspend a license (s50).	Application in accordance with LC Rules (s50(5)) s50(4) sets out powers Local Court. No appeal against decision of LC made	LC Minister

					upon review (s50(10)). General power of the Minister notwithstanding anything in this Act or the Regulations.	
42.	<i>Food Act</i>	Chief Health Officer	Original	Apply to LC to <u>review</u> the CHO's determination of the amount of compensation or refusal to pay compensation under s45(1) (s45(5)) and under s111(1) (s111(5)).	LC may affirm, vary, revoke or substitute a decision and must specify reasons for its determination (s45(7) and (8)) and s111(8) and (9)).	CHO
		LC	Appellate			LC
		Enforcement Agency	Original	Apply to LC to <u>review</u> the merits of the determination of the amount of compensation available under s64(1)).	LC may affirm, vary, revoke or substitute a decision and must specify reasons for its determination (s64(6) and (7)).	
		LC	Appellate			
		CHO / Delegate of CHO	Original	Person aggrieved by decision of CHO or Delegate of CHO under Part 7 (s84), or any of the decisions specified in s98(1), or decision to refuse certificate of clearance under s110(1) may apply for <u>review</u> of merits of decision. If decision made by Delegate of CHO, may apply to CHO to <u>review</u> decision (s84(3), s98(3) and 110(3)). If decision made by CHO may	CHO or LC may affirm, vary, revoke or substitute a decision and must specify reasons for its determination (s84(5), s84(6), s98(5), 98(6), s110(4) and s110(5).	
		CHO	Appellate			
		LC	Appellate			

				apply to LC to <u>review</u> decision (s84(2), s98(2) and s110(2)).		
43.	<i>Fuel Subsidies Act</i>	Commissioner of Taxes (appointed under s5 of <i>Taxation Administration Act</i>) Minister	Original Appellate	Application to the Minister for <u>review</u> of a decision of the Commissioner (s42).	The Minister's decision is final and cannot be appealed against other than on the grounds of excess or want of jurisdiction (s42(7) and (8)).	Minister
44.	<i>Gaming Control Act</i>	Minister SC NT Licensing Commission	Original Appellate Advisory	Licensee may <u>appeal</u> to the SC against a cancellation or suspension of a licence by the Minister under section 47F (s47G). One of functions of the Commission is to review decision of the Director relating to the administration of gaming control and make recommendations to the Minister and the Director in relation to those decisions (s13(1)(h)).	On appeal SC has same powers as Minister, is not bound by rules of evidence and appeal is "by way of rehearing" (s46G(2) & (3)). On appeal SC has same powers as Minister, is not bound by rules of evidence and appeal is "by way of rehearing" (s47G(2) & (3)).	SC
45.	<i>Gaming Machine Act</i>	Director of Licensing Gaming Control Commission	Original Appellate	Director can refuse or grant a licence under part 4 (s65), may cancel or suspend a licence (s79). A person aggrieved by a decision of the Director (other	- The <i>Gaming Control Act</i> and the Regulations made under	Gaming

		NT Licensing Commission		than part 3) may apply to the Gaming Control Commission for a <u>review</u> of that decision (s193). Decision or determination of Commission final (s19).	that Act apply to and in relation to the review as if the review was a review of a decision of the Director relating to the administration of gaming control under section 13(1)(h) of that Act.	Control Commission NT Licensing Commission
46.	<i>Heritage Conservation Act 2004</i>	Minister LC	Original Appellate	<u>Appeal</u> to LC against decision or action of the Minister under s26, s28, s39F, or s49 (s48).	Appeal to LC only on a question of law (s48(1)). Person must have an appealable interest. LC may dismiss the appeal or direct the Minister to do or refrain from doing anything under the Act (s48(3)).	LC
47.	<i>Health Practitioners Act 2004</i>	Following Boards (established under s7 of the Act): Aboriginal Health Workers Board of the Northern Territory Chiropractors and Osteopaths Board of the Northern Territory Dental Board of the	Original	A person may <u>appeal</u> to SC against any of the following decisions (s99): <ul style="list-style-type: none"> • the refusal of a Board to register or enrol the person; • a condition to which the person's registration or enrolment is made subject to; • the removal of a person's name from a register or roll other than removal under s50(2)(b); • the suspension of the 	Appeal to SC only on a question of law (s99). SC may confirm, set aside or set aside and substitute any other decision that the Board or Tribunal has jurisdiction and may make an order as to costs as it thinks fit (s100). Schedule 4 sets out procedures of Committee and Tribunal & deals with such matters as: <ul style="list-style-type: none"> • powers (item 1) 	SC

		<p>Northern Territory</p> <p>Medical Board of the Northern Territory</p> <p>Nursing and Midwifery Board of the Northern Territory</p> <p>Occupational Therapists Board of the Northern Territory</p> <p>Optometrists Board of the Northern Territory</p> <p>Pharmacy Board of the Northern Territory</p> <p>Physiotherapists Board of the Northern Territory</p> <p>Psychologists Board of the Northern Territory</p>		<p>person's right of practice or authorisation;</p> <ul style="list-style-type: none"> • the refusal of a Board to issue a person with a new practising certificate; • a decision of a Tribunal under s65 (actions by Tribunal following inquiry) • the refusal of a Board to grant the person authorisation to practice in a restricted practice area; • the cancellation of an authorisation; • the cancellation of the person's interim registration or enrolment. <p>HPR Tribunal must conduct an inquiry into each complaint referred to it by a Board (s64).</p>	<ul style="list-style-type: none"> • procedures (item 4) (ie the Tribunal must conduct its proceedings with as little formality and with as much expedition as proper consideration of the matter permits, not bound by the rules of evidence, may inform itself on any matter in any way it considers appropriate and must observe all the rules of natural justice. • procedures to be open to public (Item 7) • representation (Item 8) 	
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		Health Professional Review Tribunal (established under s63)	Appellate			
		SC	Appellate			
48.	<i>Hospital Management Boards Act</i>	Hospital Management Boards (for each hospital) (s5)	Advisory	Mainly advisory to Minister although some independent powers (see s22 (1)(b), (d) and (f)).	-	Minister
49.	<i>Housing Act</i>	Chief Executive Officer (Housing)		Subject to the directions of the Minister (s17).	-	Minister
50.	<i>Information Act</i>	Public Sector Organisations Information Commissioner SC	Original Appellate Appellate	A person may make a <u>complaint</u> to the Commissioner about a public sector organisation on one or both of the following grounds: a) that the organisation has collected or handled his or her personal information in a manner that contravenes an IPP, a code of practice or an authorisation; or b) that the organisation has otherwise interfered with the person's privacy. A person aggrieved by a decision of the Commissioner may <u>appeal</u> to the SC on a	Commissioner may determine procedures and is not bound by rules of evidence (s121).	Commissioner SC

				question of law only (s29).		
51.	<i>Kava Management Act</i>	Magistrate	Original	<u>Application</u> by Chairperson or authorised officer to Magistrate for an order for the forfeiture to the Territory and the destruction of the kava (s37).	Magistrate may make an order that the kava is to be retained or that the kava is forfeited to the Territory and is to be destroyed (s37(2)).	Commission
		Minister	Original	Application to Minister for return of vehicle seized under the Act (s50). Application to Minister for declaration of licence area (s54).		
		NT Licensing Commission	Original	Commission to approve kava management plan required under s54 (58C) and amendment to kava management plan (s58D). Application to Commission to grant a retail or wholesale licence to sell kava (s60), application to Commission to renew licence (s65), Commission may vary licence (s67), Commission may suspend or impose a condition or vary condition of licence (s76), application by Director to Commission to cancel licence (s77).		

