



**THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA**

Project No 26 – Part I

**Review Of Administrative Decisions
Appeals**

REPORT

JANUARY 1982

The Law Reform Commission of Western Australia was established by the *Law Reform Commission Act 1972-1978*.

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To: **THE HON I G MEDCALF, QC, MLC**
ATTORNEY GENERAL

In accordance with the provisions of section 11(3)(b) of the *Law Reform Commission Act 1972-1978*, I am pleased to present the Commission's report on appeals from administrative decisions.

D K Malcolm, QC
Chairman

15 January 1982

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CHAPTER 1

INTRODUCTION

1. TERMS OF REFERENCE

1.1 The Commission was asked to recommend the principles and procedures which should apply in Western Australia in relation to the review of administrative decisions both by way of appeal and by way of the supervisory jurisdiction of the Supreme Court.

2. THE COMMISSION'S APPROACH

1.2 The Commission decided to deal with the matters raised by the terms of reference in parts. The first part of the reference, the subject of this Report, deals with the principles and procedures which should apply in relation to existing administrative appeals.¹ The second part of the project deals with the review of administrative decisions by way of the supervisory jurisdiction of the Supreme Court. A working paper on this second part has been published.² As a third part of the project, the Commission intends to consider the principles which should govern the question whether a right of appeal should be created from various decisions not presently subject to appeal.

1.3 Rights of appeal created by subordinate or delegated legislation are not specifically dealt with in this Report.³ A review of such rights could be carried out by an ongoing review body, similar to the Commonwealth Administrative Review Council, the establishment of which is recommended by this Commission later in this Report.⁴

The Commission has no reason to doubt that the proposals made in this Report for rationalising existing statutory rights of appeal would apply also to rights of appeal created by subordinate legislation, and to any further rights of appeal from administrative decisions created in the future.

¹ A working paper on this part was issued in November 1978: para 1.4 below.

² *The Judicial Review of Administrative Decisions* (June 1981).

³ For example, the Mental Health Act Appeal Board set up under reg 48 of the *Mental Health (Administration) Regulations 1965-1977* hears appeals in respect of matters concerning staff of the Mental Health Services other than those employed under the *Public Service Act 1978-1980*.

⁴ Paras 7.1 to 7.4 below.

1.4 In November 1978 the Commission published a Survey of those Western Australian statutes in force as at 31 December 1977 which made provision for an appeal from an administrative decision.⁵

The Survey was accompanied by a Working Paper which discussed various methods of rationalising the existing law relating to appeals from administrative decisions. The names of those who commented on the Working Paper are listed in Appendix I. The Commission also discussed certain matters raised by the Working Paper with Professor H W R Wade, Master of Gonville and Caius College, Cambridge, and Professor D C Pearce, of the Australian National University, during their recent visits to Perth.

3. APPEALS

1.5 The right to appeal to an appellate body⁶ against an administrative decision is a right created or authorised to be created by a statute. A right of appeal involves a review of the merits of a decision. In each case in which a right of appeal is created the ambit of the appeal and the powers of the appellate body depend on the terms of the legislation creating the right. In some cases, the appellate body may deal with the matter afresh and substitute its own decision for that of the original decision-maker.⁷ In other cases, the appellate body may only be able to reverse or vary the original decision if the appellant satisfies the appellate body that the original decision was wrong, either in law or in fact or both.⁸ The statute may make provision as to the onus and standard of proof and other matters including the criteria to be taken into account by the appellate body and the introduction of fresh or additional evidence.⁹

4. OTHER MEANS OF REVIEW

(a) Judicial review by the Supreme Court

1.6 The right to appeal from an administrative decision may be contrasted with the power of the Supreme Court to review administrative decisions. This form of review, referred to as

⁵ Some of these appeal provisions have been subsequently amended, and further rights of appeal have been created. Appendices II-V of this Report take account of these changes.

⁶ The appellate bodies in Western Australia include the Supreme and District Courts and other courts, Ministers, public servants such as the Commissioner of Public Health, and specialist tribunals such as the Land Valuation Tribunal.

⁷ For example, the *Optometrists Act 1940-1978*, s 31.

⁸ For example, the *Inquiry Agents Licensing Act 1954-1964*, s 4 and the *Justices Act 1902-1980*, s 205.

⁹ *Rules of the Supreme Court 1971-1981*, Order 65 rule 10(2).

judicial review, is concerned only with whether or not a decision was made lawfully and not with the merits thereof. Unlike the power of an appellate body to hear appeals, the power of the Supreme Court to review a decision is an inherent power and is not created by statute. The Supreme Court's power is exercised by means of a number of remedies including the prerogative writs of certiorari, prohibition and mandamus and the remedies of injunction and declaration. On such a review, the Supreme Court does not have the power to substitute its decision for that of the decision-maker. Generally, the Court only has the power to quash the decision, in which case, if the decision-maker must re-determine the matter, he must do so in accordance with the law. The Court also has power to compel a decision-maker to perform a public duty according to law.

(b) The Parliamentary Commissioner for Administrative Investigations

1.7 Another form of review is by way of complaint to the Parliamentary Commissioner for Administrative Investigations (commonly known as the "Ombudsman").¹⁰ The Parliamentary Commissioner has power in certain circumstances to investigate allegations of maladministration. The Commissioner does not have power to substitute his own decision for the decision he is investigating, his sanction being his power ultimately to report his opinion to Parliament.¹¹ Consequently, the procedure should be distinguished from a true appeal. Though not a true appeal, the decision in question may in fact be altered or reversed in light of the Commissioner's recommendations.

(c) Ministerial control

1.8 Where a Minister has control over decisions made by a department or statutory instrumentality it may be possible to have the Minister review such a decision. Not all decisions made by departments or instrumentalities are under the control of an individual Minister. Nevertheless, in those cases in which it does operate, this is a significant means of review.

¹⁰ The office of Parliamentary Commissioner was created under the *Parliamentary Commissioner Act 1971-1976*.

¹¹ *Parliamentary Commissioner Act 1971-1976*, s 25.

CHAPTER 2

THE EXISTING APPELLATE ARRANGEMENTS AND THEIR DEFECTS

1. SUMMARY OF THE EXISTING APPELLATE ARRANGEMENTS

2.1 Part I of the Survey published in 1978 contains an account of the constitution and functions of the administrative decision-makers from whose decision there was a right of appeal created by a statute enacted prior to 31 December 1977. Part I also contains an account of the nature and extent of each appeal.

2.2 Since the Survey was prepared there have been changes in the provisions relating to appeals, most notably in the case of rating matters. The matters about which decisions may be made and which are presently subject to a right of appeal in Western Australia may be classified under the following headings -

1. Matters affecting public servants;¹
2. Rates and taxes;
3. Licences, authorities, permits or duties concerning -
 - (a) occupations and commercial activities;
 - (b) premises;
 - (c) the manufacture and control of foodstuffs;
 - (d) (i) land and its uses;
(ii) conservation and the environment;
 - (e) other matters;
4. Medical;
5. Compensation;
6. Industrial;
7. Miscellaneous.

¹ This category includes people employed by instrumentalities, such as the State Energy Commission, and by local authorities as well as those employed under the *Public Service Act 1978-1980*.

The relevant appeals within these categories are listed in the appropriate part of Appendices II-V of this Report. The following general comments may be made with regard to the existing appellate arrangements of each category.

Category 1 - Matters affecting public servants

2.3 This category involves matters relating to the promotion and disciplining of public servants and matters relating to their conditions of employment, such as the classification or re-classification of a position. The Supreme Court is authorised to hear appeals from decisions of the Local Government Superannuation Board and the Superannuation Board. There are four appellate tribunals relating to specific groups of officials, the Government Railways Appeal Board, the Government School Teachers Tribunal, the Police Appeal Board and the State Energy Commission Appeal Board. There are also appellate tribunals with a more general jurisdiction such as the Public Service Board, the Public Service Appeal Board, the Promotions Appeal Board and the Public Service Arbitrator. In two cases there is an appeal to the Western Australian Industrial Appeal Court.²

Category 2 - Rates and taxes

2.4 Category 2 includes fourteen matters relating to the valuation of land for rating purposes and the assessment of water, drainage and irrigation rates, land tax and local authority rates. Prior to 1978 the appellate arrangements relating to these matters followed no definite pattern. Often the Local Court was designated as the appellate body,³ but in other cases there were specific appellate tribunals such as the City of Perth Rating Appeal Board and a Valuation Appeal Court. Now all of these appeals lie to a Land Valuation Tribunal established under the *Land Valuation Tribunals Act 1978*. There is a further appeal on a question of law to the Supreme Court from a direction, determination or order of a Land Valuation Tribunal.⁴

² *Government School Teachers Arbitration and Appeal Act 1979*, s 27 and the *Public Service Arbitration Act 1966-1978*, s 26.

³ Section 5 of the *Local Courts Act 1904-1976* provides for the appointment of Local Courts. They are commonly referred to collectively as “the Local Court” and will be so described throughout this report.

⁴ *Land Valuation Tribunals Act 1978*, s 35.

2.5 Also included in this category are appeals to the Supreme Court from an assessment of fees for a licence to carry on the business of wholesaling petroleum⁵ and for the sale of tobacco.⁶

There are three appeals to the Treasurer from the Commissioner of State Taxation under section 22 of the *Land Tax Assessment Act 1976-1980*, and sections 73(2) and 75(8) of the *Stamp Act 1921-1980*. There are also appeals to the Supreme Court under section 58(1) of the *Death Duty Assessment Act 1973-1978*,⁷ section 33(1) of the *Pay-roll Tax Assessment Act 1971-1981* and section 33(1) of the *Stamp Act 1921-1980*.

Category 3(a) - Licences, authorities, permits or duties concerning occupations and commercial activities

2.6 Included within this category are a large number of rights of appeal relating to occupations and professions, such as architects, builders, chiroprudists, hairdressers, nurses, dentists, legal practitioners, medical practitioners, pharmaceutical chemists, psychologists and veterinary surgeons. This category also includes appeals relating to commercial activities such as those concerned with lodging houses, the securities industry, taxi-cars, sales of automobiles, auction and land sales, hire-purchase, building societies, friendly societies and co-operatives, and primary industries such as dairying, fishing and pearling.⁸ There are sixty-six statutory rights of appeal in this category.

2.7 A common method of controlling professions and occupations is by requiring persons who wish to enter these professions or occupations to be licensed or registered by a specialist tribunal which is vested with disciplinary powers.⁹ Appeals from such decisions lie variously to the Local Court, Courts of Petty Sessions, the District Court and the Supreme Court. It is

⁵ *Transport Act 1966-1981*, s 47U.

⁶ *Business Franchise (Tobacco) Act 1975-1981*, s 17(1).

⁷ Death duty is payable only on the estate of a person who died before 1 January 1980: *Death Duty Assessment Act 1973-1978*, s 8.

⁸ It is not always easy to categorise the various decision-making powers. Some powers could, for example, be categorised either under this category or under category 3(c): licences, authorities, permits or duties concerning the manufacture and control of foodstuffs.

⁹ For example, the Medical Board and the Psychologists Board of Western Australia. In a number of cases, for example, s 74 of the *Settlement Agents Act 1981*, s 93 of the *Real Estate and Business Agents Act 1978-1980* and s 73 of the *Finance Brokers Control Act 1975*, the District Court may authorise the control body to appoint a supervisor to carry on the business of an agent or broker. Incidental amendments to these provisions would be necessary to provide for the application to be made to the Administrative Law Division of the Supreme Court, consistent with the Commission's suggestion in this Report that the Division, and not the District Court, should be the appellate body in the case of appeals relating to agents or brokers under these Acts.

difficult to discern any rational basis for the selection of the appellate body in each case and the existing arrangements involve inconsistencies.¹⁰ Moreover, there are some tribunals with similar responsibilities whose decisions are not subject to appeal, for example, there is no appeal from decisions of bodies responsible for the licensing of surveyors¹¹ or the registration of money lenders.¹² Whether or not such a right of appeal should be created is a proper matter for consideration by the ongoing review body whose establishment is recommended in Chapter 7.¹³

2.8 Similarly a system of licensing or registration is also a common method of controlling commercial activities, but again, no definite pattern appears to have been followed as regards the appellate rights created or, where a right is created, the selection of the appellate body.

Category 3(b) - Licences, authorities, permits or duties concerning premises

2.9 This category includes appeals from decisions relating to licensing or registration of buildings, such as hotels and lodging houses, the control of the physical condition of buildings, for example, whether or not a building is fit for use or meets certain health standards and dust control or ventilation in mines. There are eleven rights of appeal within this category. Appeals lie to various bodies including the Supreme Court, the Local Court, a stipendiary magistrate, a minister or a senior public servant such as the Commissioner of Public Health.

Category 3(c) - Licences, authorities, permits or duties concerning the manufacture and control of foodstuffs

2.10 Included within this category are appeals from decisions to destroy contaminated or unsound food. It also includes appeals from decisions relating to the control of veterinary preparations and the marketing of food such as eggs and potatoes. There are seven rights of appeal within this category. Three lie to Courts of Petty Sessions,¹⁴ three to a minister and one to a public servant.

¹⁰ Para 2.20 below.

¹¹ *Licensed Surveyors Act 1909-1976*.

¹² *Money Lenders Act 1912-1979*.

¹³ Para 1.3 above

¹⁴ Some statutes refer to Courts of Summary Jurisdiction. This has the same meaning as a *Court of Petty Sessions: Interpretation Act 1918-1981*, s 4.

Category 3(d)(i) - Licences, authorities, permits or duties concerning land and its uses

2.11 This category includes appeals from decisions relating to the settlement of land for farming, the provision of land to establish an industry and matters such as the control of extractive industries, town planning and mining. There are thirty-one rights of appeal within this category. This category includes a number of wide discretionary powers. In such cases, each decision involves the decision-maker in a consideration of a number of factors within broad criteria. In the determination of the question in issue, the policy of the government of the day may be an important factor. This possibly accounts for the fact that a majority of rights of appeal lie to a minister.¹⁵ However, in some cases appeals lie to the Supreme Court or to a stipendiary magistrate.¹⁶ In the case of certain town planning decisions there is provision for an appeal to the Town Planning Appeal Tribunal as an alternative to an appeal to the Minister for Urban Development and Town Planning.

Category 3(d)(ii) - Licences, authorities, permits or duties concerning conservation and the environment

2.12 Decision-makers in this category are concerned with conservation and the environment, including protecting the air, underground water and waterways from pollution and soil from erosion. Six rights of appeal have been created within this category. Once again, the policy content of some of the decisions appears to have been an important consideration in selecting the appellate tribunal. Four appeals lie to a minister, one to the Environmental Appeal Board,¹⁷ one to the Local Court, and in one case there is an appeal either to the Local Court or to the Minister for Health.

Category 3(e) - Licences, authorities, permits or duties concerning other matters

2.13 Decision-makers in this category deal with matters as diverse as construction and machinery safety, control of dogs and explosives and licensing of vehicles and drivers. There are twenty-three rights of appeal created within this category. Thirteen lie to one or other of the courts. Other appeals lie to bodies such as ministers, the State Energy Commission, the Commissioner of Public Health, referees, and a Board of Reference or an Arbitrator.

¹⁵ For example, appeals relating to mining tenements: *Mining Act 1978-1981*, s 32(2).

¹⁶ For example, appeals relating to the licensing of bakehouses: *Bread Act 1903-1973*, s 3B(7).

¹⁷ See footnote 2 Chapter 5.

Category 4 - Medical

2. 14 This category includes two rights of appeal. Under section 8(2) of the *Miner's Phthisis Act 1922-1929* a person who is prohibited from being employed in a mine on the ground that he is suffering from tuberculosis may appeal to a Board. Under section 14 of the *Mine Workers' Relief Act 1932-1981* a person may appeal against a diagnosis of an illness by the Mines Medical Officer to a Medical Board. The diagnosis of an illness as resulting from employment in the mining industry is necessary before a person can obtain a benefit under the Act.

Category 5 - Compensation

2. 15 Nine rights of appeal from decisions relating to compensation for matters such as the resumption of land and losses suffered by people involved in the pig industry are included in this category. Appeals lie to the Compensation Court, the Supreme Court, the Local Court, ministers, and in at least one case, there is provision for arbitration.¹⁸

Category 6 - Industrial

2. 16 This category includes rights of appeal from decisions relating to industrial relations excluding those involving public servants. There are seven rights of appeal within this category. Appeals lie to the Western Australian Industrial Commission in Court Session, the Full Bench of the Commission and the Western Australian Industrial Appeal Court.

Category 7 - Miscellaneous

2. 17 There is no common thread running through the fifty-four rights of appeal within this category. Thirty-five of the appeals lie to one or other of the courts, including the Children's Court and ten rights of appeal lie to ministers. Other appeals lie to bodies such as the Legal Aid Review Committee, the Commissioner of Public Health and the State Energy Commission.

¹⁸ *Local Government Act 1960-1981*, s 684

2. DEFECTS OF THE EXISTING APPELLATE ARRANGEMENTS

2.18 This project initially arose out of a submission to the Government by the Law Society of Western Australia. In this submission, the Law Society expressed concern at what it regarded as a lack of co-ordination in the existing appellate arrangements in the administrative law area. The Society stated:

“At the present time there are many statutes of the State which give to a person or body a right of appeal against the decision of a Board, a corporate body or a Minister to some tribunal but the choice of tribunal varies from statute to statute and often varies in the same statute.”

2.19 The Commission’s Survey of Western Australian legislation confirms the view expressed by the Society. At present there are approximately 257 administrative decisions which are subject to a statutory right of appeal¹⁹ to more than forty-three appellate bodies. A study of the Survey suggests that the present arrangements are the result of ad hoc legislation over a long period of time without an apparent overall plan.²⁰

2.20 As a result, the present arrangements incorporate inconsistencies and, in the Commission’s view, variations in the rights of appeal from the decisions of bodies with similar responsibilities which are difficult to justify. For example, while appeals on matters relating to medical practitioners, debt collectors, midwives and employment agents lie to the Supreme Court, appeals relating to architects, finance brokers and veterinary surgeons lie to the District Court. On the other hand appeals relating to builders, motor vehicle dealers and nurses, other than midwives, lie to the Local Court. Further, as pointed out in paragraph 2.7 above, no rights of appeal exist in the case of surveyors and money lenders. While the present arrangements are unsystematic, it seems to have been accepted that the ordinary courts provide a satisfactory appellate body in many cases. Fifty-four percent of statutory rights of appeal lie to one or other of the existing courts.

¹⁹ That is, where the right of appeal is created directly by a statute. There are also other rights of appeal created by subordinate legislation.

²⁰ Although the existence of a number of different appellate bodies may apparently involve the duplication of staff and facilities, this may not of itself be undesirable if the selection of each appellate body has been made on a rational and consistent basis. The creation of a new appellate body need not necessarily be accompanied by an increase in staff or facilities. A member of an appellate body could, for example, be chosen from the existing body of judges and magistrates. Staff could be provided by altering the responsibilities of existing public servants and existing court or hearing rooms could be used.

2. 21 Another defect with the existing appellate arrangements is that in many cases the existing law does not provide for questions of law to be determined ultimately by the Supreme Court.²¹ It is anomalous that the legislature has not provided for the Supreme Court, which is the most appropriate body in the State to determine questions of law, to be the ultimate appellate court on such questions in all cases in which rights of appeal have been created. This is particularly so as general rules and principles, such as the “rule of law” and the rules of natural justice, might be overlooked or underestimated by a decision-maker or a special appellate tribunal concerned with dealing with a particular factual problem. It is true that there is some scope for the review of questions of law by the Supreme Court by means of judicial review²² but relief by this means has traditionally been confined to errors of law involving the jurisdiction of the decision-maker. This means of review also has limitations not normally associated with a right of appeal: the remedies are discretionary and the Court does not have power to substitute its decision for that of the decision-maker. The existing law as to the circumstances in which judicial review is available is also much more complicated than that relating to the availability of a right of appeal.

2.22 At present the procedure for appeals to the various appellate bodies varies widely, although the procedural steps that should be taken are similar. Unless otherwise prescribed by a particular statute Order 65 of the *Rules of the Supreme Court 1971-1981* provides a code of procedure for administrative appeals to the Supreme Court and the District Court. That code does not, however, apply to other appellate bodies. In the case of the other appellate bodies it is necessary to refer to the Act creating the right of appeal or to the regulations made under that Act for the procedure to be followed. One noteworthy deficiency is that there is no general procedure for appeals to the Local Court. If an Act in which a right of appeal to the Local Court is created does not provide for the procedure to be followed it is necessary for the Court to contrive its own procedure in that particular case.

²¹ For example, s 31 of the *Dairy Industry Act 1973-1981* provides for an appeal to the Quota Appeals Committee from a refusal to grant a quota. The decision of the Committee is final and not subject to appeal to the Supreme Court, even on questions of law.

²² Para 1.6 above.

CHAPTER 3

APPROACHES TO REFORM ELSEWHERE

1. INTRODUCTION

3.1 Western Australia is not the only jurisdiction to have unsatisfactory arrangements for appeals from administrative decisions. Two major lines of approach to reform have been effected or proposed elsewhere. The first involves a rationalised appeal system based mainly on the creation of a limited number of specialist appellate bodies. The second is based on a general appellate body such as an administrative court, an administrative appeal tribunal or an administrative division of an established court, with a limited number of specialist appellate tribunals the existence of which is required by particular circumstances. These approaches are discussed below.

2. SPECIALIST APPELLATE TRIBUNALS

3.2 The arrangements for appeals from administrative decisions made by tribunals were reviewed in England in 1957 by the Committee on Administrative Tribunals and Enquiries.¹ This Committee recommended that there should be -

- (a) 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;²
- (b) an appeal on a question of law to the courts, except in the case of a limited number of specified tribunals.³

3.3 These recommendations have been adopted in England to a limited extent. Of the first, Garner says:⁴

¹ Report of the *Committee on Administrative Tribunals and Enquiries* (Cmnd 218), referred to as the “Franks Committee” after the Chairman of the Committee. The Committee made recommendations on many other matters which are not relevant to this report, including the constitution and the procedure of tribunals of first instance.

² Id, 25 paras 105 and 106.

³ Id, 25-26 paras 107-109

⁴ J F Garner, *Administrative Law* (5th ed, 1979), 242.

“This recommendation has not been adopted in terms but is applied in practice in some cases (for example, from the local valuation courts in rating cases to the Lands Tribunal, from industrial tribunals to the Employment Appeal Tribunal and from the licensing authority to the Transport Tribunal in goods vehicle licensing).”

As to the second recommendation, the *Tribunals and Enquiries Act*, first enacted in 1958 and consolidated in 1971, creates a right of appeal on questions of law from a number of tribunals, such as Independent Schools Tribunals and Rent Tribunals, to the High Court.⁵

3.4 A proposal for the establishment of a general administrative appeal tribunal outside the framework of the ordinary courts was rejected by the Franks Committee.⁶ The Committee said that the proposal had several disadvantages. First, a general tribunal could not have the required experience and expertise in particular fields. Secondly, it would involve the creation of an adjudicating body not subject in matters of jurisdiction to the control of the superior courts.⁷ Thirdly, conflicting systems of law would inevitably arise, since 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.⁸

3. A GENERAL APPELLATE BODY

(a) An administrative law division of an established court

3.5 In New Zealand, an Administrative Division of the Supreme Court⁹ was established in 1968 following a recommendation of the New Zealand Public and Administrative Law Reform Committee.¹⁰ The Division consists of not more than four judges assigned to it by the Chief Justice.¹¹ Lay members may also be appointed to the Division in respect of any specified proceeding or class of proceeding.¹²

⁵ *Tribunals and Inquiries Act 1971-1979* (Eng), s 13(1).

⁶ Report of the Committee on Administrative Tribunals and Enquiries (Cmnd 218), 28 and 29 paras 120 to 123.

⁷ This was apparently on the basis that the tribunal would not be subject to the supervisory jurisdiction of the High Court by means of the prerogative writs or the remedies of declaration and injunction.

⁸ The proposal made to the Committee was apparently on the basis that there would be no appeal on a point of law from the general administrative tribunal to the Court of Appeal and ultimately to the House of Lords.

⁹ Reconstituted as the High Court in 1979: *Judicature Amendment Act 1979* (NZ), ss 2 and 12.

¹⁰ *Judicature Amendment Act 1968* (NZ). First Report of the Public and Administrative Law Reform Committee of New Zealand, *Appeals From Administrative Tribunals* (1968).

¹¹ *Judicature Act 1908* (NZ), s 25(2).

¹² *Id*, s 26A. Two additional members may be appointed to the Division in land valuation proceedings.

3.6 The *Judicature Amendment Act 1968*, which created the Administrative Division, does not itself bestow any appellate jurisdiction on the Division. Rights of appeal in a particular area are created by amendment to the legislation dealing with that area. Forty-six statutes provide for appeals to the Division,¹³ including statutes relating to the valuation of land, liquor licensing, licensing of cinemas and compensation for personal injuries. However, appeals still lie to other appellate bodies. Appeals in two important areas of appellate work in New Zealand, namely, road transport licensing and town planning, do not lie to the Division, except from planning tribunals on questions of law.¹⁴

3.7 The New Zealand Public and Administrative Law Reform Committee considered that there would be greater public confidence in the administrative appeal system if appeals from administrative decisions were heard by an Administrative Division of the Supreme Court.¹⁵ While the Committee expressed the view that the value of special knowledge and experience in the administrative appeal area could be exaggerated, the Committee nevertheless saw real advantages in having appeals dealt with by a limited number of judges sitting in the Division. The Committee considered that a limited number of judges specialising, inter alia, in administrative appeals would:¹⁶

“ . . . make for consistency of judicial policy and approach and for the ready acquisition of skill and experience in dealing with the problems of administrative law. It would also make for economy of effort.”

3.8 It has been suggested recently by Professor K J Keith that the concept of an administrative division has not lived up to its promise, apparently because of the manner in which the reform has been implemented. Professor Keith is of the view that there has not been “the amount of specialisation and the growth of expertise which the Committee had

¹³ The statutes are listed in Appendix II of the Fifteenth Report of the New Zealand Public and Administrative Law Reform Committee.

¹⁴ K J Keith, *Administrative Law Reform 1953-1978* (1978) 9 VU WLR 427, 444.

¹⁵ First Report of the Public and Administrative Law Reform Committee of New Zealand, *Appeals From Administrative Tribunals* (1968), 15 para 35.

¹⁶ Id, 13 para 33.

probably envisaged’’.¹⁷ Professor Keith suggests that this is because in the first seven years of its operation almost half the members of the Supreme Court served on the Division.¹⁸

3.9 On the other hand, the New Zealand Royal Commission on the Courts reported in 1978 that:¹⁹

“The tendency to ensure that appeals on matters of law, and, in suitable cases, other final appeals from administrative tribunals go to the Administrative Division of the High Court should be fostered. We consider that a specialist division of the High Court is well equipped to appreciate and administer the policy, spirit, and intent of the various Acts creating the numerous tribunals, while at the same time ensuring a fair and consistent development of the law. We believe the High Court has a vital and important role to play in this regard. We appreciate that, to some extent, this may involve the court in matters of policy as well as law, and that in theory there are some risks involved. We believe, however, that the protection of the citizen is of paramount importance and that the successful operation of the Administrative Division to date has demonstrated how well the judges are able to cope with the problems.”

3.10 There is also an Administrative Law Division of the New South Wales Supreme Court.²⁰ Under section 53(3B) of the *Supreme Court Act 1970-1981* 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 public officer where mandamus, prohibition, certiorari, injunction or a declaration is being sought. However, there does not appear to have been an attempt to use the Division to rationalise the existing appellate arrangements in New South Wales. In a report on administrative appeals, the New South Wales Law Reform Commission recommended that such a rationalisation be carried out by creating a Public Administration Tribunal.²¹

3.11 In England since 1977 applications for judicial review may be heard by a Divisional Court of the Queen’s Bench Division.²² Appeals which lie to the High Court from decisions of tribunals and ministers are also heard by judges of the Queen’s Bench Division. These

¹⁷ K J Keith, *Administrative Law Reform 1953-1978* (1978) 9 VUWLR 427, 443.

¹⁸ Ibid. The New Zealand Public and Administrative Law Reform Committee has also expressed concern at whether or not the purposes for which the Administrative Division was created are being achieved and has begun to gather information on its operation: Fifteenth Report of the Public and Administrative Law Reform Committee, 41 para 18

¹⁹ Report of the New Zealand Royal Commission on the Courts (1978), 93 para 312.

²⁰ *Supreme Court Act 1970-1981* (NSW), s 38.

²¹ Report on *Appeals in Administration* (1973). This recommendation has not been implemented.

²² *Rules of the Supreme Court 1965-1980* (Eng), Order 53 rule 5. Since 1980 the decision whether or not the application should be heard by the Divisional Court, or by a single judge, is made by a judge of the Queen’s Bench at the initial hearing of the application.

appeals are heard by a single judge of the Queen's Bench Division unless the appeal is final, in which case it will be heard by a Divisional Court of the Queen's Bench.²³

3.12 Professor H W R Wade says of this new system whereby applications for judicial review of administrative decisions may be made to the Queen's Bench that, in substance, ". . . an administrative division of the High Court is brought into being".²⁴

(b) An appellate body created outside the court system

3.13 The Commonwealth Government has created a general appellate tribunal outside the court system, by the establishment of the Administrative Appeals Tribunal. The Tribunal was established by the *Administrative Appeals Tribunal Act 1975- 1981* following reports by the Administrative Review Committee in 1971 and the Committee on Administrative Discretions in 1973.²⁵ For constitutional reasons, relating to the separation of judicial and executive functions, the Commonwealth could not vest administrative power in a judicial body. For this reason, a tribunal outside the courts and exercising non-judicial power was necessary unless the discretions given to administrative officers were converted to discretions which raised justiciable issues. The Kerr Committee concluded that no such attempt should be made and, partly for constitutional reasons and partly because the Committee did not regard a court as being the most appropriate body to review administrative decisions on the merits, recommended that a superior court should not be used, except in special cases, to review administrative decisions on the merits.²⁶

3.14 The Administrative Appeals Tribunal consists of a President and such Deputy Presidents and other members as are appointed.²⁷ A person cannot be appointed as a presidential member unless he is or has been a judge, or is enrolled as a legal practitioner of the High Court, another federal court, or the Supreme Court of a State or Territory for not less than five years.²⁸ A person may be appointed as a non-presidential member if he has certain special qualifications, including experience, for not less than five years, at a high level in

²³ Id, Order 55 rule 2.

²⁴ *Reform of Remedies in Administrative Law* (1978) 94 LQ Rev 179, 181.

²⁵ The establishment of a general appellate tribunal has also been recommended in Victoria by the Statute Law Revision Committee in its report, *Appeals from Administrative Decisions and a Proposal for an office of Ombudsman* (1968), and in New South Wales by the Law Reform Commission in its report, *Appeals in Administration* (1973). Such general appellate tribunals have not been established.