		NT Licensing Commission	Appellate	Where Commission refuses to grant or renew a wholesale licence, applicant may request the Commission to conduct a <u>hearing</u> in relation to the application (s64(4)). Licensee may request Commission to conduct a <u>hearing</u> where decision made by Commission to vary a licence under s67 (s68). Licensee may request Commission to conduct <u>hearing</u> where direction issued by Commission under s75, or suspends or varies a licence under s76 (s79).	Part 10 sets out procedures for hearings by the Commission under the Act. Hearing to be conducted in accordance with Part V of the <i>Liquor Act</i> (s80). Refer to <i>Liquor Act</i> discussion below which deals with the procedures under Part V. Commission may affirm, set aside, vary decision, vary condition or impose condition, issue a direction, suspend or cancel the licence, or make any other order it thinks fit (s82(1)). The decision of the Commission under s82(1) is final and conclusive (s82(2)).	
52.	<i>Land and Mining Tribunal Act</i>	Lands and Mining Tribunal (s4) SC	Original Appellate	Functions of LMT to hear, determine and/or make recommendations on matters set out in s5. <u>Appeal</u> against compensation determinations (under s24) made by Tribunal to SC (s37).	Part 3 deals with proceedings of Tribunal, such matters as lodgement of applications (s9), sittings (s10), conduct of proceedings with little formality, technicality, and as much expedition, not bound by rules of evidence, if no rules prescribed to be	LMT SC

					<p>determined by the Tribunal (s11), appearance and representation (s12), hearings in public (s13), evidence (s14), summons (s15), assistance by Tribunal (s16), decisions & reasons for decisions (s17), costs (s18), witness expenses, rules (s20) and contempt of Tribunal (21).</p> <p>An appeal to SC under section is an appeal in the strict sense (s37(2)). SC may confirm the determination, vary determination, substitute its own determination or dismiss the appeal (s37(3)).</p>	
53.	<i>Lands Acquisition Act</i>	Minister	Original	Minister to refer matter to Tribunal once notice of acquisition served under section 50(1AA) (s51).	-	SC
		Lands and Mining Tribunal (s3)	Appellate	Tribunal shall <u>hear and determine</u> matter referred to it under s51 (s81). On application under s64 of the <i>Native Title Act</i> and the revocation, variation or other	-	

				order made as a consequence of that revision affects native title rights or interests acquired under this Act, the relevant native title body corporate or the Minister may <u>refer</u> any determination of the Tribunal back to the Tribunal for <u>reconsideration</u> and the Tribunal may consider the matter and, if it thinks fit, revise the determination accordingly (s81A).		
		SC	Appellate	Person aggrieved by determination of Tribunal under s81 or 81A may <u>appeal</u> to SC (s84).	An appeal to SC is an appeal in the strict sense (s84(2)).	
54.	<i>Land Development Corporation Act</i>	Land Development Corporation (s4)		Powers (s7) subject to the directions of the Minister.	-	Minister
		Advisory Board (s13)	Advisory	Function of Advisory Board to advise the Corporation (s14).	-	Minister
55.	<i>Legal Practitioners Act</i>	Law Society (s7)	Original	Complaints to Law Society regarding professional conduct of legal practitioner or former legal practitioner (s46).	-	
		Complaints	Appellate	<u>Appeal</u> from Law Society to	Appeal to Complaints	SC

		Committee (s48A)		<p>Complaints Committee against s47(1)(ba) or s47(1)(c) (s49).</p> <p>AG, Law Society or person who lodged a complaint with Law Society may <u>lay a charge</u> of professional misconduct before Complaints Committee (s50).</p> <p>Where the Complaints Committee becomes aware of evidence of conduct other than the conduct described by the charge must refer the matter of the conduct to the Law Society (s50AB(2)).</p> <p>A right of <u>appeal</u> to SC against a finding, admonishment or fine confirmed by the Complaints Committee under s49A(2)(a) or 50(4A)(a), or a finding recorded, admonishment or reprimand administered or</p>	<p>Committee by way of rehearing (s49A), may confirm or quash decision by Law Society, and exercise powers under s50, costs at discretion of Complaints Committee.</p> <p>Complaints Committee may dismiss the charge or inquire into the conduct described in the charge (s50(3)).</p> <p>Where an appeal puts in issue conduct of a legal practitioner which has been the subject of a complaint under s46 or a charge under s50(1) the appeal may only be made on a mistake of law or fact”(s51B(2A)).</p>	SC
		SC	Appellate			

				<p>order made by the Complaints Committee, except no right of appeal to SC under s50(3)(a) or (b).</p> <p>A person refused practising certificate by Law Society of the kind sought by that person may <u>apply</u> to SC (s29(1)), or a person whose practising certificate has been cancelled or suspended by the Law Society may apply to SC for an order (s29(2)).</p>		
56.	<i>Legal Aid Act</i>	<p>Legal Aid Commission (s5)</p> <p>Legal Aid Committee (s15)</p>	Original/ Appellate	<p>A person may request that the following decisions be <u>reconsidered</u> by the Review Committee (where the decision was made by the Committee) or where the decision was made by an officer by an appropriate officer (s35):</p> <p>(a) refusing to provide legal assistance under this Act;</p> <p>(b) refusing to provide legal assistance under this Act of the nature, or to the extent,</p>		<p>Commission</p> <p>Review Committee</p>

		Review Committee	Appellate	<p>applied for;</p> <p>(c) imposing a condition on the provision of legal assistance under this Act or varying adversely to a legally assisted person a condition so imposed;</p> <p>(d) terminating the provision of legal assistance under this Act;</p> <p>(e) refusing to pay the whole or a part of an amount that the Commission has been requested to pay under section 33; or</p> <p>(f) in relation to any other matter relating to the provision or refusal of legal assistance.</p> <p>The person may request the Commission to refer the reconsideration to a Review Committee for <u>review</u> (s35(3)).</p>	<p>RC must allow person requesting review to be heard (s39), power of RC to obtain information and documents (s40). RC may confirm, vary or set aside the primary decision (s41(1)), and RC must cause a copy of reasons to be sent to person and Commission (s41(3)). The</p>	
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					decision of a Review Committee shall be final and conclusive (s41(5)).	
57.	<i>Licensed Surveyors Act</i>	Surveyors Board (s8) Licensed Surveyors Appeal Tribunal (s40)	Original Appellate	Board must conduct inquiry where an order is made for the removal of a licensed surveyor (s34), Board authorise registration of an applicant or refuse to authorise registration of a person whose name has been removed from the Register (s38). A person/licensed surveyor may <u>appeal</u> to the Tribunal against the Board where it: a) refuses an application for the registration of a person; b) orders the removal from the Register of the name of a licensed surveyor; c) reprimands a licensed surveyor; or d) suspends, otherwise than under section 33(3), the registration of a licensed surveyor.	Licensed survey may be represented by a legal practitioner or an agent, may examine witnesses (s34(2)), Board is not bound by rules of evidence and may inform itself in such a manner as it thinks fit (s34(3)). Tribunal has such powers and shall comply with such practices and procedures as are prescribed and, in the absence of a practice or procedure in relation to a particular matter or thing being prescribed, shall adopt such procedures as it thinks fit (s42). An appeal under this Part is in the nature of a rehearing (s43(3)). In an appeal, Tribunal is bound by the rules of	Tribunal

					<p>evidence (s43(4)).</p> <p>A party to an appeal may be represented by either a legal practitioner or agent (s43(6)).</p> <p>The decision of the Tribunal is final and conclusive and shall not be challenged in a court by prerogative writ or otherwise (s46)</p>	
58.	<i>Liquor Act</i>	Director or Member of Licensing Commission	Original	Application for licence lodged with Director (s26), application to transfer licence lodged with Director (s41), Member to consider objection to application of, variation of conditions of licence etc (s471), application for special licence lodged with Director (s58), other applications by Director to Commission (s69), application for declaration to be lodged with Director (s76), application for permit to be lodged with Director (s90)	-	Commission
		NT Licensing Commission	Original	Decisions of Commission: issue of licence by (s24),	-	

		NT Licensing Commission	Appellate	<p>assessment of applications (s28), may vary conditions of licence (s33), consider application for transfer of licence (s43), issue of special licence (s60), consideration of application under s76 (s77), consideration of application under s90 (s91).</p> <p>Commission to conduct <u>hearing</u> where (s50):</p> <ul style="list-style-type: none"> • an applicant for a licence requests a hearing after his or her application has been refused without a hearing; • the holder for the time being of a licence or a person to whom it was proposed to transfer the licence, requests a hearing after an application for transfer of the licence has been refused without a hearing; • a licensee requests a hearing in relation to the conditions of his or her licence where the licence was issued without a 	<p>Part V (ss50-56) deals with hearings conducted by the Commission, sets out matters such as procedure (s51), power to summon witnesses (s52), decision of Commissioner is final and conclusive; and shall not be challenged, appealed against, reviewed, quashed or called into question in any court (s56)</p>	
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		Member selected by Chairperson	Original	<p>hearing</p> <ul style="list-style-type: none"> • a licensee requests a hearing after an application for a variation of the conditions of his or her licence has been refused without a hearing; • a licensee requests a hearing after approval of a material alteration has been refused without a hearing. <p>Director may make an <u>application</u> to Commission under s69 for an order for cancellation of licence (s71). Member to consider objection and reply and either dismiss the application, or determine that the Commission must conduct a <u>hearing</u> (s471).</p>	Commission must consider application and either dismiss or conduct a hearing in relation to the application (s71).	
59.	<i>Local Government Grants Commission Act</i>	Local Government Grants Commission (s4)	Advisory	Advisory Powers only (s12). Minister may accept recommendations or return them to Commission for reconsideration (s17).	-	Minister
60.	<i>Local Government Act</i>	Council/CEO Local Government	Original Appellate	<p>A person may <u>appeal</u> against an entry in the rate book (s63) under (s235).</p> <p>A person aggrieved by a</p>	Tribunal has power to summons a person to attend before it, give evidence & produce such documents in person's custody (s226(2)).	SC