²⁶ Report of the Commonwealth Administrative Review Committee (1971), 68 and 86.

²⁷ *Administrative Appeals Tribunal Act 1975-1981* (Cth), 5 5.

²⁸ Id, s 7(1).

industry, commerce, public administration or industrial relations or has obtained a degree or similar qualification after studies in the field of law, economics or public administration.²⁹ It was envisaged that these members would bring to the tribunal professional and technical expertise in various fields.³⁰ Provision is made for some non-presidential members to be appointed as senior non-presidential members by the Governor-General.³¹ The Tribunal sits constituted either by a presidential member alone, by a presidential and two non-presidential members, by a senior non-presidential member alone, or by three non-presidential members.³²

3. 15 The Tribunal may exercise the powers conferred on it in the following Divisions -³³

- (1) a General Administrative Division;
- (2) a Medical Appeals Division;
- (3) a Valuation and Compensation Division; and
- (4) such other Divisions as are prescribed.

3. 16 The Tribunal does not have power to hear appeals from all administrative decisions made in the Commonwealth sphere. It may only hear appeals from decisions prescribed by the *Administrative Appeals Tribunal Act 1975-1981*³⁴ and any other enactment.³⁵ As at 1 July 1981, 105 Acts, regulations or by-laws created approximately 412 rights of appeal to the Tribunal.³⁶

3. 17 On the review of a decision the Tribunal may exercise all of the powers and discretions which were conferred by the relevant enactment on the original decision-maker and the Tribunal may -³⁷

²⁹ Id, s 7(2).

³⁰ Report of the Commonwealth Administrative Review Committee (1971), 24.

³¹ *Administrative Appeals Tribunal Act 1975-1981* (Cth), s 6(5).

³² Id, s 21(1). Of 664 hearings in 1978-1979 to 1980-1981, 184 were heard by presidential members alone, 109 by a presidential and two non-presidential members, 192 by a senior non-presidential member alone, and 179 by three non-presidential members.

³³ *Administrative Appeals Tribunal Act 1975-1981* (Cth), s 19(1) and (2). The Tribunal has not sat in a Division other than the General Administrative Division.

³⁴ Id, ss 25 and 26 and the Schedule to the Act.

³⁵ Id, s 25.

³⁶ Administrative Review Council *Fifth Annual Report 1980-1981*, Appendix III.

³⁷ *Administrative Appeals Tribunal Act 1975-1981* (Cth), s 43(1). *Re Control Investment Pty Ltd and Australian Broadcasting Tribunal* (No 2) (1981) 3 ALD 88.

- (1) affirm the decision under review;
- (2) vary the decision under review; or
- (3) set the decision under review aside and -
 - (a) make a decision in substitution for the decision so set aside; or
 - (b) remit the matter for reconsideration in accordance with any directions or recommendations of the Tribunal.

The Tribunal's determination is based on the material before it and not on the material before the original decision-maker. The Tribunal reviews the merits of the decision and whether or not it was the correct or preferable one.³⁸

3. 18 A party to a proceeding before the Tribunal may appeal from any decision of the Tribunal to the Full Court of the Federal Court of Australia on any question of law.³⁹ The Tribunal may, either on its own motion or at the request of a party, refer a question of law arising in a proceeding before the Tribunal to the Full Court of the Federal Court for determination.⁴⁰ There is a further right of appeal from the Full Court of the Federal Court to the High Court.⁴¹

3. 19 The establishment of the Administrative Appeals Tribunal is only one of a number of reforms which have been made to the review and supervision of the administrative process in the Commonwealth sphere. The office of Ombudsman was created by the *Commonwealth Ombudsman Act 1976-1981*. Provision has been made for the review of the lawfulness of administrative decisions by the Federal Court of Australia with the enactment of the *Commonwealth Administrative Decisions (Judicial Review) Act 1977-1980*. Pursuant to the *Administrative Appeals Tribunal Act 1975-1981*, the Commonwealth Government has also established a council, the Administrative Review Council,⁴² to maintain a continuous review of Commonwealth Administrative law.

³⁸ *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577, 589.

³⁹ *Administrative Appeals Tribunal Act 1975-1981* (Cth), s 44(1) and *Federal Court of Australia Act 1976-1981*, s 25.

⁴⁰ *Administrative Appeals Tribunal Act 1975-1981* (Cth), s 45(1) and (2).

⁴¹ *Federal Court of Australia Act 1976-1981*, s 33.

⁴² Para 7.2 below.

CHAPTER 4

THE DEVELOPMENT OF AN ADMINISTRATIVE APPEAL SYSTEM

1. INTRODUCTION

4.1 As stated above, the present appellate arrangements in Western Australia have three main defects. First, in the case of many administrative appeals, the existing appellate arrangements do not provide for questions of law to be determined ultimately by the Supreme Court. Secondly, the present arrangements incorporate inconsistencies and an unjustifiable variation in the rights of appeal from the decisions of bodies with similar responsibilities. Thirdly, there is no single simple code of procedure for conducting appeals. In order to overcome these defects, the Commission considers that it is necessary, as a first step, to develop an administrative appeal system. Having considered the existing appellate arrangements, the Commission considers that a more coherent and rational system can be developed by making greater use of the ordinary courts. The Supreme Court, in particular, can play an important role in the application of general legal principles to administrative decision-making. The courts already play an important role in the determination of appeals from administrative decisions and have the advantage that they are seen by the community as being independent of the Executive Government. An appeal to a court need not involve undue delay or expense, particularly if a code of procedure is developed which is sufficiently flexible to enable the appellate court to deal with each appeal in a way which is the most appropriate in the circumstances of the case. The reforms made in the United Kingdom following the report of the Franks Committee were a recognition that:¹

“.....it had been a mistake to try to have two legal systems, each operating in isolation from the other. All the complaints made it obvious that the public would never be satisfied unless tribunal justice measured up to the traditional standards. The only way to achieve this was to integrate the tribunals with the system of the courts both by adopting rules and standards observed by the courts and also by building bridges between the two systems by way of rights of appeal and judicial review.”

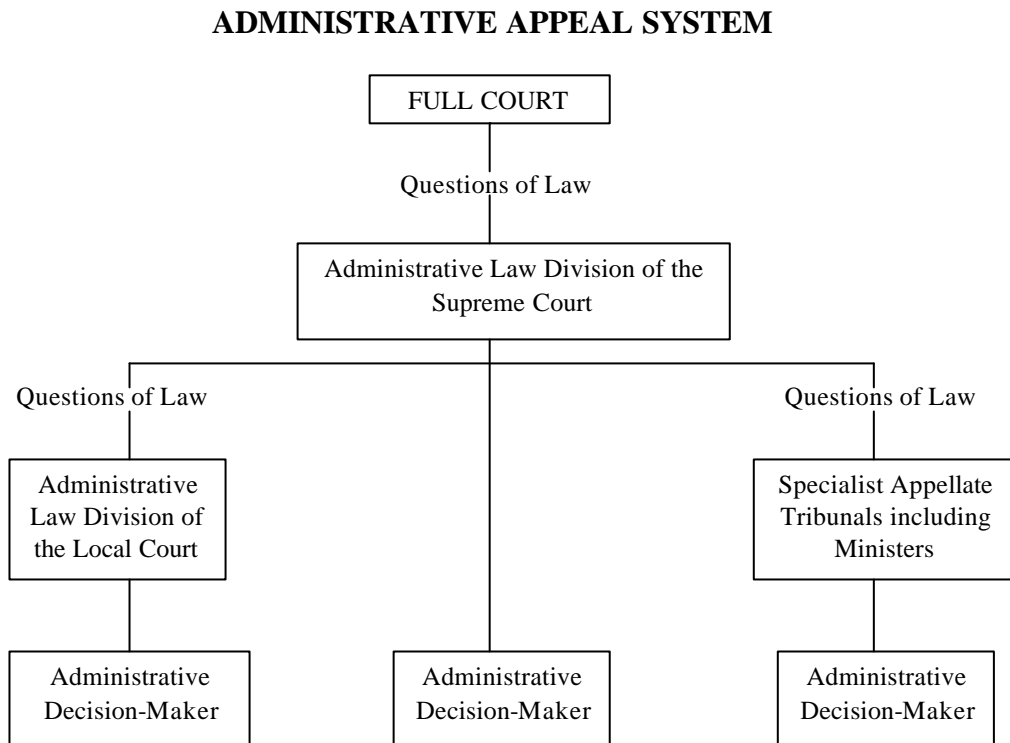
¹ H W R Wade, *Administrative Tribunals and Administrative Justice* (1981) 55 ALJ 374, 376.

4.2 Having considered the approaches to reform elsewhere and for the reasons developed below, the Commission recommends that the administrative appeal system in Western Australia should consist of -

- * The Full Court of the Supreme Court.
- * An Administrative Law Division of the Supreme Court.
- * An Administrative Law Division of the Local Court.
- * A limited number of specialist appellate bodies.

4.3 In the proposed system, where an appeal lies to the Administrative Law Division of the Local Court or to a specialist appellate tribunal there should be a further appeal on a question of law to the Administrative Law Division of the Supreme Court. There should be provision for a further appeal to the Full Court of the Supreme Court on questions of law. ²

4.4 The following diagram is a schematic representation of the administrative appeal system which the Commission recommends be provided in Western Australia.



² Para 4.24 below.

The adoption of this administrative appeal system would also provide a means of checking the proliferation of appellate bodies. There are at least forty-three such bodies at present. Their proliferation would be checked if, when a new right of appeal was created, provision were made for the appeal to lie to one of the existing bodies rather than to create another ad hoc body. Only if this is not appropriate should a further specialist appellate body be created. In the Commission's view there should be a presumption against the creation of ad hoc bodies to hear rights of appeal in the administrative area.

2. THE ADMINISTRATIVE LAW DIVISION OF THE SUPREME COURT

4.5 As can be seen from the diagram, the Administrative Law Division of the Supreme Court is central to the administrative appeal system proposed by the Commission. The Commission considers that it is important for the Supreme Court to be central to the administrative appeal system in the same way as it occupies a central position in relation to other areas of law. In the Commission's view it is a role which the proposed Administrative Law Division of the Court should perform in the administrative law sphere.³ This role could best be performed by the Supreme Court acting as the first level of appeal in appropriate cases.⁴ The Supreme Court is already the first level of appeal in a significant number of cases in the administrative law area. Approximately twenty-six percent of existing rights of appeal lie to the Supreme Court. In other cases, where another appellate body is considered to be a more appropriate appellate body for the first level of appeal, the Supreme Court's supervisory role could be maintained by providing for a further appeal to the Administrative Law Division of the Supreme Court on questions of law.

4.6 The Commission has recommended that a separate Administrative Law Division be established in the Supreme Court for the purpose of developing a body with a special knowledge of administrative law and special expertise in dealing with administrative appeals. Specialisation would be achieved by the appointment or assignment of one or at most two judges to the Administrative Law Division, though they would continue to perform other work of the Court. The need to appoint judges to serve on the proposed Division could be

³ The Commission discussed whether an administrative division should be established in the Supreme Court or the District Court in the Working Paper: para 4.20. Five commentators made submissions on this matter. Two, D McColl and Mr J A D Treloar, favoured the Supreme Court. The other three, the Commissioner for Corporate Affairs, the Law Society and the Town of Albany, favoured the District Court. None of the commentators gave reasons for the view expressed.

⁴ Subject to an appeal to the Full Court of the Supreme Court on questions of law or the referral of an appeal to the Full Court by a judge of the Administrative Law Division: para 4.24 below.

borne in mind when an appointment to a vacancy on the Court was being considered. The Chief Justice should be authorised to assign judges of the Supreme Court to the Administrative Law Division.

4.7 The creation of an Administrative Law Division would also facilitate the development of procedures and practices less formal than those applicable to appeals from decisions relating to civil and criminal matters, matters initially determined by formal hearings in an adversary setting. A suggested code of procedure for the proposed Administrative Law Division and the other appellate bodies in the rationalised administrative appeal system is discussed in Chapter 6.

4.8 A further advantage of creating an Administrative Law Division in the Supreme Court is that it would thereby be possible to provide for prerogative writ applications and applications for injunctions and declarations involving administrative decisions to be heard in that Division. The law relating to these remedies in the administrative law area is being considered by the Commission as a second part of this project.⁵ Any new remedy created as a result of that review of the law, such as an “application for judicial review” could be heard in that division.

3. THE ADMINISTRATIVE LAW DIVISION OF THE LOCAL COURT

4.9 The Commission has recommended that the Local Court should be an appellate body in the administrative appeal system because the Commission recognises that there may be matters, including those of a local nature, which could be dealt with adequately by the Local Court initially,⁶ with a further appeal to the Administrative Law Division of the Supreme Court on points of law. A separate division should be established in the Local Court for the same reason that was advanced in paragraph 4.6 above for establishing a separate division of the Supreme Court. The Chief Stipendiary Magistrate should be given power to designate the magistrates to sit on the Administrative Law Division of the Local Court.

⁵ Law Reform Commission of Western Australia, Project No 26 Part II, Working Paper on *The Judicial Review of Administrative Decisions* (June 1981). See para 1.6 above.

⁶ For example, a decision whether or not to register a dog: *Dog Act 1976-1977*, ss 14-17.

4. 10 If provision were made, as a general rule, for appeals to be heard in the Local Court nearest to the address of the original decision-maker, the majority of appeals would be heard at courts in the Perth Metropolitan Area, and especially at the Perth Local Court, though some appeals would be heard at courts in country areas. In order to ensure that one or two magistrates were designated to hear administrative appeals so that they could develop the necessary specialisation, the Commission recommends that the Administrative Law Division of the Local Court should sit at the Perth Local Court and that it should generally hear all appeals arising in the Perth Metropolitan Area. It would, however, be inconvenient and expensive for appellants in country areas to be required to commence an appeal at the Perth Local Court in all cases. For this reason, notwithstanding the need for specialisation, the Commission recommends that an appellant who resides or has his place of business outside the Perth Metropolitan Area should be able to commence the appeal in the Local Court which is the most convenient to him. In these cases the respondent should be able to object to the choice of court and apply to the court for a transfer of the appeal to a Local Court which in all the circumstances of the case is the most convenient. It should also be possible to remove an appeal commenced in a country court to the Division sitting at the Perth Local Court if the parties agree to that course of action.

4. REJECTION OF THE CONCEPT OF A GENERAL APPELLATE BODY OUTSIDE THE ESTABLISHED COURT SYSTEM

4.11 The Commission in the previous paragraphs has recommended that an Administrative Law Division should be created in each of the Supreme and Local Courts. In making these recommendations, the Commission considered but rejected the possibility that a new general appellate body outside the established court system should be created in Western Australia.⁷ The arguments for and against such a body are discussed under the following headings -

- (a) Formality;
- (b) Expense;
- (c) Policy matters;
- (d) Consistency and specialisation;

⁷ Seven commentators expressed an opinion on this matter. Four of the commentators favoured the use of the established courts: Mr J A D Treloar, D McColl, the Commissioner for Corporate Affairs and the Law Society of Western Australia. The other three commentators favoured a body outside the established courts: the Main Roads Department, the Local Government Association of Western Australia and Dr G D S Taylor.

- (e) Lay members;
- (f) Existing role;
- (g) Conflicting systems of jurisprudence;
- (h) Independence from the Executive.

(a) Formality

4.12 One argument advanced for an administrative appeal tribunal outside the established courts is that the procedure of such a body is less formal and more flexible than that of a superior court. In a personal submission to the Commission, the then Director of Research of the Administrative Review Council, Dr G D S Taylor, suggested that a more flexible procedure might well be essential to the exercise of certain jurisdictions and that the likelihood of a tribunal varying its procedure was much greater than an ordinary court doing so.⁸ Although informality may be seen as being a desirable objective it has been recognised by a member of the Commonwealth Administrative Appeals Tribunal that:⁹

“...in many of the matters which come before the Tribunal, the adoption of too great a degree of informality may positively inhibit the orderly conduct of a strongly contested case and may impede the proper presentation by the parties and consideration by the Tribunal of the issues involved.”

Experience in the Administrative Appeals Tribunal suggests that what is required in an administrative appeal body is substantial flexibility as to the formality of the procedure. There is a need to apply to each case a procedure that is appropriate to its effective hearing and determination. The Commission considers that, in determining administrative appeals, courts and judges have demonstrated a capacity for flexibility in matters of formality, consistent with the application of general principles of justice.¹⁰ In Western Australia it seems to be unnecessary to establish a general appellate body outside the existing court system with many of the characteristics of a court (for example, the presidential members of the Administrative

⁸ For a recent case in which some flexibility was shown by the Commonwealth Administrative Appeals Tribunal see para 6.11 below. It appears that, where possible, the Tribunal allows the parties to establish the degree of formality within which the hearing is conducted: A N Hall, *Administrative Review Before the Administrative Appeals Tribunal - A Fresh Approach To Dispute Resolution?*, 24 para 48, Australian National University Administrative Law Seminar, Canberra July 1981, hereinafter cited as “Hall”. Mr Hall is a Senior Non-Presidential Member of the Tribunal.

⁹ Hall, 32 para 63.

¹⁰ It seems that judges of the Federal Court have had little difficulty in adopting a more flexible approach in matters of formality when hearing appeals in the Administrative Appeals Tribunal.

Appeals Tribunal are judges) when the existing courts can themselves be adapted to provide the appropriate degree of flexibility in matters of formality.

(b) Expense

4.13 The costs involved in a court hearing need not be greater than the costs involved in a hearing before a general appellate tribunal. In each case where parties are legally represented the cost of representation will have to be met and could normally be expected to be the same. The separate question whether or not a losing party should be required to pay the costs of the successful party is dealt with later¹¹ but need not be determined by whether the appeal is heard before a court or a tribunal.

(c) Policy matters

4.14 There is an important question whether an Administrative Law Division of an ordinary court should be asked to implement social, economic or industrial policy. It should firstly be noted that an administrative appeal body, whether a court or not, is not usually involved in a review of whether such a policy developed elsewhere is right or wrong or in developing such a policy. In Western Australia, most existing rights of appeal involve the performance of curial functions such as the interpretation and application of statutory criteria in a particular case,¹² rather than a review of policy. This is a role which courts are suited to perform. An appellate tribunal with a particular expertise may be required in some cases, but that is a separate question which is discussed below.¹³

4.15 The Commission recognises that there may be circumstances in which the decision subject to review involves a wide discretionary power and where it was made in order to implement stated government or ministerial policy. This is not necessarily a reason for creating a general appellate body outside the court system, but may provide a reason for

¹¹ Paras 5.21 and 5.22 below.

¹² Including a statutory provision requiring the appellate body to take account of certain policies. In Western Australia, for example, s 53 of the *Town Planning and Development Act 1928-1981* requires the Town Planning Appeal Tribunal to have “due regard to any approved statement of planning policy prepared pursuant to the provisions of section 5AA . . . which may affect the subject matter of the appeal”. Section 5AA permits the Town Planning Board with the approval of the Minister and the Metropolitan Region Planning Authority to prepare statements of planning policy directed primarily toward “broad general planning and facilitating the co-ordination of planning”. These statements must have regard to a number of matters specified by statute. They must be formulated in accordance with statutory procedure involving various consultations, be approved by the Governor and published in the Government Gazette.

¹³ Paras 4.22 and 5.1 below.

creating a specialist appellate tribunal¹⁴ especially where the policy concerned cannot reasonably be reduced to statutory or regulatory form. Whether such a specialist tribunal is necessary in particular types of cases could be the subject of recommendations by the ongoing review body which the Commission recommends be established. In coming to a decision on the matter, that body would no doubt have regard to the approach adopted by the Commonwealth Administrative Appeals Tribunal regarding government policy. The approach is set out in *Re Drake and Minister for Immigration and Ethnic Affairs (No 2)*.¹⁵ Brennan J said:¹⁶

“When the Tribunal is reviewing the exercise of a discretionary power reposed in a Minister, and the Minister has adopted a general policy to guide him in the exercise of the power, the Tribunal will ordinarily apply that policy in reviewing the decision, unless the policy is unlawful or unless its application tends to produce an unjust decision in the circumstances of the case. Where the policy would ordinarily be applied, an argument against the policy itself or against its application in the particular case will be considered, but cogent reasons will have to be shown against its application, especially if the policy is shown to have been exposed to parliamentary scrutiny.”

It is probable that, unless otherwise directed by the statute, a court would adopt a similar approach. Accordingly, if the aim is to provide a thorough-going review of the merits of a particular ministerial policy this could be achieved by including an appropriate statutory direction to the court or, alternatively, the jurisdiction could be bestowed on a specialist appellate body with the necessary expertise.

(d) Consistency and specialisation

4.16 Concern has also been expressed that specialisation and consistency in approach would be less likely to occur if the established courts were involved in administrative appeals than if such appeals were heard by a general appellate body outside the ordinary court system. The Commission does not accept this argument. An Administrative Law Division of an established court with specially assigned judicial officers acting as a general appellate body would develop expertise and a consistent approach to a wide range of appeals.

¹⁴ Such a tribunal could be a Minister.

¹⁵ (1979) 2 ALD 634. The case concerned a review of a deportation order made by the Minister. However, the approach of the Tribunal would seem equally to apply to a case where an appeal lay from a departmental officer who made the decision in order to implement a government or ministerial policy.

¹⁶ Id, 645

(e) Lay members

4.17 In his comments on the Working Paper, Dr Taylor referred to the advantage of having lay members on the appellate body. He saw this as being a major advantage of a body separate from the courts:

“The major advantage to be derived from a separate body is the presence of lay members upon the Tribunal having equal status with the Chairman. My experience with the Administrative Appeals Tribunal is such that in my view the importance of this factor should not be underestimated. Judges do, of course, receive evidence and make judgments upon matters beyond their peculiar legal expertise, but review on the merits tends to throw up matters of appreciation in which the mere presentation of evidence is an inadequate substitute for expertise on the part of a decision-maker.”

While there are rights of appeal in Western Australia in which it would be important to have lay members for the reasons advanced by Dr Taylor, the Commission can see no reason why lay members should not sit with the Administrative Law Divisions.¹⁷ The Commission considers that provision for lay membership can be made in a general appellate body within the established court system. The Commission’s recommendations for lay members are discussed below.¹⁸

(f) Existing role

4.18 Apart from not being convinced by the arguments against establishing a general appellate body within the existing court system, the Commission notes that the ordinary courts already play an important role in the determination of appeals from administrative decisions. An analysis of Appendices II-V of the Report shows that about fifty-four percent of the rights of appeal lie to one or other of the existing courts. The balance lie to one or other of the ministers (eighteen percent) or to separate appellate bodies (twenty-eight percent).¹⁹

¹⁷ In those cases in which special expertise is a necessity for the appellate body the Commission suggests that the appellate tribunal be retained and that the jurisdiction of one tribunal be expanded as a part of the rationalisation of the existing rights of appeal: paras 5.3 to 5.7 below.

¹⁸ Paras 5.16 and 5.17 below.

¹⁹ In a substantial proportion of these latter cases the appellate body is either constituted by a judge or a stipendiary magistrate or has such a judicial officer as chairman.

(g) Conflicting systems of jurisprudence

4.19 The establishment of a completely new body outside the established courts would raise the difficulty of defining the relationship between such a body and the ordinary court system. There would be a danger of the growth of conflicting systems of jurisprudence. This may be limited to some extent if an appeal on questions of law were provided to the Full Court of the Supreme Court from the appellate body's decisions, but ultimate reconciliation in any case would depend on whether or not a party wished to incur the expense of appealing to the Full Court.

(h) Independence from the Executive

4.20 Most importantly, an appellate body outside the established courts might not be perceived as having the same standing as an administrative division of an established court. The creation of an Administrative Law Division of an established court would have the advantage of creating a body recognised by the community as being impartial and independent of the Executive Government.

(i) Conclusions

4.21 For the above reasons, the Commission believes that a system can be developed based on the established courts with the desired attributes of specialisation and flexibility of procedure without undue delay or cost. Although in the Commission's view these reasons of themselves justify that conclusion, the Commission also points to the relatively small number of appeals likely to arise in a State with the population of Western Australia which would not seem to justify the cost of establishing a new administrative appeal tribunal, with its attendant administrative expenses.

5. THE NEED FOR A LIMITED NUMBER OF SPECIALIST APPELLATE TRIBUNALS

4.22 Although the Commission has recommended that the administrative appeal system should be based on an Administrative Law Division of the Supreme Court, it does recognise that there may be particular areas of administrative decision-making in which it may be necessary or desirable for various reasons to have certain specialist appellate bodies outside

the Administrative Law Division. The Commission has therefore recommended below that a limited number of specialist appellate bodies should be retained.²⁰

6. THE ROLE OF THE FULL COURT OF THE SUPREME COURT

4.23 Before consideration is given to the question of which specialist appellate bodies should be retained and the principles which should govern the jurisdiction of the proposed Administrative Law Divisions of the Supreme Court and the Local Court and the retained specialist appellate bodies one further matter relating to the structure of a new administrative appeal system requires consideration, namely, the role of the Full Court of the Supreme Court.

4.24 As the Full Court is the ultimate appellate court in Western Australia and in the interest of not unduly prolonging the final determination of a matter, the Commission recommends that an appeal to the Full Court should be restricted to appeals on questions of law. A judge of the Administrative Law Division who is hearing an appeal should have power to refer any question of law arising on an appeal to the Full Court.

7. FURTHER APPEALS

4.25 Apart from appeals within the State's system of courts there are provisions for a further appeal in certain circumstances from a decision of the Supreme Court to the High Court of Australia²¹ or the Judicial Committee of the Privy Council.²² The Commission's recommendations in this Report cannot affect these rights of appeal.²³

²⁰ The bodies which should be retained and their jurisdiction are discussed in paras 5.3 to 5.7 below.

²¹ *Judiciary Act 1903-1979* (Cth), s 35.

²² *Judicial Committee Act 1844* (UK) s 1 and Order in Council, SR & O 1909, No 760.

²³ The legislation providing for such appeals cannot be amended by the State legislature.

CHAPTER 5

THE JURISDICTION, CONSTITUTION AND POWERS OF THE APPELLATE BODIES

1. JURISDICTION OF THE ADMINISTRATIVE LAW DIVISIONS AND OF THE OTHER APPELLATE BODIES

(a) General criteria

5.1 The Commission considers that generally an appeal from an administrative decision-maker should lie to the proposed Administrative Law Division of the Supreme Court or the proposed Administrative Law Division of the Local Court. There are three categories of cases in which the Commission envisages that it may be desirable that the appellate body be a body other than one of the proposed Administrative Law Divisions. In each of these cases, there should be a further right of appeal to the Administrative Law Division of the Supreme Court on points of law only. These three categories are -

- * 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. The need for expertise could arise from a need for an appellate body to be familiar with typical factual situations or to have or develop a particular technical knowledge, for example, industrial matters. In this case the appeal should lie to such a specialist appellate body.
- * Cases in which the decision in question involves wide discretionary powers associated with the implementation of government policy. As the Commission pointed out in paragraph 4.15 above, in such a case the appeal could lie to a specialist appellate body. That body could be a Minister.
- * Cases in which the number of potential appeals or the need for expedition is such that it is necessary to establish a separate appellate body in order to ensure that all appeals are determined with the minimum of delay without overburdening the Administrative

Law Divisions of the Supreme Court and the Local Court. Appeals relating to the provision of legal aid, for example, are both numerous¹ and require expedition.

5.2 In the case of other rights of appeal it would be necessary to consider whether the appeal should lie to the Administrative Law Division of the Supreme Court or the Local Court. A consideration of this question would involve a number of factors including the following -

- (1) does the decision the subject of the right of appeal involve such complex questions of law, fact or discretion that it is desirable to have a Supreme Court judge as the appellate body;
- (2) does the decision the subject of the right of appeal involve rights, benefits or privileges of such an important nature that it is appropriate to have the appeal determined by a Supreme Court judge;
- (3) is the decision the subject of the right of appeal of such a local nature that to provide for an appeal to the Administrative Law Division of the Supreme Court would involve unnecessary inconvenience, expense or delay.

(b) Specialist appellate bodies

5.3 There are a number of specialist appellate bodies which the Commission considers should be retained.² These are -

1. The Land Valuation Tribunals established under sections 5 and 6 of the *Land Valuation Tribunals Act 1978*.
2. The Review Committees established under section 50 of the *Legal Aid Commission Act 1976-1979*.

¹ There were 288 applications for review in 1980-1981: Legal Aid Commission of Western Australia, *Fourth Statutory Report 1980-1981*, 10. Many of these were no doubt urgent.

² Section 44 of the *Environmental Protection Act 1971-1980* provides for the creation of an Environmental Appeal Board. The Act provides for the Board to hear appeals against proposals of the Environmental Protection Authority on the policy to be followed with respect to environmental protection or enhancement. No such policies have been formulated and the Board has not been established.

3. The Licensing Court acting as an appellate body under section 99 of the *Liquor Act 1970-1981*.
4. The Quota Appeals Committee established under of the *Dairy Industry Act 1973-1981*.
5. The Medical Board established under section 14 of the *Mine Workers' Relief Act 1932-1981*.³
6. The Town Planning Appeal Tribunal established under section 42 of the *Town Planning and Development Act 1928-1981*.

5.4 The Land Valuation Tribunal was established in 1979 following the Report of the Committee of Inquiry into Rates and Taxes attached to Land Valuation (1975). Prior to the *Land Valuation Tribunals Act 1978* there were twenty boards and courts involved in hearing and determining valuation disputes under nine Acts. They were described by the Treasurer as being:⁴

“by no means uniform in jurisdiction or procedure. All of these arrangements are somewhat confusing to ratepayers and taxpayers.”

The Commission would not wish to disturb the arrangements so recently established as the result of a special inquiry. However, in other circumstances it may have been suitable to vest the jurisdiction of the Tribunal in the proposed Administrative Law Division of the Local Court with a stipendiary magistrate assisted by two lay members.

5.5 The Town Planning Appeal Tribunal was established following an amendment to the Act in 1976. Prior to the establishment of the Tribunal appeals lay either to the Minister or to the Town Planning Court.⁵ The Town Planning Court consisted of a judge and two other persons, one appointed by each party to the appeal. Between 1971 and 1976 only eleven appeals were made to the Court. Only one of these appeals was actually heard and determined by the Court. It was thought that the Court did not gain public acceptance because it had

³ A Medical Board is also provided for under section 8 of the *Miners Phthisis Act 1922-1929*. However, the Act no longer appears to have any practical application: see *Mine Workers Relief Act 1932-1981*, s 3.

⁴ Western Australian Parliamentary Debates (1978) Vol 220, 2618.

⁵ At present appeals may be made either to the Minister or the Tribunal. An appeal to the Tribunal extinguishes the right of appeal to the Minister and vice versa.