		<p>Tribunal (each magistrate is a member of the Tribunal and the Chief Magistrate is President - powers of the Tribunal may be exercised by any one member (s225))</p>		<p>decision of a council made or taken under a by-law may <u>appeal</u> to the Tribunal (s201A).</p> <p>Tribunal can hear and determine an <u>application</u> made or matter referred to it under s14, 22, 58, 69, 94, 246 & other provisions which give the Tribunal jurisdiction (s226).</p> <p><u>Appeal</u> against decision of Tribunal to SC on a question of law only (s240(1))</p>	<p>Tribunal has power to do all things necessary or convenient for the performance of its functions and for the purposes of enforcement has powers of the LC (s226(4)).</p> <p>Tribunal is not bound to follow strict legal procedure or to observe the rules of law governing the admission of evidence, but may inform itself on any matter in such manner as it thinks fit and shall act without regard to technicalities or legal form (s230).</p> <p>Representation of parties (s231), persons summoned to attend (s232), witness to give sworn evidence (s233), Tribunal may order costs (s234), rules and procedures (s239).</p>	
61.	<i>Marine Act</i>	Director (s35)	Original	Apply to Director for issue of certificate (s28), application to Director for licence for declared service (s132).	-	MAT

		Marine Appeal Tribunal	Appellate	<p><u>Appeal</u> by a seamen to the MAT from a decision of the Director in respect of an issue, endorsement, revalidation, suspension or cancellation or a certificate of a seaman (s35).</p> <p><u>Appeal</u> to MAT where Director refused to allow erection of jetty, wharf, pontoon or structure (s188A(3)).</p>	MAT of the NT consists of each magistrate (s10) - appeal may be heard and determined by one member of the Tribunal (s14). MAT to hear and determine appeals submitted under the Act (s11(1)). Regs 13 to 18 of the Marine (Examination and Certificates) Regulations prescribes procedures for appeals against decisions of the Director.	SC
		Pilotage Authority (s161)	Original	<u>Appeal</u> from pilotage authority to Tribunal where pilotage licence has been suspended or cancelled (s181).	Tribunal has all the powers of a LC of Full Jurisdiction under the <i>Local Courts Act</i> . (s11(2)). An assessor, with prescribed qualifications, may attend the hearing of an appeal to advise and assist the Tribunal (s13).	
		Formal Investigator (s124)	Original	<u>Appeal</u> to SC by a person who has been named in a report of a formal investigation or a rehearing under s124 as a person whose wrongful act caused or contributed to a casualty in relation to a vessel, or a person who has been		
		SC	Appellate		SC “may make such order as the justice of the case requires” (s25(1)).	

		LC	Appellate	censured or whose certificate has been ordered to be suspended or cancelled (s125). <u>Appeal</u> to LC against decision of Director to refuse a licence or to cancel or suspend a licence (s141).		
62.	<i>Marine Pollution Act</i>	CEO LC SC	Original Appellate	CEO may recover discharge expense by making demand against a security (s88). <u>Appeal</u> the claim by the CEO to either LC or SC depending on the monetary limit (s89).	Appeal by way of rehearing but party may present new evidence at hearing (s89(2)) and costs of appeal lie in the court's discretion (s89(3)).	LC or SC
63.	<i>Meat Industries Act</i>	Chief Inspector of Stock (s3) LC	Original Appellate	Application to Chief Inspector for various licences (s13), Chief Inspector may grant licence (s19). <u>Appeal</u> to LC from decision of the Chief Inspector (s67).	The appeal to LC shall be conducted as a hearing de novo, LC has all powers, duties and functions of Chief Inspector (s69).	LC
64.	<i>Mental Health and Related Services Act</i>	Secretary	Original	Apply to Secretary for licence to permit electro convulsive therapy to be performed on premises (s67), apply to renew licence (s68).	-	MHRT SC

	Authorised Psychiatric Practitioner	Original	APP may issue notification of admission (s41(2)), notification of interim community management order (s47(2)), information concerning medication (s88) or discharge plan (s89).	-	
	Ombudsman	Appellate	Apply to Ombudsman for <u>investigation</u> of decision of Secretary in accordance with <i>Ombudsman (Northern Territory) Act (s72)</i> .	-	
	Mental Health Review Tribunal (s118)	Appellate	Tribunal to <u>review, determine</u> : <ul style="list-style-type: none"> • long term voluntary admissions (s122); • involuntary admissions and community management orders (s123); • of certain decisions of authorised psychiatric practitioners (s124); • as to whether person able to give informed consent (s126). 	Part 15, Division 3 deals with proceedings of Tribunal, hearing of appeals in discretion of Tribunal but question of law to be decided by President alone (s129), right of appearance and representation (s131), access to medical records (s132), evidence (s133), interpreter (s134), hearings not open to public (s135), record of proceedings (s136).	
	SC	Appellate	Person aggrieved by decision of Tribunal may <u>appeal</u> to SC	Appeal by way of rehearing (s142(3)).	

				(s142).		
65.	<i>Mining Management Act</i>	Mining Officer (s59)	Original	Functions and powers of Mining Officer (ss61 and 62).	-	Minister
		CEO or Delegate	Appellate	<u>Review</u> decision of Mining Officer (s66(2)), can apply for further review by Review Panel (s68).	-	Minister
		Mining Board (s49)	Original	Primarily advisory function, constitute review panel under Part 8 (s50).	-	
		Minister	Original	Application to Minister for authorisation to carry out mining activities (s35), may impose conditions of authorisation (s37), may impose variations or revoke authorisation (s38), Minister may claim on security (s44).	-	
		Mining Board (Review Panel)	Appellate	Apply for <u>review</u> of decision of Minister or Delegate, CEO to provide Mining Board with decision to be reviewed (s69).	Review “on the merits”, must conduct the review in a manner that is fair and expeditious and must give proper consideration to all relevant issues, must give written notice of the decision and the reasons for the decision (s70).	

66.	<i>Mineral Royalty Act</i>	<p>Secretary</p> <p>Minister</p> <p>Board of Review (s26)</p> <p>SC</p>	<p>Original/ Appellate</p> <p>Appellate</p> <p>Appellate</p> <p>Appellate</p>	<p>Secretary to make assessment of royalty payable (s18), may lodge an <u>appeal</u> against assessment to the Secretary (s28(1)).</p> <p>Person may request the Secretary to treat his or her objection as an application for <u>review</u> and forward it to the Minister (s29).</p> <p>Minister appoints a Board of Review to <u>review</u> the assessment (s26).</p> <p><u>Appeal</u> to the SC from the action of the only if it involves a question of law (s35(1)).</p>	<p>Review limited to grounds stated in written objection lodged under s28(1). Board shall form its opinion on the matters submitted to it including whether a discretion or opinion under this Act was reasonably exercised or held by the Minister or the Secretary, and shall have such other powers as are prescribed, either party may be represented (s33).</p>	<p>Minister</p> <p>SC</p> <p>LC</p>
67.	<i>Motor Vehicles Act</i>	Registrar of Motor Vehicles	Original	<u>Appeal</u> to LC against decision of Registrar of Motor	Nature of appeal (s25H), LC shall redetermine the	LC