“something of the formal atmosphere of a court of law and high cost”.⁶ The Tribunal was established because it was thought that it would :⁷

“provide a less formal atmosphere in which, nevertheless, proceedings can be conducted in a manner allowing all parties to present their cases fully so that a fair and just decision can be reached.”

The Town Planning Appeal Tribunal has been utilised to a far greater extent than the Town Planning Court.⁸

5.6 Although otherwise there may be a good argument for transferring the Tribunal’s jurisdiction to the Administrative Law Division of the Supreme Court, the Commission is reluctant to recommend that the position be disturbed at this stage. The Tribunal is of recent origin and is hearing a considerable number of appeals. By way of introducing a limited rationalisation in town planning matters, the Commission suggests that certain appeals heard by various appellate bodies be dealt with in future by the Town Planning Appeal Tribunal. These are appeals under the *City of Perth Parking Facilities Act 1956-1981*, s 15D(1); the *Industrial Development (Resumption of Land) Act 1945-1981*, s 7(5)(d); the *Local Government Act 1960-1981*, ss 235(4) and 295(3)(d) and (4)(d); the *Metropolitan Region Town Planning Scheme Act 1959-1981*, s 43(3); and the *Town Planning and Development Act 1928-1981*, ss 7B(6)(a) and 7B(8)(b).⁹

5.7 Appendix IV contains a list of the rights of appeal of which the Commission is aware¹⁰ which the Commission suggests be conferred upon existing specialist appellate tribunals.

(c) The Administrative Law Divisions of the Supreme Court and the Local Court

5.8 There are two general recommendations which the Commission wishes to make concerning the jurisdiction of the Administrative Law Divisions of the Supreme Court and the Local Court.

⁶ Western Australian Parliamentary Debates (1976) Vol 213, 3142.

⁷ Ibid.

⁸ Approximately fifty appeals were made to the Tribunal in 1981 alone.

⁹ Consistent with existing rights of appeals to the Town Planning Appeal Tribunal a policy decision would have to be made as to whether there should be an alternative appeal to the Minister for Urban Development and Town Planning pursuant to s 39 of the *Town Planning and Development Act 1928-1981*

¹⁰ That is, in statutes up to and including Act No. 80 of 1981.

5.9 First, the Commission recommends that the proposed Administrative Law Division of the Supreme Court be given jurisdiction to hear all administrative appeals which presently lie to the Supreme Court and the District Court. Jurisdiction in only fifteen rights of appeal is presently vested in the District Court, and very few appeals arise out of them. In the interests of specialisation and for the reasons advanced in paragraphs 4.5 to 4.8 above, the Commission recommends the use of the Supreme Court rather than the District Court in dealing with these matters.

5.10 The Commission also suggests that a number of rights of appeal relating to the licensing, registration or disciplining of people in various professions, occupations, livelihoods or commercial activities which at present lie to other bodies be conferred on the Administrative Law Division of the Supreme Court. These appeals involve rights, benefits or privileges of such an important or complex nature that it is appropriate to have the appeal determined by a Supreme Court judge.

5.11 In conformity with the foregoing, Appendix II of this Report contains a list of the rights of appeal of which the Commission is aware¹¹ which should initially be conferred on the proposed Administrative Law Division of the Supreme Court.¹²

5.12 The second general recommendation which the Commission wishes to make is that all other rights of appeal conferred on the Local Court, Courts of Petty Sessions (including those in which the statute actually refers to a Court of Summary Jurisdiction) or a stipendiary magistrate should be conferred on the proposed Administrative Law Division of the Local Court. The Commission considers that it is incongruous for courts whose procedures are designed for criminal jurisdiction such as Courts of Petty Sessions, to hear appeals from administrative decisions.¹³ In addition the Local Court is always presided over by a stipendiary magistrate whereas a Court of Petty Sessions may be presided over by justices of the peace. There are also a number of other rights of appeal which the Commission suggests

¹¹ That is, in statutes up to and including Act No 80 of 1981.

¹² The question of appeals from decisions relating to legal practitioners is within the terms of reference of the Inquiry into the Future Organisation of the Legal Profession in Western Australia whose tentative suggestions are contained in para 3. 15 of the Working Paper No 1 issued in July 1981. The Commission agrees with the Committee that because legal practitioners are officers of the Supreme Court it would be appropriate for the Full Court of the Supreme Court to continue to have ultimate control of matters under the *Legal Practitioners Act 1893-1979*.

¹³ The Commission also suggests that Courts of Petty Sessions should not generally act as administrative decision-makers, for example, in respect of the licensing of employment agents: *Employment Agents Act 1976*, ss 22 and 25. In the interest of consistency, consideration could be given to conferring the jurisdiction of Courts of Petty Sessions to make administrative decisions on the Local Court.

should be transferred to the Division. While the Commission believes they should be within the jurisdiction of the ordinary court system they are not of such importance or complexity as to require determination by the Supreme Court. The rights of appeal of which the Commission is aware¹⁴ which the Commission suggests should initially be conferred upon the proposed Administrative Law Division of the Local Court are listed in Appendix III.

5.13 Under the *Public Works Act 1902-1979*, a Compensation Court is established with jurisdiction to determine the amount of compensation which is payable where an offer or amended offer for compensation made by the Governor, the Minister for Works or other body is rejected.¹⁵ The compensation is payable for land or water taken or for damage done under the *Public Works Act 1902-1979* and other Acts.¹⁶ The Compensation Court may be comprised in one of two ways -¹⁷

I. Three members -

- (i) a President, who is either a judge of the Supreme Court (where the amount claimed exceeds \$1,000), or a stipendiary magistrate (where the amount claimed does not exceed \$1,000 or if a judge so orders and the parties consent);
- (ii) an assessor appointed by the claimant; and
- (iii) an assessor appointed by the respondent;

OR

II. Any person acting alone if agreed upon by the parties.

¹⁴ That is, in statutes up to and including Act No 80 of 1981.

¹⁵ The compensation payable may also be determined by agreement between the respondent and the claimant, or by an action for compensation by the claimant against the respondent in a court of competent jurisdiction: *Public Works Act 1902-1979*, s 47A(a) and (b).

¹⁶ A number of these Acts and the power conferred on the government authority are listed at pages 177-184 of the Commission's Survey published in 1978.

¹⁷ *Public Works Act 1902-1979*, ss 50-52.

The Commission considers that the sum of \$1,000 referred to above should be increased to \$6,000, the jurisdictional limit of the Local Court.¹⁸ The Commission also considers that unless the parties agree to have the appeal heard by a person acting alone the appeal should be heard in the Administrative Law Division of the Supreme Court where the amount claimed exceeds \$6,000 and in other cases in the Administrative Law Division of the Local Court. In these appeals lay members could sit in the Division.¹⁹

(d) Other rights of appeal

5.14 The Commission has not considered whether or not there is any need to rationalise the existing rights of appeal in the industrial relations area. These rights of appeal are listed in sections 1 and 6 of Appendix V. All or many of these rights of appeal were probably created following discussions between representatives of employers, employees and the Government. Although there may be some scope for a review of the rights of appeal,²⁰ particularly in the public service area,²¹ the Commission has not made any recommendations on this matter because it considers that any such review would best be carried out after discussion between interested groups. During such discussions, consideration could be given to the principles enunciated in this report.

5.15 Although the recommendations in this report, if adopted, would go a long way towards rationalising the existing appellate arrangements there would still be a large number of rights of appeal²² which would have to be examined to determine the most appropriate appellate body in each case. The Commission has not at this stage carried out a detailed study of these other rights of appeal to determine which body in the rationalised administrative appeal system should hear the appeal. The Commission suggests that the study be deferred until a decision is made on whether or not the administrative appeal system is to be established. If it were, the Commission's recommendations in this Report would provide a substantial basis for carrying out a reform of the existing appellate arrangements and there would be no need to delay the implementation of the recommendations pending the further study suggested. In

¹⁸ Six thousand dollars is set as the general jurisdiction of the Local Court by the *Acts Amendment (Jurisdiction of Courts) Act 1981*. This Act was assented to on 14 December 1981, but has not yet been proclaimed.

¹⁹ Para 5.16 below.

²⁰ See, for example, Mr Justice Wickham (as he is now) *Power Without Discipline. The "Rule of No-Law" in Western Australia: 1964* (1965) 7 UWALR 88.

²¹ See section 1 of Appendix V.

²² These rights of appeal are listed in Appendix V.

paragraph 7.4 below the Commission recommends that a body should be established to carry out an ongoing review of administrative law. If that recommendation were adopted, it would be more appropriate for that body, rather than the Law Reform Commission, to carry out the study. As has been pointed out already there are in any event other rights of appeal created in delegated legislation which require consideration in order to be assimilated to the system proposed by the Commission.

2. LAY MEMBERS

5.16 As there may be circumstances in which it would be desirable for the Administrative Law Divisions to have the benefit of persons with a particular expertise,²³ for example, where a claim for compensation is the subject of an appeal,²⁴ or an appeal is made from a decision to detain a ship on the ground that it is unsafe,²⁵ the Commission recommends that provision should be made for the appointment of lay members to sit on the Administrative Law Divisions.

Where the number of appeals is such as to warrant it, panels of lay members could be established. A person could be appointed by the Governor to the panel if he has, in the opinion of the Governor, special knowledge or skill in relation to any class of decisions in respect of which an appeal may be made to one of the Administrative Law Divisions.

5.17 Where the Chief Justice or Chief Stipendiary Magistrate, as the case may be, considered in a particular case that it would be desirable to have lay members as members of the division, he could select members of the panel for the purpose of the hearing and determination of the appeal. Appointments of lay members where no relevant panel existed could be made by the Chief Justice or the Chief Stipendiary Magistrate.²⁶ Except on a question of law, the appeal should be decided according to the opinion of the majority. In the case of a question of law, including the question whether a particular question is one of law, the question should be decided in accordance with the opinion of the presiding judge or magistrate.²⁷

²³ See the comments of Dr Taylor referred to in para 4.17 above.

²⁴ *Public Works Act 1902-1979*, ss 34 and 47A.

²⁵ *Western Australian Marine Act 1948-1980*, s 58(1)(d).

²⁶ See, for example, s 56 of the *Supreme Court Act 1935-1981* which provides for the appointment of assessors by the Court.

²⁷ As in *Administrative Appeals Tribunal Act 1975-1981* (Cth), s 42(1).

3. POWERS OF THE APPELLATE BODY

5.18 At present the powers of the various appellate bodies vary depending on the statute creating the right of appeal. However, in the case of appeals to the Supreme Court and District Court, some standardisation of powers has been imposed by Order 65 of the *Rules of the Supreme Court 1971-1981*. This Order applies to certain appeals to the Supreme Court and District Court, including those in which the procedure to be followed in the conduct of the appeal is not otherwise prescribed. Rule 10(1) of this Order makes provision for the powers of the appellate court on such an appeal.

5.19 The Commission considers that the law in this area can be simplified for administrators, legal practitioners and others by providing the various appellate bodies in the proposed administrative appeal system with the same powers on an appeal. For this purpose the Commission recommends that they should have power to exercise all the powers and discretions conferred on the original decision-maker. In doing so the Commission recommends that the appellate body should have power to -²⁸

1. affirm the decision;
2. vary the decision; or
3. set the decision aside and -
 - (a) make a decision in substitution for the decision so set aside; or
 - (b) remit the matter for reconsideration in accordance with any directions or recommendation of the appellate body.

This would invest the Administrative Law Division with the same general powers as the Commonwealth Administrative Appeals Tribunal which enable it to arrive at what it considers to be the “correct or preferable” decision.²⁹

5.20 Although a statute may designate either the Administrative Law Division of the Supreme Court or the Administrative Law Division of the Local Court as the appellate body, the Commission considers that it is desirable to introduce some flexibility into the selection of

²⁸ These powers are based on the powers granted in Order 65 rule 10 of the *Rules of the Supreme Court 1971-1981* and those conferred on the Administrative Appeals Tribunal under s 43 of the *Administrative Appeals Tribunal Act 1975-1981* (Cth): see para 3.17 above.

²⁹ *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577, 589.

the most appropriate appellate body in a particular case. One circumstance in which this would be desirable is where an appeal to the Administrative Law Division of the Local Court raises complex questions of law which would best be determined by the Administrative Law Division of the Supreme Court. On the other hand there may be circumstances in which an appeal which would otherwise be heard in the Administrative Law Division of the Supreme Court could be more conveniently determined by the Local Court, for example, where either party resides in a country area. In order to provide flexibility to deal with such circumstances, the Commission recommends that a judge of the Administrative Law Division of the Supreme Court should have power, either on his own motion or on the 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. Power could also be given to a magistrate in the Administrative Law Division of the Local Court to remit a matter from the Court to the Administrative Law Division of the Supreme Court either on his own motion or on the application of a party to an appeal, after giving the parties an opportunity to be heard in chambers.³⁰

4. COSTS

5.21 The prospect of being required to pay the costs of a successful respondent could severely restrict the likelihood of a person appealing against an administrative decision. It is equally undesirable if a respondent is inhibited from presenting its side of the case for fear of being required to pay the appellant's cost if the appeal is successful. In the Commonwealth Administrative Appeals Tribunal each party to an appeal bears his own costs. A senior non-presidential member of the Tribunal, Mr R K Todd, has commented favourably on this rule. He said:³¹

“...across the broad sweep of the Tribunal's jurisdiction I firmly believe that the possibility of an award of costs would kill the Tribunal for the ordinary citizen. With the Tribunal, as with the Taxation Boards of Review, the citizen may come to it knowing that he can limit his costs. He may engage senior or junior counsel, or a solicitor, or a lay advocate, or he may present the case himself. Very often the latter is a wise course. It certainly puts a knowledgeable, responsible and responsive Tribunal on its mettle to ensure that the case is fully presented. Some judicial comment has, I

³⁰ Such a power could be exercised subject to any order or practice direction of the Administrative Law Division of the Supreme Court.

³¹ R K Todd, *Administrative Review Before the Administrative Appeals Tribunal - A Fresh Approach To Dispute Resolution?*, 26 para 27, Australian National University Administrative Law Seminar, Canberra July 1981. Hereinafter cited as “Todd”.

suggest, flowed from a lack of understanding as to how often it is essential for the Tribunal to do just this. The Tribunal often has to elicit the applicant's story after the manner of counsel in examination-in-chief. It is simply not possible to speak of the Tribunal not descending into the arena in the way in which one may speak of a Court where both sides are represented by counsel. Because the Tribunal is prepared to help in this way it would be tragic for the ordinary person to be deterred from coming to the Tribunal to present his own case because of the fear of an order for costs being made against him."

5.22 In order to ensure that neither party is inhibited from presenting its case, the Commission recommends that generally each party to an appeal should bear his own costs for the appeal or any remittal application.³² The appellate body should, however, be able to make an award of costs if it is of the view that there are special reasons for ordering one party to pay the costs of the other, for example, the appellant may have instituted the appeal frivolously or vexatiously or without reasonable cause to believe that the appeal was justified or the decision-maker may not have acted in a bona fide manner in making the initial decision.

5.23 It should be possible to recover any costs awarded against a party to an appeal by an appellate body other than the proposed Administrative Law Divisions of the Supreme Court and Local Court in a court of competent jurisdiction. In the case of appeals to the proposed Administrative Law Divisions of the Supreme Court and the Local Court, the costs should be recovered in the manner provided for the recovery of costs in the Supreme Court and the Local Court, respectively.

³² Para 5.20 above.