		LC	Appellate	Vehicles (ss25G & 102) person aggrieved by Registrar to impose a condition, refuse to grant, transfer or renew any licence, permit, registration or cancel or suspend any licence or permit (s102(6)).	matter, hear relevant evidence tendered, and take into consideration all matters which the Registrar ought to have taken into consideration in determining the matter. Decision of LC “final and conclusive” (s25G(2))	
68.	<i>Motor Accidents (Compensation) Act</i>	Board of TIO Motor Accidents (Compensation) Appeal Tribunal (constituted by a Judge of the SC (s28))	Original Appellate	Rights of benefits to be determined by Board (s12). Person aggrieved by determination of Board may <u>appeal</u> to the Tribunal (29(1)).	Tribunal, it shall conduct such hearings into the matter as it thinks fit and may make such determination as the Board could have made thereon as the Tribunal considers proper in the circumstances having regard to the intention of the Act, and such determination is binding on the Board (s29(3)). Hearing shall be conducted as a hearing “de novo” (s29(4)). Rules and procedure of Tribunal to be made by SC	MACA Tribunal

					judges (s29A). A decision of the Tribunal is final and shall not be capable of being reviewed in any court of law by prerogative writ or otherwise (s30).	
69.	<i>Museums and Art Galleries Act</i>	Museums and Art Galleries Board (s9)	Advisory	Functions and powers of Board (ss10 and 11). Board subject to the directions of the Minister” (s12(1)).	-	Minister
70.	<i>Northern Territory Aboriginal Sacred Sites Act</i>	Aboriginal Areas Protection Authority (s5) Minister	Original Appellate	Authority to examine and evaluate applications made under section 19B (application for authority certificate) and section 27 (application to have site registered). Person aggrieved by decision of Authority may apply to Minister for <u>review</u> (s19H). A person who has applied under s19B may <u>apply</u> to the Minister for a review of the decision (s30(1)), Minister requests the Authority to <u>review</u> the matter or refuse to	- - -	Minister

				request the Authority and the Authority reports back to Minister who makes the decision (s30, s32).		
71.	<i>Northern Territory Employment and Training Act</i>	<p>The Ministerial Advisory Board for Employment and Training (ss4,5)</p> <p>NT Employment and Training Authority (NTETA) (s18) or Delegate of Authority</p> <p>NTETA</p> <p>Appeals and Review Tribunal (s77)</p>	<p>Advisory</p> <p>Original</p> <p>Appellate</p> <p>Appellate</p>	<p>Board must give effect to directions from Minister (s16).</p> <p>NTETA is subject to the directions of the Minister (s25). Person may apply to the NTETA for registration of an organisation (s36 and s39), Authority may suspend or cancel registration (s41).</p> <p>Person may request NTETA to <u>review</u> decision of delegate of Authority (s42(1)), person aggrieved by a decision made under Part 6 (Apprenticeships) of the delegate of NTETA may <u>appeal</u> to the NTETA (s70(1)).</p> <p>Person may request the Tribunal to conduct an <u>inquiry</u> in relation to the decision made by the NTETA (s42(3)),</p>		<p>Minister</p> <p>NTETA</p> <p>SC</p>

		SC	Appellate	<p>a person or organisation aggrieved by a decision of the NTETA Part 6 may request the Tribunal to conduct an inquiry (s70(7)).</p> <p>A person may <u>appeal</u> to the SC against a decision of the Tribunal (s94).</p>	<p>may inform itself on any manner it thinks fit and is not bound to act in a formal matter and may act without regard to legal forms and technicalities (s85(2)), inquiry held in private (s85(4)), Tribunal must ensure that each party to the inquiry has a reasonable opportunity to present his or her case, to inspect all relevant documents and to make submissions to the Tribunal (s85(7)), each party may appear in person or be represented by another person (s85(8)).</p> <p>Appeal to SC only on a question of law (s94(1))</p>	
72.	<i>Northern Territory Licensing Commission Act</i>	<p>Director of Licensing (s22)</p> <p>NT Licensing Commission (s4)</p>	<p>Original</p> <p>Original/ Appellate</p>	<p>Director subject to the directions of the Commission (s23(3)).</p> <p>Person aggrieved by decision may apply to Commission for a <u>review</u> of that (s28).</p>	<p>-</p> <p>Commission must conduct a review in a manner that is fact and expeditious (s29).</p>	NTLC
73.	<i>Northern Territory Rail Safety Act</i>	Director of Rail Safety (s6)	Original	Various decisions under the Act, eg application to Director	-	LC

		Director or Rail Safety	Appellate	for accreditation (s12), variation of accreditation (s22), variation, suspension or cancellation of accreditation (s24). Person aggrieved by decision under the Act may request the Director to <u>review</u> the decision (s78(1)).	Director must conduct the review in a manner that is fair and expeditious and must give proper consideration to the issues (s78(3)).	
		LC	Appellate	Person may <u>appeal</u> against decision of Director to the LC (s79).	Appeal is by way of a hearing do novo (s79(2)).	
74.	<i>Northern Territory Tourist Commission Act</i>	NT Tourist Commission (s5)	Advisory	NTTC subject to the directions of the Minister (s19).	-	Minister
75.	<i>Northern Territory Treasury Corporation Act</i>	NT Treasury Corporation (s4)	Advisory	NTTC Subject to the directions of the Treasurer (s5(1)).	-	Treasurer
		Advisory Board (s8)	Advisory	Advisory Board's powers and functions determined by Treasurer (s8).	-	Treasurer
76.	<i>Notifiable Diseases Act</i>	Medical Officer/ Chief Health Officer	Original	Medical officer may give directions to an infected or suspect person (s11) or order of CHO under Act.		LC
		LC	Appellate	Person affected by directions	LC may confirm the notice,	

				under s11 may <u>appeal</u> to LC. A person may <u>apply</u> to LC to determine amount of compensation if an amount cannot be agreed between that person and the CHO (section 21(2)).	vary a direction or revoke notice or may make such orders as to costs as it thinks fit (s12(2)). LC shall hear and determine that matter in such manner and may make such orders as to costs as it thinks fit (section 21(3)).	
77.	<i>Ozone Protection Act</i>	Ozone Protection Consultative Committee (s7)	Consultative only	-	-	Minister
78.	<i>Parks and Wildlife Commission Act</i>	Parks and Wildlife Commission of the NT (s9)	Advisory / Management	Subject to the directions of the Minister (s22).	-	Minister
79.	<i>Pastoral Land Act</i>	Community Living Areas Tribunal (s93)	Original/ Appellate	CLA Tribunal to consider the <u>application</u> referred to it, to make recommendations to the Minister as to whether the land should be acquired by the Territory and granted or transferred in fee simple for the benefit of the applicant and such other functions as are imposed on it by or under this Act (s98(1)). <u>Apply</u> to the Minister for area land as a community living	CLA Tribunal shall not consider any matter other than that contained in written submissions or material before it (s106(1), the convening of meetings of the Tribunal and the procedures at those meetings are, subject to this Act, in the discretion of the Chairman (s106(2)).	SC PLAT
		Minister	Original/ Appellate			

				area (s101). Minister may refer application to Tribunal under s101, (s104 and 105). But Minister may accept or reject recommendations made by the Tribunal (s110).		
		SC	Appellate	An <u>appeal</u> lies to the SC against a decision of the Minister (under Part 6).	Appeal to SC only if the decision is made on error of Law or manifestly wrong (s112(1)).	
		Minister	Original	Minister/Valuer-General gives to a person a notice of a determination of the value of improvements on pastoral land, the person may lodge with, the Minister/Valuer-General an <u>objection</u> to the determination (s121), Minister may decide to forfeit lease (s40).		
		Valuer-General	Original			
		Pastoral Land Board (s11)	Original	Functions of Board set out in s29, eg to consider applications for the subdivision or consolidation of pastoral land and make recommendations to the Minister.		

		Pastoral Land Appeal Tribunal (s115)	Appellate	<p><u>Appeal</u> to the PLAT against certain decisions (s119):</p> <ul style="list-style-type: none"> • a decision or action of the Board; • a decision of the Minister of Valuer-General (s121); • a decision of the Minister under s40. 	Question of law determined by President only (s116 (1)) and Tribunal must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms, and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit (s116 (2)), powers and procedures of Tribunal (s117). Regs 25 to 27 of the Pastoral Land Regulations deals with appeals and reviews of the Tribunal. Appeal under s119 limited to the grounds stated in the objection (s119(2)).	
80.	<i>Pay-Roll Tax Act</i>	Commissioner of Taxes (s3) Commissioner	Original Appellate	<p>Various decisions, determinations and assessments under the Act.</p> <p>A person dissatisfied with any decision, determination or assessment made by the Commissioner under this Act may lodge with, the Commissioner an <u>objection</u></p>		SC

		SC	Appellate	(s34). A person may <u>appeal</u> to the SC if dissatisfied with a decision of the Commissioner (s35).	Appeal to SC limited to the grounds in the objection, and burden of proof on objector (s35(2)).	
81.	<i>Petroleum Act</i>	Minister	Original	Person may apply to the Minister for exploration permit (s16), apply for renewal of exploration permit (s23), apply for retention licence (s32), renewal of retention licence (s37), apply for production licence (s45), may apply to the Minister for the grant of an access authority (s57A) Minister may issue improvement notice (s89Q), Minister may issue prohibition notice (s89R).		
		Minister	Appellate	Minister does not have to comply with the recommendations of the Tribunal in certain circumstances (s57L(1B)).		
		Lands and Mining Tribunal	Original/ Appellate	Person may <u>refer</u> dispute about compensation to the Tribunal (s57P(4)) (original). Apply to Tribunal for		

		SC	Appellate	<p>appointment of a mediation (s57H(5)), application to Tribunal to have the objection to the prescribed petroleum act heard (s57J), Minister may refer <u>objection</u> to Tribunal (s57KA) (appellate).</p> <p>Person aggrieved by a decision of the Minister may <u>apply</u> to the SC for judicial review of the decision (s57M(1)), appeal to SC against decision of Minister to issue improvement notice or prohibition notice (s89U),</p> <p>A person may make an <u>application</u> to SC for the rectification of the Register (s103)</p>	To avoid doubt, judicial review does not extend to a review of the decision on its merits (s57M(2A))	
82.	<i>Petroleum (Submerged Lands) Act</i>	Minister	Original	Minister to keep a Register of titles (s75), Minister to enter particulars in Register (s76).		SC
		SC	Appellate	Person may make an <u>application</u> to SC to rectify the Register (s88).	SC may decide any question in connection with the rectification of the Register.	
		Minister	Original	Minister may determine a registration fee under s92		

		SC	Appellate	(s91(1)). <u>Appeal</u> to SC against a determination of Minister under s91.	SC may affirm, reverse or modify the determination of the Minister (s91(3)).	
83.	<i>Place Names Act</i>	Place Names Committee of the NT (s5)	Advisory	Reports to Minister (s9) and subject to Ministerial direction (s11).	-	Minister
84.	<i>Planning Act</i>	Development Consent Authority (s82) Lands and Mining Tribunal (referred to as the Appeals Tribunal) (s108)	Original Appellate	Decisions that may be appealed against detailed below. Subject to Ministerial direction (s85). <u>Appeal</u> against the following decisions (Part 9, Division 2): <ul style="list-style-type: none"> • refusal to issue permit under s46 (s111) • if DCA does not determine application under s46 (s112); • against refusal by DCA to extend period of permit under s59 (s113); • condition of permit or alteration of proposal under s46 (s114); • against refusal to refund or remit contribution under s73(3) (s115); • against variation or condition placed on permit 	- Part 9, Division 5 (determination by Tribunal) Appeal to be determined by Tribunal in absence of the parties and having regard only to the matters set out in s.129 (1), but discretion to call parties (s129 (2)).	Appeals Tribunal Minister SC

				under s57 (s116). But no appeal against a determination of DCA made in accordance with a direction of the Minister under s85 (s117). A person may <u>appeal</u> against a determination of the Tribunal to the SC only on a question of law (s133).		
		SC	Appellate			
85.	<i>Plant Diseases Control Act</i>	Chief Inspector of Plants and Diseases (s7) LC	Original Appellate	Notice to destroy specified plants (s20(1) and (2)). <u>Appeal</u> to LC against service of notice by Chief Inspector that he intends to destroy specified plants (s20(3)).	- -	LC
86.	<i>Plumbers & Drainers Licensing Act</i>	Plumbers & Drainers Licensing Board (s5) LC	Original Appellate	Powers and functions of Board (s16). Apply to LC for a <u>review</u> of the decision of the Board (s36).	- LC review merits of the decision, review to be by way of a hearing de novo (s36A), LC can confirm, vary or set aside and substitute its own decision (s37A).	LC
87.	<i>Police</i>	Commissioner of	Original	An <u>appeal</u> to the Promotions	Only ground on which an	PAB

<i>Administration Act</i>	Police (s7)	Appellate	Appeal Board may be made against the Commissioner's decision to promote a member under s16(1)(b) or (3), makes a decision under s17(b), makes an appointment contrary to s18(5) or refuses to promote or transfer a member under s166AA(3) (s92).	appeal may be made is that the appellant has superior merit to the member promoted or person appointed (s92(3)). Procedures of appeal are prescribed or in the discretion of the Board (s92(4)), neither party may be represented by a legal practitioner (s92(5)). Regs 13, 14 and 17 deals with procedure of PAB.	SC DAB IAB			
	Promotions Appeal Board (s92)							
	Police Arbitral Tribunal (s35)					Appellate	The Commissioner and the Police Association may request the Tribunal to conduct a <u>hearing</u> and make a decision in relation to all or any aspects of a matter to which a request under section 40(1) relates (s40C).	A matter before the Tribunal is to be resolved by a decision of the majority of the members of the Tribunal and procedures to be adopted at the hearings shall be determined by the Tribunal (s38).
	SC					Appellate	Commissioner of PA may with leave of SC, <u>appeal</u> to SC only on a question of law (s50A).	
	Disciplinary Appeal Board (s94)	Appellate	A member may <u>appeal</u> to either the DAB or IAB against the (s94):	Appeal by way of review of material before the Commissioner but may be				

		Inability Appeal Board (s94)	Appellate	<ul style="list-style-type: none"> • action of the Commissioner under section 78; • the action under section 84E(3) by a member; • action under section 81(2)(d) or 84D by the Commissioner or a prescribed member; • direction, action or intention under section 89 by or of the Commissioner; • decision or opinion as a result of which such an action was taken, direction given or intention made. 	converted into appeal de novo (s95(2) & (3)). The decision of the Appeal Board is capable of being reviewed by a court (s95(5)). Procedure for an appeal or a preliminary hearing is within the discretion of the Appeal Board 95(6) and is conducted with as little formality and technicality, and with as much expedition, as the requirements and a proper consideration of the matter permit (95(7)). Regs 15, 16 and 17 deals with procedure of appeals to DAB and IAB.	
88	<i>Power and Water Corporation Act</i>	Power and Water Corporation (s4)		PAWC previously subject to directions of Minister section 16 now repealed).	-	Corporation
89.	<i>Prisons (Correctional Services) Act</i>	Prison Officer (s8)	Original	Officers subject to the directions of the Director of Correctional Services (s8(2)). Prison officer may bring a charge of prison misconduct (s31(1)).		Director
		Office in Charge of Prison (OIC)	Original	OIC hears and determines a charge of prison misconduct	Hearing in accordance with Regulations (s32(1)) (Reg	

		Director of Correctional Services (s6)	Appellate	<p>(s32), OIC may impose penalties for prison misconduct (s33).</p> <p>Prisoner may <u>appeal</u> to Director against imposition by OIC of penalty (s35(1)).</p> <p>No appeal from order of Director made under section 35(4) (s34(5)).</p>	<p>4). OIC in conducting a hearing is not bound by the rules of evidence but may inform himself or herself on any matter in such manner as he or she thinks fit (s32(3)), and be heard and determined in the presence of the prisoner (s32(4)). OIC may appoint a person to assist/represent prisoner at hearing (s32(5)) but cannot be represented by a legal practitioner (s32(7)), prisoner may give evidence, cross-examine and call witnesses (s32(9)).</p> <p>Appeal heard and determined in accordance with Regulations (s35(2)) (Reg8), prisoner cannot be represented by legal practitioner (s35(2A)), Director may make certain orders (s35(4)), appeal by way of <u>review</u> (Reg 8(4)).</p>	
90.	<i>Private Hospitals and Nursing Homes Act</i>	Chief Health Officer (CHO) (s3)	Original	Various decisions, such as application to CHO for licence to conduct a private hospital or nursing home		LC

					<i>Court Act</i> ; or in the absence of relevant rules – directions of the Court, LC not bound by rules of evidence and must observe the rules of natural justice (s33).	
92.	<i>Procurement Act</i>	Procurement Review Board (s6)		Functions of PRB set out in Reg6(7). PRB under control of Minister who may issue procurement directions (s11).	-	Minister
93.	<i>Prostitution Regulation Act</i>	NT Licensing Commission (NTLC) (s3)	Original	Various decisions as detailed below.	-	Tribunal
		Commissioner of Police	Original	Decision of Commissioner to refuse to issue a certificate or cancel a certificate (s9).	-	SC
		Escort Agency Licensing Tribunal	Appellate	Tribunal considers appeals against decisions of NTLC and Commissioner (s33). The following decisions of the NTLC and who may appeal (s34): Minister may appeal against a decision to grant or renew a licence, an applicant may appeal against decision to refuse to grant or renew licence, the Minister/applicant may appeal as to conditions	Regulations may prescribe procedure to be followed in an appeal (s36(4)). Appeal is to be by way of rehearing “unless the Tribunal otherwise decides” (s36(8)), powers of Tribunal (s37). Procedures generally (s38), Commission and Tribunal to act fairly, must and according to equity and good conscience, without regard to technicalities and	