CHAPTER 6

A SUGGESTED CODE OF PROCEDURE FOR APPELLATE BODIES

1. INTRODUCTION

6.1 A number of commentators on the Working Paper expressed concern that an Administrative Law Division of the Supreme Court would be too formal in its procedure. The Commission does not consider that the proposed Administrative Law Divisions need have an unduly formal procedure or operate in an unduly formal manner. Some sort of formality, in the sense of a regular procedure, is necessary.

6.2 In rationalising the existing appellate system, the Commission considers that it would be desirable to develop a code of procedure for appeals to the proposed Administrative Law Divisions of the Supreme Court and the Local Court. Consideration could be given to applying the code to the other appellate bodies in the administrative appeal system. The adoption of such a code would mean that administrators, legal practitioners and others would need to be familiar with only one procedure for instituting and hearing an appeal. It is envisaged that the code would be incorporated in appropriate procedural rules adopted by the particular appellate body.

6.3 The following paragraphs contain an outline of the code of procedure proposed by the Commission. In developing the code the Commission's aim has been to provide a simple set of rules covering each step in the procedure so that the parties will know with reasonable certainty how to proceed, while ensuring that the appellate body is able to obtain sufficient information to review the initial decision. The Commission has also endeavoured to develop a procedure which involves the minimum of delay, formality and expense.

6.4 In the Working Paper, the Commission suggested that the appellate procedure should be based on the procedure set out in Order 65 of the *Rules of the Supreme Court 1971-1981*. The Law Society in its comments on the Working Paper suggested, however, that Order 65 should not be followed because there was room for improvement. The Commission agrees with this view and, in any case, considers that it is necessary to look at the procedure afresh in

the light of the procedure of the Commonwealth Administrative Appeals Tribunal and a number of State appellate bodies, including the Town Planning Appeal Tribunal and the Land Valuation Tribunal. In particular, the Commission has attempted to develop a procedure, the salient features of which are the same as, or similar to, those procedures of the Administrative Appeals Tribunal which have proved to be convenient or desirable. The adoption of these features would also have the advantage that legal practitioners and others will not be confronted with substantially different appellate procedures in the Commonwealth and State jurisdictions.

2. PRE-TRIAL MATTERS

(a) Commencement of the appeal

6.5 An appeal should be instituted by a written Notice of Appeal. The Notice should contain the following details -¹

1. The name of the appellant;
2. The address of the appellant and the appellant's address for service;
3. The substance and the date of the decision the subject of the appeal;
4. The person or body from which the appeal is brought and any person (other than the appellant or a person heard as a witness only) who appeared before or was heard by that person or body on the hearing or determination of the application or other proceeding in which the decision, the subject of the appeal was made or given (the "respondent");²
5. The office, appointment or title and address of the respondent;
6. The provision under which the right of appeal was created;
7. The reasons or grounds for the appeal;
8. The relief sought.

¹ See, for example, *Administrative Appeals Tribunal Regulations* (Cth), Form 1.

² In some cases it would be expected that the body from which the appeal was brought would be a nominal respondent, for example, where the initial decision was made by a court. If, however, it were the only respondent it would be necessary to empower the appellate body to appoint counsel to assist it so that both sides could be argued before it.

The Notice should be accompanied by any document or other evidence in support of the grounds of appeal.³

6.6 The Notice of Appeal, together with a number of copies of the Notice corresponding to the number of respondents, should be filed with the Registrar or other administrative officer of the appellate body. That officer should send a copy of the Notice to each respondent. The Notice should be filed with the Registrar within 21 days of the date of the decision if the appellant or his representative was present when the decision was made or given, or if not, within 21 days of the date on which notice of the decision was sent to the appellant.

(b) Entry of appearance

6.7 A person on whom a Notice of Appeal has been served who wishes to be heard on the appeal should file a notice to that effect with the appellate body within 14 days of the date of service of the Notice of Appeal and serve a copy on the appellant. The Notice should also contain the respondent's address for service.⁴

(c) Obtaining reasons for the decision

6.8 The existing *Rules of the Supreme Court* do not provide a means whereby a person can obtain the reasons for a decision. This is a matter for which provision has been made in the *Commonwealth Administrative Appeals Tribunal Act 1975-1981*. Section 28 of the Act provides that a person entitled to appeal against a decision may require the decision-maker to furnish the appellant with a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision. This provision has been described by Deane J as bringing about a "quiet revolution" by lowering a "narrow bridge over the moat of executive silence"⁵ The Commission considers that this is a very important provision and recommends that it be adopted in Western Australia.⁶ Not only would such a provision facilitate the preparation of an appeal but the knowledge that a decision-maker's reasons for making a decision will have

³ *Land Valuation Tribunals Regulations 1979*, r 6(2)

⁴ *Rules of the Supreme Court 1971-1981*, Order 65 rule 3(4).

⁵ *Minister for Immigration and Ethnic Affairs v Pochi* (1980) 31 ALR 666, 685-686.

⁶ There is a precedent for such a power in Western Australia. Section 11(1) of the *Builders' Registration Act 1939-1979* provides that an applicant for registration under the Act whose application has been refused by the Builders' Registration Board is entitled, on demand, to be furnished with written reasons for the refusal. See also s 13 of the *Administrative Decisions (Judicial Review) Act 1977-1980* (Cth).

to be disclosed may ensure that the decision-maker gives more careful consideration to the decision before it is made and thus improve the administrative decision-making process. The disclosure of the reasons for a decision may also assure a person that he was treated fairly and lawfully and ensure that unnecessary appeals are not commenced.

(d) Lodging material documents with the appellate body

6.9 The decision-maker should, within 14 days of receiving a copy of a Notice of Appeal, be responsible for filing the following documents with the appellate body and serving a copy on the appellant -

1. A statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.⁷
2. Any application, documents, written submissions, statements, reports and other papers relating to the decision appealed against;⁸
3. A certified copy of any proceedings before the respondent and of any notes of evidence in those proceedings and the decision of the respondent to which the appeal relates.

All the original exhibits in the custody of the decision-maker produced as evidence in those proceedings should also be sent to the appellate body.⁹ The Commission considers that these are important provisions which should materially assist the appellate body in determining the appeal and facilitate a speedy determination of an appeal.

(e) Preliminary conference

6.10 Another provision in the *Commonwealth Administrative Appeals Tribunal Act 1975-1981* which the Commission considers should be adopted in Western Australia is the provision for a preliminary conference in appropriate cases at the direction of the appellate

⁷ *Administrative Appeals Tribunal Act 1975-1981*, S 37(1).

⁸ *High Court (Administrative Division) Rules 1969-1977* (NZ), rule 36(a).

⁹ *Rules of the Supreme Court 1971-1981* (Cth), Order 65 rule 8.

body. Under section 34(1) of the Act, a presidential member may, after considering any material lodged by the parties and if the parties agree, direct the holding of a conference of the parties or their representatives. The purpose of the conference is to attempt to obtain a consent agreement between the parties without holding, a formal hearing. The Tribunal must make a decision in accordance with the terms of any agreement between the parties if the Tribunal is satisfied that a decision in those terms would be within the powers of the Tribunal.¹⁰

6.11 The value of this procedure is shown by an unreported case, *Re Josephine Duncan and the Director-General of Health*.¹¹ The appellant, who lived in Cairns, sought assistance under the Isolated Patients' Travel and Accommodation Assistance Scheme. It was accepted that she resided in an "isolated area". The matter in dispute was whether the "nearest suitable specialist" was in Brisbane or Sydney. A preliminary conference, by telephone, was used to arrange to obtain written information from two specialists. This information made it clear, and the respondent conceded, that the specialist in Sydney was the nearest suitable specialist. The Tribunal made a finding to this effect. As a result of this procedure it was not necessary to hold a formal hearing and the practices of the specialists were not interrupted.

6.12 In this case the conference exposed further material which the decision-maker had not taken into account causing him to change his decision. In other cases:¹²

"Having aired his complaints in an informal conference before an experienced member of the Tribunal and having had the opportunity of a free-ranging and, at his discretion, a confidential discussion of the matter, many applicants gain a clearer understanding of the issues and may conclude, contrary to their earlier opinion, that the decision under review could not be successfully challenged. In such cases, the applicant may withdraw."

(f) Directions hearing

6.13 As there will undoubtedly be cases in which, because of the complexity of the matters in dispute, it will be necessary to clarify the issues in dispute on the appeal the Commission recommends that provision should be made for a directions hearing. At a directions hearing a member of the appellate body could attempt to identify the issues more clearly and give directions as to the procedure to be followed prior to or at the hearing. Directions could be

¹⁰ *Administrative Appeals Tribunal Act 1975-1981* (Cth), s 34(2).

¹¹ Noted at (1980) 54 ALJ 752.

¹² Hall, 21-22 para 43.

given, for example, for the exchange of reports of expert witnesses or proofs of evidence prior to the hearing. A directions hearing is used on occasions in the Commonwealth Administrative Appeals Tribunal. Where possible:¹³

“... mechanisms are explored for eliminating the unnecessary protraction of the hearing over issues not seriously in dispute. The presiding officer may well take a quite active role in assisting the parties to identify the issues and in directing the procedures to be followed.”

The experience of the Administrative Appeals Tribunal has shown that where the Tribunal takes the initiative in laying down a timetable and giving directions appeals are heard expeditiously.

(g) Stay of proceedings

6.14 Although the institution of an appeal should not automatically stay the operation of a decision the subject of an appeal, the appellant should be able to apply to the appellate body to have the operation of the decision stayed. The respondent should be given notice of such an application and an opportunity to be heard.¹⁴ Such an application may be necessary, for example, where the decision the subject of an appeal involves the suspension or cancellation of a licence, including a licence to practise a particular profession.

(h) Setting down for hearing

6.15 The appeal should be set down for hearing by the Registrar or other administrative officer of the appellate body not less than 21 days after the date on which the appeal was instituted or in accordance with an order made at a directions hearing. Notice of the date for the hearing should be sent to the appellant and respondent not less than 7 days before the date of the hearing.¹⁵ Where it is necessary to have an appeal brought on for hearing urgently¹⁶, it should be possible for the appellant to apply to the appellate body for directions for the abridgement of the times for setting the appeal down for hearing, holding the hearing, filing documents and preparing the appeal book.

¹³ Id, 21 para 41.

¹⁴ *Administrative Appeals Tribunal Act 1975-1981* (Cth), s 41.

¹⁵ *Rules of the Supreme Court 1971-1981*, Order 65 rule 7.

¹⁶ For example, with regard to an order to detain a ship on the ground that it is unsafe: *Western Australian Marine Act 1948-1980*, s 58(1)(c).

(i) Appeal book

6.16 As the provision of an appeal book would, in many cases, involve unnecessary expense and delay, particularly in view of the Commission's recommendations in paragraphs 6.8 and 6.9 above for the supply of information with respect to the decision the subject of the appeal, the Commission considers that appeal books should not be required unless the appellate body directs that they be prepared. Where such a direction is given the appellant should prepare the appeal book to the satisfaction of the Registrar or other administrative officer of the appellate body.

3. THE HEARING

6.17 One unsatisfactory aspect of the existing law is that often nothing is said in the statute as to the nature of the appeal. These statutes may merely provide that there shall be an appeal to some appellate body, without indicating whether the appeal is to be a new hearing, that is, upon material presented completely afresh, or a rehearing in the sense that the appellate body has power to reconsider the matter "upon the whole or part of the material before the administrative body".¹⁷ In many cases the use of a term such as "rehearing" is inappropriate because the initial decision does not involve a hearing.¹⁸ In these cases it is for the appellate body "to pronounce anew upon the rights of the parties as disclosed by the evidence before it".¹⁹

6.18 The Commission recommends earlier in this Report that the appellate body should be able to exercise all the powers and discretions conferred on the person who made the decision the subject of the appeal.²⁰ For this purpose, the Commission recommends that the appellate body should have power to determine the appeal on the material which was before the decision-maker or on any fresh or additional evidence or information which is available at the time of the determination of the appeal. Where there has been an oral hearing before the decision-maker, the appellate body should also have power to rehear the testimony of any witness who appeared before him. In order to make the procedure as flexible as possible,

¹⁷ *Turnbull v New South Wales Medical Board* [1976] 2 NSWLE 281, 288.

¹⁸ *Re Mulligan; Ex parte Isidoro* [1979] WAR 198.

¹⁹ *Phillips v The Commonwealth of Australia* (1964) 110 CLR 347,350.

²⁰ Para 5.19 above.

however, the appellate body should have power, either on its own motion or on the application of a party, to order that the appeal be in the nature of a hearing de novo.

6.19 The appellate body should not be bound by the rules of evidence but should be able to inform itself on any matter in such manner as it thinks fit. There is a provision to this effect in the *Commonwealth Administrative Appeals Tribunal Act 1975-1981*.²¹ This does not mean that the appellate body is bound to conduct an investigatory or inquisitorial proceeding. Nor does it mean that the rules of evidence are completely abandoned or that orders can be made without a basis in evidence having rational probative force. It means that on occasions the appellate body can receive relevant material which would not ordinarily be admitted in evidence in a court, for example, the report of the Commonwealth Royal Commission into Drug Trafficking, known as “the Woodward Report” was admitted in evidence in one case before the Administrative Appeals Tribunal.²² The general approach of the Administrative Appeals Tribunal has been cautious.²³ In *Re Saverio Barbaro and Minister for Immigration and Ethnic Affairs* Davies J said:²⁴

“In informing itself on any matter in such manner as it thinks appropriate, the Tribunal endeavours to be fair to the parties. It endeavours not to put the parties to unnecessary expense and may admit into evidence evidentiary material of a logically probative nature notwithstanding that that material is not the best evidence of the matter which it tends to prove. But the Tribunal does not lightly receive into evidence challenged evidentiary material concerning a matter of importance of which there is or should be better evidence. And the requirement of a hearing and the provision of a right to appear and be represented carries with it an implication that, so far as is possible and consistent with the function of the Tribunal, a party should be given the opportunity of testing prejudicial evidentiary material tendered against him. It is generally appropriate that a party should have an opportunity to do more than give evidence to the contrary of the evidence adduced on behalf of the other party. He should be given an opportunity to test the evidence tendered against him provided that the testing of the evidence seems appropriate in the circumstances and does not conflict with the obligation laid upon the Tribunal to proceed with as little formality and technicality and with as much expedition as the matter before the Tribunal permits.”

6.20 On a hearing a party should not be restricted to the grounds stated in the Notice of Appeal and the respondent should not be restricted to the reasons previously given for the

²¹ Section 33(1)(c). See also the *Environmental Protection Act 1971-1980*, s 46(1) and the *Land Valuation Tribunals Act 1978*, s 31.

²² Todd, 13 para 12.

²³ The Hon Mr Justice M D Kirby, *Administrative Review on the Merits: The Right or Preferable Decision* (1980) 6 Mon LR 171, 177-179.

²⁴ (1980) 3 ALD 1,5

decision the subject of the appeal.²⁵ Where a new matter is raised by one party the position of the other party can be protected by providing for an adjournment.

6.21 Any person, other than a respondent, whose interests are or might be affected by the decision the subject of the appeal or who was entitled to be heard by the original decision-maker should be able to apply to the appellate body for leave to appear and be heard as a party to the appeal.²⁶ The power to join a party or parties in the Commonwealth Administrative Appeals Tribunal has proved to be a useful mechanism for ensuring that all the matters relevant to the decision-making power in question are exposed.²⁷ The relevant “interests” would not have to be pecuniary or even specific legal rights as restrictions of that kind are incompatible with the variety of decisions which are subject to appeal. Rather:²⁸

“The character of the decision is relevant, for if the interests relied on are of such a kind that a decision of the given character could not affect them directly, there must be some evidence to show that the interests are in truth affected.”