				<p>or restrictions imposed on licence, a licensee/Minister may appeal the removal or variation of a condition, restriction, decision to cancel licence, a licensee/Minister against a decision, or any power conferred by s32. Tribunal considers appeal against the decision of the Commissioner to refuse to issue a certificate or cancelled a certificate (s34(2)).</p> <p><u>Appeal</u> to the SC from the Tribunal on a question of law (s40).</p>	<p>legal forms, not required to conduct matters formally, not bound by any rules or practice as to evidence, but may each inform itself in relation to any matter in such manner as it thinks fit.</p>	
94.	<i>Public Health Act</i>	Chief Health Officer (s5)	Appellate	CHO subject to direction and control by Minister (s5(2)).	-	Minister

95.	<i>Public Sector Employment and Management Act</i>	Chief Executive Officer of Agency (s3, 19)	Original	Various decisions of CEO may be appealed against, refer to appeals to Commissioner.		
		Promotion Appeals Board (s56)	Appellate	Employee aggrieved by the selection of another employee may appeal to a Promotion Appeals Board (s55(1)).	Procedures for appeal are as prescribed or, if no procedure in discretion of PAB (s55(3)). Regs 10 to 12 deals with procedures on appeal to PAB.	PAB
		Inability Appeal Board or Disciplinary Appeal Board (s57(2))	Appellate	An employee aggrieved by – a) the intention of the CEO to take action under s46(1); b) the action of the CEO under s50; or c) the action of the CEO under s51(10)(a) may appeal to IAB or DAB.	Appeal by way of <u>review</u> of evidence but with discretion to admit additional evidence. (s58(2)), procedure subject to Act and Regulations, within discretion of Appeal Boards (s58(3)). Regs 13 to 18 deals with procedures on appeal to IAB or DAB.	IAB or DAB
		Commissioner for Public Employment (s8)	Appellate	Employee may request the Commissioner to <u>review</u> the intention of the CEO to terminate the employee's employment on probation, or where an employee is aggrieved by his/her treatment in the Public Sector (s59(1)).	Commissioner has same powers and obligations to deal with request for review as Appeal Boards in s58 (s59(4)).	Commissioner

96.	<i>Racing and Betting Act</i>	Club (s4)	Original		-	
		Racing Commission (s6)	Original	Application to Commission to grant or renew a licence or permit, eg licence for racing venue (s37), registration of trotting clubs (s53) etc. Race Club may request	Commission subject to the direction of Minister (s19)	Minister
		Racing Commission	Appellate	Commission to <u>review</u> the refusal of a principal club to register it or to renew its registration, or the revocation by a principal club of its registration (s46(5)).	Decision of Commission is final (s46(7)).	
		Minister	Appellate	Person may request the Minister to <u>review</u> decision by Commission to refuse to grant a renewal of licence (s25). Decision of Minister is <u>final</u> .	Minister to consider all grounds in request and all information furnished in support of application (s25(3))	Appeals Committee
		Stewards and Officials of Clubs (s145D)	Original	Person or owner of animal aggrieved by decision of steward or official of club <u>appeal</u> from decision to appropriate Appeals Committee (s145D(1)(a)).	.	
	Appeals Committee (s145B)	Appellate	Determination of Appeals	Procedure on appeal to Appeal Committee is determined by the Appeals Committee and may deal	Tribunal	

		Racing Appeals Tribunal (s145F)	Appellate	<p>Committee is final and conclusive (s145E(3)).</p> <p>In certain cases as specified in s145D(1)(b) person or owner of animal aggrieved by decision of steward of official of club may <u>appeal</u> to the Tribunal.</p> <p>Appeal from decision of Club or Commission to the Tribunal (s145D(2)).</p>	<p>with status of decision pending appeal, representation of parties, how evidence is to be heard/received or calling of witnesses (s145E).</p> <p>Hearing of appeals to Tribunal in accordance with procedures determined by the Tribunal, hearing shall be open to the public (s145S), appearance before Tribunal (s145Y), evidence (s145Z), power to call witnesses (s145ZA), legal representation (s145ZB), costs (s145ZD), powers of Tribunal (s145ZE).</p> <p>Determination of Tribunal is final and conclusive (s145ZF).</p>	
97.	<i>Radiographers Act</i>	Radiographers Registration Board (s4)	Original	Board grants registration to person to be a Radiographer (s12), Board may suspend or cancel registration (s14) or restore the registration if the registration is cancelled (s15).	-	LC

		LC	Appellate	<u>Appeal</u> to LC against decision of Radiographers Board to refuse to grant registration or to suspend or cancel registration or refuses to restore a registration that was cancelled (s16(1)).	An appeal shall be subject to such directions at LC may determine (s16(2)). LC may direct the Board to grant the appellant registration, quash the decision appealed against and substitute another decision that the Board could have made or restore the registration that was cancelled (s16(5)). LC may order that one party to an appeal under this section pay to the other such costs as it thinks fit (s16(6)).	
98.	<i>Referendums Act</i>	Chief Electoral Officer (s3) Referendum Tribunal (s61)	Original	- Tribunal has jurisdiction to <u>hear</u> and <u>determine</u> a petition (s62(2)).	- Hearings of Tribunal is to be open to the public and not bound by the rules of evidence (s65), powers of Tribunal (s66), representation at hearing (s74), costs (s75), rules of Tribunal (s76). No appeal from a decision of the Tribunal (s72).	Tribunal
99.	<i>Registration of Interests in Motor Vehicle and Other</i>	Registrar of Interests in Goods (s4)	Original	A person may apply to the Registrar for an order awarding compensation for		LC

	<i>Goods Act</i>			<p>loss where that persons sustains a loss, where a notice was not in force under s13(1), and the creditor did not, before sustaining the loss, apply for registration of the registrable interest (s16). A creditor may apply to the Registrar for an order awarding compensation where there has been (s17):</p> <ul style="list-style-type: none"> • registration of a registrable interest in prescribed goods may be made to the Registrar (s8); or • issue of a certificate (s12) • as a result of lack of notice, the purchase of the goods, causes the creditor under the registrable interest to sustain a loss (s13). 		
		LC	Appellate	<u>Appeal</u> to LC against decision of Registrar of Interests in Goods made under s16 or 17 (s19).	LC may make an order which the Registrar could have made or dismiss the appeal (s19(2)).	
100.	<i>Residential Tenancies Act</i>	Commissioner of Tenancies (s13)	Original	Commissioner may make various determinations, decisions or orders under the		LC or SC

				Act, eg determine a condition report dispute (s27), declare rent excessive (s42), order tenant to let landlord enter premises (s77), make order for possession (s104) etc.		
		LC	Appellate	Landlord or tenant may <u>appeal</u> to LC against an order, determination or decision of Commissioner of Tenancies (s150).	Appeal to LC is to be an appeal de novo, but the court may rehear evidence taken before the Commissioner or take further evidence (s150(2)). In an appeal, the court is not bound by the rules of evidence and may inform itself in any manner it thinks fit (s150(3)). On appeal, the court may do one or more of the following (s150(3)): (a) confirm, vary or quash the order, determination or decision of the Commissioner; (b) make an order that should have been made in the first instance by the Commissioner; (c) make incidental and ancillary orders.	
		SC	Appellate	SC may hear an appeal against a decision of the LC (s150(7)).		

101.	<i>Road Safety Council Act</i>	Road Safety Council (s4)	Advisory	Advisory function to Minister (s12).	-	Minister
102.	<i>Soil Conservation and Land Utilisation Act</i>	Soil Conservation Advisory Council (s9A) Commissioner for Soil Conservation (s4) SC	Advisory Original Appellate	- No appeal but where Commissioner deposits a Memorial with Registrar-General <u>application</u> can be made to SC to remove Memorial (s16A, 16A(7)).	- -	- Commissioner SC
103.	<i>Special Purpose Leases Act</i>	Minister (s4) Valuer-General (s3) Land and Valuation Tribunal	Original Original Appellate	The decision of the Minister or the Valuer-General upon an objection to a re-appraisal or determination referred to in section 12(1) or decision of the Minister may decide to disallow an objection to the forfeiture of a lease under section 23. Objector request the Minister or Valuer-General to refer any of the above decisions to the Tribunal for <u>review</u> (s14(1)).	 Procedure of Tribunal within discretion of the Tribunal, not bound to act in a formal manner and is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks fit and shall act	Tribunal

					without regard to technicalities and legal forms (s27 VLA), representation of parties (s28 VLA) and decisions of Tribunal (s29) (s15(4)) (imparting s27 to 29 of <i>Valuation of Land Act</i>).	
104.	<i>Stock (Control of Hormonal Growth and Promotants) Act</i>	Inspector LC	Original Appellate	Inspector may seize and detain prescribed substance, stock, carcass, or ingredient, packaging or related matter (s9). <u>Appeal</u> to LC against seizure detention by inspector (s9(3)).	- LC may makes such an order as it thinks fit (s9(3)).	LC
105.	<i>Stock Diseases Act</i>	Chief Inspector of Stock (s7) Valuation Panel Person with knowledge /experience	Original Appellate	Chief Inspector is “subject to the directions and control of the Minister” (s9). Application for compensation made under s34A or 34AB is to be <u>determined</u> by a Valuation Panel appointed by the Chief Inspector (s33). If a majority of members of the panel fail to agree on the determination of an	- The procedure for determining the application is to be as agreed by the members of the valuation panel (s33(4)), decision of to be by a majority of the members (33(5)). Same procedures for person appointed as for Valuation Panel (s34(4)).	Minister Person appointed by Minister/

		appointed by Chief Inspector		application for compensation (s33), Chief Inspector appoint another person to determine application (s34).		Applicant or NT Cattlemen's Association
		Person appointed by Minister/Applicant or NT Cattlemen's Association	Appellate	The Minister or applicant may request the Chief Inspector to select a person to conduct the <u>review</u> the determination for compensation under s33 or 34, or if Minister or applicant unable to agree, NT Cattlemen's Association must appoint a person to conduct the review (s34AA).	The person appointed to review the determination may confirm or vary the determination and that confirmation or variation is a final and conclusive determination of the application for compensation (s34AA(6)).	
106.	<i>Strehlow Research Centre Act</i>	Strehlow Centre Board (s4)		Boards functions (s6), Board subject to control and direction of the Minister (s8).	-	Minister
107.	<i>Superannuation Act</i>	Commissioner of Superannuation (s4)	Original	An eligible employee/person entitled under the Scheme may apply to Commissioner for the payment of benefit to him/her (s46(1)).	Commissioner to make a decision on the application and by notice in writing advise the applicant of that decision (s46(3)).	Board
		Commissioner of Superannuation	Appellate	Person must request Commissioner to <u>reconsider</u> the decision under 46(5) before they can appeal to the Board under s47(1) (s47(3)).		SC
		Superannuation	Appellate	Function of Board to <u>review</u>		

		Review Board (s9)		any decision or action of the Commissioner or Commissioner's failure to make a decision or to act (s10). Person may <u>appeal</u> against a decision of the Commissioner under s46(3) or (5) (s47).	The Board in determining an application under s47(1) may inform itself of any matter in such manner as it thinks fit, either party may appear before the Board in person or, with the leave of the Board, may be represented by any person, Board may determine an application as it considers proper in the circumstances, Board may award costs, Board must give reasons in writing (s48).	
		SC	Appellate	<u>Appeal</u> to SC on point of law only.		
108.	<i>Taxation (Administration) Act</i>	Commissioner of Taxes (s5) and Registrar Commissioner	Original Appellate	Make various tax or duty assessments under the Act eg. s81. Person aggrieved by assessment under the Act may <u>object</u> to the Commissioner (s100).		
		SC	Appellate	Person dissatisfied with a decision of the Commissioner may <u>appeal</u> to the SC (s101).	Appeal limited to the grounds in the objection (s101(2)(a), burden of proof lies on objector (s101(2)(b)). Chief Judge may make rules	SC

					of practice and procedure for appeals under this part (s105).	
109.	<i>Territory Insurance Office Act</i>	Board of the Territory Insurance Office (s9)		Board subject to the written directions of the Minister (s7).	-	Minister
	<i>Territory Parks and Wildlife Conservation Act</i>	Director of Parks and Wildlife (appointed under s4 <i>Parks and Wildlife Commission Act</i>) LC	Original Appellate	Various decisions under Part IV, eg Director may grant or refuse to grant a permit (s56), impose condition on permit (s57), vary a term or condition of permit (s58), cancel permit (s59). Person aggrieved by a decision under Part IV (Animals and Plants) may <u>appeal</u> to LC (s64).	- Appeal to LC is to be by way of rehearing (s64(2)). LC may confirm, vary decision or remit the matter to the person who made the decision for re-consideration (s64(3)).	LC
110.	<i>Therapeutic Goods and Cosmetics Act</i>	Minister LC	Original Appellate	Various decisions such as grant, renew or vary licence or permit (s16, 17, 18) etc. <u>Appeal</u> to LC against decision of Minister to (s54): • refuse to grant, renew or vary licence or permit to manufacture or sell	 LC shall conduct a hearing into the grounds of the decision, has all the powers, duties and functions of the Minister in relation to the matter the subject of the	LC

				therapeutic goods; <ul style="list-style-type: none"> • grant, renew or vary licence or permit subject to conditions; • cancel or suspend license; • publication or service of notice under s39, 41(1) or 61(1) or report under s40(3). 	appeal, determine the appeal by confirming, varying, in such manner as it thinks fit, substituting its own decision for or disallowing the decision (s56).	
111.	<i>Tobacco Control Act</i>	Director of Licensing NT Licensing Commission	Original Appellate	Various decisions under Part 4 such as the grant or refusal of a tobacco retail licence (s29). A decision by the Director under (Part 4) is <u>reviewable</u> by the NT Licensing Commission under Part 4 of the <i>Northern Territory Licensing Commission Act</i> (s41).	The Commission must conduct a review in a manner which is fact and expeditious, the Commission may affirm, revoke or vary, or substitute a decision and must specify reasons for its decision (s29 <i>Northern Territory Licensing Commission Act</i>).	Commission
112.	<i>Totalisator Licensing and Regulation Act</i>	NT Licensing Commission who is "the Authority" (s5)	Original	A decision by the Authority under the Act is <u>reviewable</u> by the NT Licensing Commission under Part 4 of the <i>Northern Territory Licensing Commission Act</i> (s11).		LC SC

		Authority	Appellate	<p>Person makes a complaint under s69 and is not satisfied with decision of Authority may request the Authority to conduct a <u>hearing</u> (s82). Where the authority gives a direction under s71 to a licensee or decides to suspend or vary a licence under section 27 or 72 or to refuse to ratify a variation under section 28A(8), the licensee may request the authority to conduct a <u>hearing</u> (s83), application by Director to Authority for order cancelling licence (s73), consideration by Authority of application (s74).</p>	<p>Authority must conduct hearing in manner that is fair and expeditious and without regard to technicalities and legal forms, not bound by the rules of evidence but may inform itself on any matter in the manner it considers appropriate but must give proper consideration to the issues, subject to this Act and the Regulations, the procedure at a hearing is as the Authority determines (s86).</p>	
		LC	Appellate	<p>Person aggrieved by outcome of hearing may <u>appeal</u> to LC on a question of law only (s88).</p>	<p>Appeal proceedings may be closed to public (s89), LC has power to affirm, vary or quash or remit matter to the Authority for re-consideration or make orders as to costs (s90).</p>	
		Minister	Original	<p>Declarations by Minister (s114), Minister require</p>	<p>Review proceedings in SC may be closed (s121), SC</p>	

		SC	Appellate	<p>disposal and forfeiture of shares comprising prohibited shareholding interest (s116).</p> <p>A person may apply to SC to <u>review</u> the declaration or requirement to dispose of voting shares the subject of the notice (s120).</p>	has power to affirm, vary or quash or remit matter to Minister for re-consideration or make orders as to costs (122).	
113.	<i>Trade Measurement Act and Trade Measurement Administration Act</i>	<p>Licensing Authority</p> <p>("Licensing Authority" is defined by reference to the <i>Trade Measurement Administration Act</i> as the Commissioner of Consumer Affairs (s4))</p> <p>LC</p>	<p>Original</p> <p>Appellate</p>	<p>Various decisions as set out below.</p> <p><u>Appeal</u> to Appeals Tribunal (LC) against following decisions of licensing authority to (s59):</p> <ul style="list-style-type: none"> • refuse the person's application for a licence; • make an order under s55 in respect of the person; • impose or vary a condition to which the person's licence is to be subject; • reprimand the person as a licensee; • suspend the person's licence; or • cancel the person's licence and disqualify the former licensee from 	<p>Determination of appeals under Trade Measurement Act (set out in s15 <i>Trade Measurement Administration Act</i>):</p> <p>(a) in the case of an appeal against a decision to refuse an application for a licence – make any decision that the licensing authority could have made on the application;</p> <p>(b) in the case of an appeal against a decision to make an order under section 55 of that Act (order preventing employment of certain persons) amend the order;</p> <p>(c) in the case of an appeal against a decision to impose or vary a condition of a licence – impose a different</p>	LC

				holding a licence. The appeals tribunal is the LC (s14).	condition or vary the condition differently; and (d) in the case of an appeal against a decision to take disciplinary action against a licensee – remit the matter to the licensing authority and direct it to take specified disciplinary action under section 58(1) of that Act.	
114.	<i>Traffic Act</i>	Member of Police force LC SC	Original Appellate Appellate	If person charged with an immediate suspension offence Police may give notice to person informing person that he/she is disqualified from driving and request person to surrender their licence (s20A(2)), person may <u>appeal</u> to LC against notice (s20A(9)). <u>Appeal</u> to SC from the conviction, order or finding in respect of the offence under the Act (s43).	In determining the appeal the LC shall hear any relevant evidence tendered by the applicant and by or on behalf of the Registrar and any evidence of a medical practitioner required by the court (s20A(11)). LC may make an order confirming the notice or cancelling the notice (s20A(12)). Order of LC final and conclusive (s20A(14)).	LC SC
115.	<i>Utilities Commission Act</i>	Utilities Commission (s5)	Original	Various determinations, decisions under the Act eg determinations by Utilities Commission (s20).		SC