Any party to a hearing should be able to appear personally or by a legal practitioner.²⁹

6.22 If a party who has been given notice of a hearing fails to appear at the hearing, the appellate body should have power to proceed to hear and determine the appeal in that person’s absence³⁰ or to dismiss the appeal, if that person is the appellant.³¹

6.23 The appellate body should have power to summon any person and require any person to produce documents, to inspect and retain documents, to require any person appearing before the body to make an oath or affirmation that he will truly answer all questions put to him and require any such person to answer all relevant questions put to him by the appellate body or a party to the appeal.³² Any party to a hearing should be given a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make

²⁵ See *Land Valuation Tribunals Act 1978*, s 30 and *Town Planning and Development Act 1928-1981*, s 51. This is also the position in the Commonwealth Administrative Appeals Tribunal: Hall, 20 para 38 and 22-23, para 45.

²⁶ *Administrative Appeals Tribunal Act 1975-1981* (Cth), s 30(1) and *Land Valuation Tribunals Act 1978*, s 26.

²⁷ Hall, 23 para 46.

²⁸ *Re McHattan and Collector of Customs* (1977) 18 ALR 154, 157 per Brennan J.

²⁹ In some instances a party may be represented by an agent: *Land Valuation Tribunals Act 1978*, s 28(2) and *Town Planning and Development Act 1928-1981*, s 49.

³⁰ *Land Valuation Tribunals Act 1978*, s 25 and *Town Planning and Development Act 1928-1981*, s 48.

³¹ *High Court (Administrative Division) Rules 1969-1977* (NZ), rule 40(1).

³² *Land Valuation Tribunals Act 1978*, s 29(1) and *Town Planning and Development Act 1928-1981*, s 50.

submissions to the appellate body.³³ A hearing should be held in public unless the appellate body determines that the proceedings should be held *in camera*.³⁴

4. THE APPELLATE BODY'S DETERMINATION

6.24 The appellate body should give its decision in writing and a copy of the decision should be sent to the appellant and the respondent. The decision should include the reasons for the decision and its findings on material questions of fact and a reference to the evidence on which the findings were based.

6.25 The appellate body should also have power to strike out an appeal if the parties consent.³⁵

5. REFERRALS AND FURTHER APPEALS

6.26 In paragraph 4.24 above the Commission recommended that there should be an appeal from a judge of the proposed Administrative Law Division to the Full Court, or a referral of a matter by a judge to the Full Court, on questions of law. Where a matter is referred to the Full Court without a hearing in the Administrative Law Division the procedure referred to above should apply to the hearing of the matter. Where, however, there is an appeal to the Administrative Law Division on a question of law from another appellate body or an appeal to the Full Court on a question of law, the procedure should be that provided in Order 63 of the *Rules of the Supreme Court 1971-1981*.

6. OTHER MATTERS

(a) Enlargement or abridgement of time

6.27 In paragraph 6.15 above the Commission recommended that an appellant should be able to apply for an abridgement of the various times proposed for the steps in the appeal procedure. In order to ensure that the time limits do not make the procedure unduly inflexible, the Commission recommends that the parties to an appeal should also be able to apply to the

³³ *Land Valuation Tribunals Act 1978*, s 27.

³⁴ *Id*, s 32 and *Town Planning and Development Act 1928-1981*, s 54A.

³⁵ *Administrative Appeals Tribunal Act 1975-1981* (Cth) s 42A(1).

appellate body to have any of those periods enlarged. It should be possible to make such an application either before or after expiration of the time appointed or allowed.

(b) Service of documents

6.28 Documents and notices required to be served on a party to an appeal other than the respondent or a person represented by a solicitor should be served -

- (a) by delivering the notice or document to him personally;
- (b) by leaving the notice or document for him at his usual or last known place of abode, or posting it to him as a letter addressed to him at his usual or last known place of abode; or
- (c) if he is in business, by leaving the notice or document for him at his usual or last known place of business, or, by posting it as a letter addressed to him at his usual or last known place of business.

Where a person is represented by a solicitor, any document or notice to be served on the person should be served by leaving the notice or document at the office of the solicitor.

6.29 In the case of the person or body who made the decision, the notice or document should be served by any of the means referred to in the previous paragraph unless the Act under which the decision was made, or any regulation made under that Act, prescribes the manner in which documents or notices are to be served on the decision-maker.

CHAPTER 7

ONGOING REVIEW

7.1 One matter raised by the Commission in the Working Paper was whether or not a permanent advisory body similar to the Commonwealth Administrative Review Council should be established in Western Australia. Of the seven commentators on the Working Paper who adverted to this matter, only three favoured the establishment of such a permanent body.¹

7.2 The Administrative Review Council, which is established under section 49(1) and (2) of the *Commonwealth Administrative Appeals Tribunal Act 1975-1981*, consists of -

- (1) the President of the Administrative Appeals Tribunal;
- (2) the Commonwealth Ombudsman;
- (3) the Chairman of the Australian Law Reform Commission; and
- (4) not less than three nor more than ten other members appointed by the Governor General.

The Secretariat of the Council consists of a Director of Research, two Project Officers and three clerical staff. The functions of the Council are:²

- “(a) to ascertain, and keep under review, the classes of administrative decisions that are not the subject of review by a court, tribunal or other body;

¹ Mr Treloar, the Law Society of Western Australia and the Town of Albany. Those who opposed its establishment were the Main Roads Department, D McColl, the Commissioner for Corporate Affairs and the Local Government Association of Western Australia.

² *Administrative Appeals Tribunal Act 1975-1981* (Cth) s 51(1). A permanent advisory body, the Council on Tribunals, has also been established in the United Kingdom. It has a more limited scope and role than the Administrative Review Council. The Council is required to keep under review the constitution and working of specified Tribunals, to consider and report on such particular matters as may be referred to the Council, for example, the award of costs at statutory inquiries, and to consider and report on such matters as the Council may determine to be of special importance with respect to administrative procedures involving a statutory inquiry: *Tribunals and Inquiries Act 1971* (UK), s 1. The Council is consulted before procedural rules are made for certain tribunals and before those tribunals are exempted from a requirement to give reasons for a decision. The Council may make general recommendations about appointments to membership of specified tribunals. The Council makes an annual report to Parliament on its activities.

- (b) to make recommendations to the Minister as to whether any of those classes of decisions should be the subject of review by a court, tribunal or other body and, if so, as to the appropriate court, tribunal or other body to make that review;
- (c) to inquire into the adequacy of the law and practice relating to the review by courts of administrative decisions and to make recommendations to the Minister as to any improvements that might be made in that law or practice;
- (d) to inquire into the adequacy of the procedures in use by tribunals or other bodies engaged in the review of administrative decisions and to make recommendations to the Minister as to any improvements that might be made in those procedures;
- (e) to make recommendations to the Minister as to the manner in which tribunals engaged in the review of administrative decisions should be constituted;
- (f) to make recommendations to the Minister as to the desirability of administrative decisions that are the subject of review by tribunals other than the Administrative Appeals Tribunal being made the subject of review by the Administrative Appeals Tribunal; and
- (g) to make recommendations to the Minister as to ways and means of improving the procedures for the exercise of administrative discretions for the purpose of ensuring that those discretions are exercised in a just and equitable manner.

7.3 A number of matters dealt with by the Administrative Review Council are matters which have been dealt with by the Commission in this Report, for example, the procedure of appellate bodies. The Council is, however, required to consider at least one matter which does not appear to be within the Commission's terms of reference, namely, ways and means of improving procedures for the exercise of administrative discretions for the purpose of ensuring that those discretions are exercised in a just and equitable manner. Review on a continuous basis of this sort would best be carried out by an expert body. A council could also monitor the operation of the administrative appeal system should such a system be established and recommend any changes to the law and procedure which might be necessary to overcome any difficulties which might become apparent once the system was in operation. A council would also have the advantage that it could readily be consulted on proposed legislation to determine whether or not a right of appeal should be created from any decisions authorised to be made in the legislation and, if so, the selection of the most appropriate appellate body. Such a council could also carry out, on an ongoing basis, a review of the rights of appeal

listed in Appendix V³ and rights of appeal created by delegated legislation to determine which body is the most appropriate to hear and determine the initial appeal.

7.4 The Commission considers that there is a need for an ongoing body to carry-out a review of rights of administrative appeal and appeal processes and recommends that such a body be established. A new body with a membership and functions similar to that of the Commonwealth Administrative Review Council could be established or the functions and membership of an existing body, such as the Legislative Review and Advisory Committee, could be expanded so as to enable it to carry out a continuous review of administrative law in this State.

³ Paras 5.14 and 5.15 above.

CHAPTER 8

SUMMARY OF THE COMMISSION'S RECOMMENDATIONS

An Administrative Appeal System

1. An administrative appeal system should be developed which should consist of -

- * The Full Court of the Supreme Court
- * An Administrative Law Division of the Supreme Court
- * An Administrative Law Division of the Local Court
- * A limited number of specialist appellate bodies.

(Paragraphs 4.1 to 4.24)

2. 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.

(Paragraph 4.3)

3. There should be provision for points of law to be considered and determined by the Full Court of the Supreme Court.

(Paragraphs 4.3, 4.23 and 4.24)

Jurisdiction of the Appellate Bodies

4. The rights of appeal which the Commission suggests should initially be conferred upon the Administrative Law Division of the Supreme Court are listed in Appendix II.

(Paragraphs 5.8 to 5.11)

5. The rights of appeal which the Commission suggests should initially be conferred upon the Administrative Law Division of the Local Court are listed in Appendix III.

(Paragraph 5.12)

6. The specialist appellate bodies which should be retained and the rights of appeal which the Commission suggests should be conferred upon them are listed in Appendix IV.

(Paragraphs 5.3 to 5.7)

Lay Members

7. Provision should be made for the appointment of lay members of the Administrative Law Divisions in appropriate cases.

(Paragraph 5.16)

Powers of the Appellate Body

8. 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 -

1. affirm the decision;
2. vary the decision; or
3. set the decision aside and -
 - (a) make a decision in substitution for the decision so set aside; or
 - (b) remit the matter for reconsideration in accordance with any direction or recommendation of the appellate body.

(Paragraph 5.19)

9. 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.

(Paragraph 5.20)

Costs

10. Each party to an appeal should bear his own costs, unless there are special reasons for the appellate body to order one party to pay the costs of the other.

(Paragraph 5.22)

A Code of Procedure For Appellate Bodies

11. A code of procedure for the appellate bodies in the administrative appeal system should be developed.

(Paragraphs 6.1 to 6.4)

12. The most important features which the Commission suggests should be included in that code are that -

- (a) A person entitled to appeal against a decision should be able to require the decision-maker to furnish the person with a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

(Paragraph 6.8)

- (b) Provision should be made for a preliminary conference in appropriate cases at the direction of the appellate body for the purpose of obtaining a consent agreement between the parties without holding a formal hearing.

(Paragraph 6.10)

- (c) The appellate body should not be bound by the rules of evidence but should be able to inform itself on any matter in such manner as it thinks fit.

(Paragraph 6.19)

Ongoing Review

13. An ongoing body should be established to review rights of administrative appeal and appeal processes.

(Paragraphs 7.3 and 7.4)

D K Malcolm, QC
Chairman

E G Freeman
Member

H H Jackson
Member

C W Ogilvie
Member

L L Proksch
Member

APPENDIX I

LIST OF THOSE WHO COMMENTED ON THE WORKING PAPER

City of Melville

Commissioner for Corporate Affairs

Department for Community Welfare

The Law Society of Western Australia (Inc)

The Local Government Association of Western Australia (Inc)

The Main Roads Department

D McColl

Commissioner of Public Health and Medical Services

Dr G D S Taylor

Town of Albany

J A D Treloar

The Hon R L Young, MLA, Minister for Health

EXPLANATORY NOTES ON APPENDICES II-V

GENERAL APPROACH

1. The Commission's objective in preparing this Report has been to recommend the establishment of an administrative appeal system which could ensure that administrative decisions are made, and appeals from administrative decisions are decided, in accordance with general legal principles. The Commission is also concerned to rationalise as far as possible the existing appellate arrangements, which incorporate inconsistencies and an unjustifiable variation in rights of appeal from decisions of bodies with similar responsibilities. Once such a system is established, rights of appeal created in the future can be readily placed within it.

2. In New Zealand and in the Commonwealth where detailed reviews have been carried out, the reviews have been carried out by an ongoing review body. In an attempt to assist the process, the Commission has made suggestions in Appendices II-IV on the jurisdiction which should initially be conferred upon the proposed Administrative Law Division of the Supreme Court, upon the proposed Administrative Law Division of the Local Court and upon a number of specialist appellate tribunals. The Commission has approached the matter on the basis of the general principles set out in the Report and not from detailed discussions with interested parties. No doubt in particular cases, interested parties may wish to make a submission to the Government before changes are made.

3. Appendix V contains a list of rights of appeal which the Commission recommends be the subject of further consideration by an ongoing review body.

APPENDIX II - JURISDICTION SUGGESTED FOR THE ADMINISTRATIVE LAW DIVISION OF THE SUPREME COURT

4. This appendix includes all those rights of appeal presently conferred on the Supreme Court and the District Court.¹ Few appeals are heard by the District Court in its appellate administrative jurisdiction and the transfer of this jurisdiction to the Administrative Law Division of the Supreme Court could easily be accommodated by that Division.

5. This appendix also lists a number of rights of appeal relating to the licensing, registration or disciplining of people in various professions, occupations, livelihoods or commercial activities² which the Commission proposes should be conferred on the Administrative Law Division of the Supreme Court. These appeals involve rights, benefits or privileges of such an important or complex nature that it is appropriate to have the appeal determined by a Supreme Court judge. From the information available to the Commission it seems clear that the number of appeals each year is very small and would not expand the workload of the Supreme Court to any significant degree.³

APPENDIX III - JURISDICTION SUGGESTED FOR THE ADMINISTRATIVE LAW DIVISION OF THE LOCAL COURT

6. The initial jurisdiction proposed for the Administrative Law Division of the Local Court has been largely determined by providing that the Division should be given all rights of appeal presently conferred on the Local Court, Courts of Petty Sessions⁴ or a Stipendiary Magistrate. The main aim of the Commission in this area is to develop a single appellate tribunal of expertise and flexibility at that particular level. In addition there are a number of rights of appeal which the Commission has suggested should be transferred to the Division. While the Commission believes they should be within the jurisdiction of the ordinary court

¹ The District Court also has certain original administrative jurisdiction. A judge of the District Court sitting as the Hire-Purchase Licensing Tribunal acts as an administrative decision-maker of first instance under s 23A of the *Hire-Purchase Act 1959-1980*.

² See category 3(a) on pp 71-77.

³ For example, in the case of seventeen rights of appeal which the Commission has suggested be transferred to the Supreme Court there have been no appeals during the last five years. There has been one appeal to the District Court in the last five years under the *Finance Brokers Control Act 1975*, four appeals to the Local Court in the last year under s 22(1) of the *Motor Vehicle Dealers Act 1973-1979* and thirty-four appeals to the Local Court or a Stipendiary Magistrate under ss 11(2) and 14(1) of the *Builders' Registration Act 1939-1979* in the last five years.

⁴ Including those designated as Courts of Summary Jurisdiction in the relevant statute.

system they are not of such importance or complexity as to require determination by the Supreme Court.