		Utilities Commission	Appellate	Application to Utilities Commission to <u>review</u> a determination of the Utilities Commission, review of decision to make requirement under Part 5, or review of decision to disclose information under Part 5 (s27(1)).	The Utilities Commission may confirm, vary or substitute the determination or decision (s27(9)), must give written notice and the reasons for decision (s27(10)).	
		SC	Appellate	<u>Appeal</u> to SC against the decision of the Utilities Commission on the review, but only on grounds of bias or misinterpretation of facts in a material respect (s28(2)).	On appeal SC is only to consider the information on which the Utilities Commission based its decision (s28(8)) and SC may confirm the decision or return the matter back to the Utilities Commission with directions (s28(9)).	
116.	<i>Valuation of Land Act</i>	Valuer-General (s5)	Original	Valuer-General cause notice of the valuation or variation to be given to the owner of the land (s16).		
		Valuer-General	Appellate	Person may lodge with the Valuer-General an <u>objection</u> to valuation (s18).		
		Valuation Board of Review (s20G)	Appellate	Person may lodge an <u>objection</u> to the Valuer-	Board may disallow or allow the objection wholly or in	LVRT

		Land and Valuation Review Tribunal (s21).	Appellate	<p>General's decision with Chairman of Board (s20A(2) and s20G).</p> <p>Objector dissatisfied with decision of Board request Board to refer the decision to the Tribunal for <u>review</u> (s25(1)).</p>	<p>part, and must give the objector notice in writing of its decision and has all the powers of the Valuer-General (s20H). Board not bound by the rule of evidence and may inform itself on any matter in such manner as it thinks fit; to act in a formal manner and may act without regard to legal forms and technicalities, parties may be represented, Board cannot make an order as to costs (s20J).</p> <p>Review limited to grounds set out in objection (s25), procedure of hearing within the discretion of the Tribunal, Tribunal is not bound to act in a formal manner and is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks fit and must act without regard to technicalities and legal forms (s27). Parties may be represented (s28).</p>	
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					Decision not challengeable or subject to prerogative writs (s31).	
117.	<i>Veterinarians Act</i>	Veterinary Board of the NT (s4) LC	Original Appellate	Appeal to LC against following decisions of Veterinary Board (s36): <ul style="list-style-type: none"> • to refuse registration (s13); • to impose conditions on registration (s18); or • hearing held under Part 5, appeal against a finding or requirement of, or action effected by the notice (s33). 	Appeal to LC by way of rehearing unless the LC otherwise directs (s36(3)). Powers of the LC on appeal set out in s37.	LC
118.	<i>Waste Management and Pollution Control Act</i>	Delegate of the Minister, CEO or Administering Agency Chief Executive Officer Chief Executive Officer Minister or Review Panel established by the Minister (s111(2))	Original Appellate Original Appellate	Person may apply to the CEO for <u>review</u> under s108 of a decision made by a delegate of the Minister, CEO or Administering Agency (s110(1)). Person may apply to Minister or Review Panel established by the Minister for <u>review</u> of a decision under s108 made by CEO personally, or review under s109 by made by the CEO personally (s110(2)).	- Review is to be by way of hearing do novo (s111(3)), practices and procedures of review to be determined by person/panel reviewing decision (s111(4)), may confirm, vary or set aside and make new decision	Minister/ Review Panel

					(s111(5)).	
119.	Water Act	<p>Controller of Water Resources (s18)</p> <p>Water Advisory Committee (s23)</p> <p>Review Panel (s24)</p> <p>Minister</p>	<p>Original</p> <p>Advisory</p> <p>Appellate/ Advisory</p> <p>Appellate</p>	<p>Various decisions for example power of Controller to enter land and take action (s20).</p> <p>Committee to <u>advise</u> Controller (s23(1B)).</p> <p>Panel to <u>advise</u> the Minister or the Controller (s24(1)), advise Minister in review of decision of Controller (s30).</p> <p>Person aggrieved by an action or decision under the Act may apply to the Minister for <u>review</u> of the matter (s30), does not apply to a decision made by the Controller under s93(3) or by the Minister under s5(6).</p>	-	<p>Minister</p> <p>Where there is a review of a decision of the Controller, Minister may uphold, substitute the decision or refer the matter back to the Controller (s30(3)), or in any other case <u>refer</u> the matter to the Review Panel requesting the Panel to advise the Minister. Powers of Review Panel (s31).</p>
120.	<i>Water Supply and Sewerage Services Act</i>	Utilities Commission (s6)	Original	Application to Commission for license in water supply and sewerage services (s15), variation of licence (s20), transfer of licence (s21) or suspension or cancellation of	-	<p>SC or Commission</p>

		Utilities Commission	Appellate	<p>licence (s24).</p> <p>Person may apply to Commission for a <u>review</u> of a decision of the Commission to (s29(1)):</p> <ul style="list-style-type: none"> • refuse the application for grant or variation of the conditions for licence or for transfer of licence; or • suspend or cancel the licensee's licence or to vary the conditions of the licence. 	Commission may confirm, amend or substitute the decision (s29(5)) and must give reasons for decision in writing (s29(6)).	
		SC	Appellate	<p><u>Appeal</u> to SC against the review of the decision by the Commission only on grounds of bias or misinterpretation of facts in a material respect (s30).</p>	SC may either confirm or return the matter to original decision-maker with directions (s30(5)). Minister has power to intervene in an appeal or review of decision (s31).	
121.	<i>Weeds Management Act</i>	Minister / Weed Management Officer (s24) / Authorised Person (s25) Weed Advisory Committee (s16)	Original Advisory	Minister may make various declarations under the Act eg s21, 22(4), 23, and require notifications s29, person may apply to Minister for permit to use declared weeds (s30) etc. Powers of Officers (s28),	-	LC

		LC	Appellate	<p>Officer may refuse to grant an access permit (s22(3)). Authorised Persons may exercise powers specified in his/her appointment (s25(2)).</p> <p><u>Appeal</u> to LC against decision of Minister, an Officer or Authorised Person (s36).</p>	<p>Appeal by way of hearing de novo (s36(2)). LC may confirm, set aside or substitute any decision the Minister, Officer or Authorised Person could have made (s36(3)).</p>	
122.	<i>Work Health Act</i>	<p>Work Health Officer (s35)</p> <p>Work Health Authority (s6)</p> <p>Work Health Court</p>	<p>Original</p> <p>Original</p> <p>Appellate</p>	<p>Investigation by Officer under s37.</p> <p><u>Appeal</u> to WHC against the action or continued possession by Authority of that plant, substance or thing (s37(4)).</p> <p><u>Appeal</u> to WHC against an improvement or prohibition notice issued (s43), against decision to cancel or reduce compensation (s69(b)(iii)).</p>	-	<p>WHC or SC</p>

		SC	Appellate	<p>A person who has a right to apply to the Court for a ruling or a <u>right of appeal</u>, or a <u>right of review</u>, under this Act (other than Part V) may apply to the WHC for the <u>ruling</u> or a <u>determination</u> of the appeal or matter (s111).</p> <p>Appeal against the decision or determination on a question of law to the SC (s116).</p>	<p>The WHC shall consider and determine all applications and appeals referred to in section 111(1) in such manner as it thinks fit (s112).</p>	
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KEY

- s** section (i.e. s46)
- Reg** Regulation
- CSJ** Court of Summary Jurisdiction
- LC** Local Court
- SC** Supreme Court

Organisational Structure as at 30 June 2003