APPENDIX IV - JURISDICTION SUGGESTED FOR SPECIALIST APPELLATE TRIBUNALS

7. This appendix lists the initial jurisdiction proposed for a number of specialist appellate tribunals which the Commission considers should be retained, at least at present. The reasons for retaining these tribunals are set out in paragraphs 4.22 and 5.1 to 5.6 above. With the exception of the Town Planning Appeal Tribunal, their jurisdiction would remain the same as at present. The additional jurisdiction proposed for the Town Planning Appeal Tribunal is marked § in Appendix IV, the Commission's aim in this respect being to rationalise the rights of appeal in the town planning area.

APPENDIX V - RIGHTS OF APPEAL WHICH SHOULD BE CONSIDERED BY AN ONGOING REVIEW BODY

8. This appendix lists rights of appeal which the Commission suggests be made the subject of detailed study and recommendations by the proposed ongoing review body having regard to the basic system proposed in the Report and in the light of the experience gained from the operation of the system once established. Many of these appeals involve wide areas of discretion and government policy (paras 4.14 and 4.15 above). Others, such as those relating to industrial matters, involve special arrangements developed over time through consultation or agreement between interested groups. In still others, such as those relating to occupations or livelihood, detailed investigation will be required to determine whether the appropriate appellate body should be the Administrative Law Division of the Supreme Court or that of the Local Court.

APPENDIX II
JURISDICTION SUGGESTED FOR ADMINISTRATIVE LAW DIVISION OF THE SUPREME COURT

STATUTE	APPEALS ORIGINATING FROM	SUBJECT MATTER	EXISTING APPELLATE BODY	PAGE OF WORKING PAPER SURVEY
1. Matters affecting public servants				
<i>Local Government Superannuation Act 1980, s 22(5)</i>	Local Government Superannuation Board	A decision directly affecting a person in relation to the superannuation scheme.	Supreme Court	(Enacted since Survey)
<i>Superannuation and Family Benefits Act 1938-1981, s 85(1)</i>	Superannuation Board	To hear and determine appeals from any person aggrieved by a decision of the Board with respect to superannuation benefits.	Supreme Court	17
2. Rates & Taxes¹				
<i>Business Franchise (Tobacco) Act 1975-1981, s 17(1)</i>	Commissioner of State Taxation	Assessment of a fee for a licence issued under the Act.	Supreme Court	203
<i>Death Duty Assessment Act 1973-1978, s 58(1)</i>	Commissioner of State Taxation	Assessment of duty payable on the estate of a deceased person.	Supreme Court	217
<i>Land Valuation Tribunals Act 1978, s 35</i>	Land Valuation Tribunal	A determination of a Tribunal on a rating appeal.	Supreme Court (on questions of law)	(Enacted since Survey)
<i>Pay-roll Tax Assessment Act 1971-1981, s 33(1)</i>	Commissioner of State Taxation	Determination of liability to tax and assessment of tax payable.	Supreme Court	241
<i>Stamp Act 1921-1980, s 33(1)</i>	Commissioner of State	Assessment of stamp duty payable	Supreme Court	249*

¹ Apart from the appeal rights referred to below, s 172(1) of the *Income Tax Assessment Act 1937-1940* provides for an appeal to either the Supreme Court or a Board of Review. However, income tax is not now levied under this Act.

Taxation

<i>Transport Act 1966-1981</i> , s 47U(1)	Commissioner of Transport	Assessment of fees for licence to carry on the business of wholesaling petroleum.	Supreme Court	(Enacted since Survey)
3. Licences, authorities, permits or duties concerning -				
(a) Occupations and commercial activities				
<i>Architects Act 1921-1981</i> , ss 14D(2), 16 and 22A(8)	Architects' Board of Western Australia	Registration and disciplining of architects and practising firms.	District Court	35*
<i>Auction Sales Act 1973-1978</i> , s 20	Stipendiary magistrate	Licensing and disciplining of auctioneers.	Supreme Court	36
<i>Builders' Registration Act 1939-1979</i> , ss 11(2) and 14(1)	Builders' Registration Board of Western Australia	Refusal of application for registration as builder (s 10), withholding or refusing, cancellation or suspension of registration of a builder (s 13).	Local Court (s 11(2)) Stipendiary Magistrate (s 14(1))	37**
<i>Building Societies Act 1976-1978</i> , s 87(2)	Registrar of Building Societies	Exercise of various powers given by the Act, eg to register amalgamated societies.	District Court	202
<i>Chiropodists Act 1957-1981</i> , s 10(2)	Chiropodists Registration Board	Registration or cancellation of licence to practice chiropody.	Court of Petty Sessions	39**
<i>Chiropractors Act 1964-1980</i> , s 20A(1)	Chiropractors Registration Board	Registration and disciplining of chiropractors	Local Court	(Enacted since Survey)**
<i>Coal Mines Regulation Act 1946-1976</i> , s 31(5) and (9)	Court of Petty Sessions	Removal of a check-weigher or weigher.	Supreme Court	40
<i>Companies Act 1961-1979</i> , s 9(16)	Companies Auditors Board	Registration and disciplining of auditors and liquidators.	Supreme Court	41
<i>Co-operative and Provident Societies Act 1903-1973</i> , ss 6(1) and 8(4)	Registrar of Friendly Societies	Refusal to register a society or any rules or amendments, and with approval of the Minister, to cancel or suspend the registration of a society.	Supreme Court	215
<i>Dairy Industry Act 1973-1981</i> , s 57(4)	Dairy Industry Authority of Western Australia	To issue or cancel a licence issued under s 52 (eg to act as a dairyman in any dairy area).	Court of Petty Sessions Supreme Court	44**

<i>Debt Collectors Licensing Act 1964-1966</i> , s 11(1)	Local Court	Refusal to grant or renew a licence or to cancel a licence or disqualify a person from holding a licence.	Supreme Court	45
<i>Dental Act 1939-1981</i> , s 33(2)	Dental Board of Western Australia	Registration and disciplining of dentists or dental therapists.	Supreme Court	46
<i>Employment Agents Act 1976</i> , ss 22 and 25	Court of Petty Sessions	Licensing and disciplining of employment agents.	Supreme Court	47
<i>Finance Brokers Control Act 1975</i> , s 23(1)	Finance Brokers Supervisory Board	Licensing and disciplining of finance brokers.	District Court	48
<i>Finance Brokers Control Act 1975</i> , s 56	Finance Brokers Supervisory Board	Exercise of powers relating to trust accounts.	District Court	48
<i>Friendly Societies Act 1894-1975</i> , ss 9(8) and 10(4)	Registrar of Friendly Societies	Refusal to register society or rules or cancel or suspend registration of a society.	Supreme Court	147
<i>Friendly Societies Act 1894-1975</i> , s 11(5)	Minister for Health	Refusal to approve an amendment of the rules of a society.	Supreme Court	147
<i>General Insurance Brokers and Agents Act 1981</i> , s 22(2)	Insurance Brokers Licensing Board	Refusal to grant a licence or an order of the Board, for example, to suspend or cancel a licence or for the refusal to grant or renew an exclusion from the Act.	District Court	(Enacted since Survey)
<i>Hairdressers Registration Act 1946-1975</i> , s 16(5)	Hairdressers Registration Board of Western Australia	Refusal to register, cancellation or suspension of the registration of a hairdresser.	Stipendiary Magistrate	52**
<i>Health Act 1911-1981</i> , s 334(2)	Nurses Board of Western Australia	Exercise of disciplinary powers with respect to midwives under Part XIII of the Act.	Supreme Court	54
<i>Hire-Purchase Act 1959-1980</i> , s 23H(1)	Hire-Purchase Licensing Tribunal (ie a District Court judge)	Exercise of powers under Act including issue and renew a licence of a credit provider and to discipline licensees.	Full Court of the Supreme Court	55
<i>Inquiry Agents Licensing Act 1954-1964</i> , ss 4 and 6	Court of Petty Sessions	Issue, renew or cancel the licence of an inquiry agent.	Supreme Court	56

<i>Land Valuers Licensing Act 1978</i> , s 16(1)	Land Valuers Licensing Board	Decisions or orders of the Board, including an application for the grant of a land valuer's licence.	District Court	(Enacted since Survey)
<i>Legal Aid Commission Act 1976-1979</i> , s 40(8)	Legal Aid Commission of Western Australia	Exclusion or removal of the name of a practitioner from a legal aid panel or inclusion of a name but with limitations.	Supreme Court	58
<i>Marine Stores Act 1902-1963</i> , ss 9 and 22	Court of Petty Sessions	Licensing of marine dealers.	Supreme Court	60
<i>Medical Act 1894-1981</i> , ss 12(8), 12A(3)(a) and 13(8)	Medical Board	Registration of persons for the practice of medicine and surgery in certain areas and removal of a medical practitioner from the register.	Supreme Court	61
<i>Motor Vehicle Dealers Act 1973-1979</i> , s 22(1)	Motor Vehicle Dealers Licensing Board	Issue of vehicle dealer's, yard manager's or salesman's licences, or disqualifying a person from obtaining a licence.	Local Court	63**
<i>Motor Vehicle Drivers Instructors Act 1963-1974</i> , s 10(2)	Road Traffic Authority	Cancellation, suspension or issue of a motor vehicle drivers instructors licence.	Court of Petty Sessions	64**
<i>Nurses Act 1968-1980</i> , s 33(1)	Nurses Board of Western Australia	Registration and disciplining of nurses.	Local Court	65
<i>Occupational Therapists Registration Act 1980-1981</i> , s 33(2)	Occupational Therapists Registration Board of Western Australia	Order of Board or decisions of the Board with respect to registration of occupational therapists.	Local Court	(Enacted since Survey)
<i>Optical Dispensers Act 1966</i> , s 5(4)	Commissioner of Public Health	Licensing of optical dispensers.	Minister for Health	66**
<i>Optometrists Act 1940-1978</i> , s 31(2)	Optometrists Registration Board	Registration and disciplining of optometrists.	Supreme Court	67
<i>Painters' Registration Act 1961-1976</i> , s 18	Painters' Registration Board	Registration and disciplining of painters.	Local Court	68**
<i>Pawnbrokers Act 1860-1973</i> , s 3	Court of Petty Sessions	Licensing of pawnbrokers.	Supreme Court	69

<i>Pearling Act 1912-1975</i>	Stipendiary magistrate	Granting or refusing various licences, including a pearl dealer's licence.	Supreme Court	70
<i>Pearling Act 1912-1975, s 42(3)</i>	Minister for Fisheries and Wildlife	Re-assessment of rent when an exclusive licence is renewed.	Supreme Court	71
<i>Pharmacy Act 1964-1980, ss 22(3), 23(4), 26(3) and 32B</i>	Pharmaceutical Council of Western Australia	Registration of pharmaceutical chemists, a pharmacy, issue of licences, discipline a chemist, company or friendly society.	Supreme Court	73
<i>Psychologists Registration Act 1976, ss 42(6) and 44(2)</i>	Psychologists Board of Western Australia	Registration and disciplining of psychologists and decisions under s 42(5).	Supreme Court	74
<i>Radiation Safety Act 1975-1981, s 12(1)</i>	Radiological Council	Exercise of licensing powers, for example, licensing persons to use radiological substances.	Supreme Court	75
<i>Real Estate and Business Agents Act 1978-1980, s 23(1)</i>	Real Estate and Business Agents Supervisory Board	Decision or order of the Board including an application for the grant of a licence as a real estate or business agent.	District Court	(Enacted since Survey)
<i>Second-hand Dealers Act 1906-1948, s 4</i>	Court of Petty Sessions	Refusal to grant a second-hand dealer's licences.	Supreme Court	76
<i>Securities Industry Act 1975-1978, s 118</i>	Commissioner for Corporate Affairs	Licensing, and revocation or suspension of licences, eg for dealers and investment advisers.	District Court	77
<i>Security Agents Act 1976-1979, ss 17(4), 18, 19 and 20</i>	Court of Petty Sessions	Application for licence or renewal where there has been an objection or where licensing officer proposes not to grant a licence or renewal thereof. Disciplining the holder of a licence issued under the Act.	Supreme Court	78
<i>Settlement Agents Act 1981, s 23(1)</i>	Settlement Agents Supervisory Board	Decisions or orders of the Board including an application for the grant of a licence or an inquiry into the conduct of a settlement agent.	District Court	(Enacted since Survey)
<i>Settlement Agents Act 1981, s 57(2)</i>	Settlement Agents Supervisory Board	Decision or determination of the Board with respect to trust accounts of settlement agents, including a direction that an account be audited.	District Court	(Enacted since Survey)

<i>Taxi-cars (Coordination and Control) Act 1963-1980</i> , s 16(3)	Taxi Control Board	Issue or refusal to renew a taxi car licence.	Local Court	79**
<i>Taxi-cars (Coordination and Control) Act 1963-1980</i> , s 23E(4)	Chairman of the Board	Exercising disciplinary powers with respect to holders of taxi-car licences.	Local Court	79**
<i>Transport Act 1966-1981</i> , s 57(3)	Commissioner of Transport	Revocation or suspension of licences granted under the Act, eg, for a commercial goods vehicle.	Stipendiary Magistrate	81**
<i>Veterinary Surgeons Act 1960-1977</i> , ss 22(1), 23(12) and 24B(1)	Veterinary Surgeons' Board	Registration and disciplining of veterinary surgeons, or registration of veterinary clinics or hospitals.	District Court	82
<i>Western Australian Marine Act 1948-1980</i> , s 120F(1)	Shipping Master	Refusal to approve the engagement of a seaman to be entered on board a ship to which Part VII of the Act applies, ie coast-trade ships.	Court of Petty Sessions	84**

(b) Premises

<i>Fire Brigades Act 1942-1979</i> , s 25A(4)	Western Australian Fire Brigades Board	Direction to owner or occupier of premises to install and provide certain equipment.	Supreme Court or Court of Petty Sessions	91
<i>Health Act 1911-1981</i> , s 241H(1)	Commissioner of Public Health	Licensing of premises for the purpose of the manufacture for sale of therapeutic substances.	Supreme Court	95
<i>Liquor Act 1970-1979</i> , s 15(1)	Licensing Court of Western Australia	Exercise of various powers including granting licences such as hotel licences.	Supreme Court (on questions of law)	98
<i>Radiation Safety Act 1975-1981</i> , s 12(1)	Radiological Council	Exercise of various powers including granting of exemption or registration of premises or apparatus or product and imposition of conditions (s 36).	Supreme Court	102

(c) Manufacture and control of foodstuffs

None

(d)(i) Land and its Uses

<i>Closer Settlement Act 1927-1953</i> , ss 4(4) and 8	Land Acquisition (Closer Settlement) Board	Report to the Minister for Lands that any land is “unutilised” or service of a notice of default under s 8.	Supreme Court	114
<i>Closer Settlement Act 1927-1953</i> , s 6B(3)	A Committee appointed under s 6A.	Report to the Minister for Lands as to the suitability of land for closer settlement	Supreme Court	115
<i>Mining Act 1978-1981</i> , s 147	Warden’s Court	Final judgment or order of a Warden’s Court, eg determining the extent of a mining tenement.	Supreme Court	(Enacted since Survey)
<i>Town Planning and Development Act 1928-1981</i> , s 17(3)	Minister for Urban Development and Town Planning	Order to a local authority to pay part of expenses incurred by another local authority under the Act or a scheme.	Supreme Court	128
<i>Town Planning and Development Act 1928-1981</i> , s 18(3)	Minister for Urban Development and Town Planning	Order to a local authority to do all things necessary for enforcing the observance of a scheme or provision thereof.	Supreme Court	129

(d)(ii) Conservation and Environment

None

(e) Other Matters

<i>Environmental Protection Act 1971-1980</i> , s 71(3)	Minister for Conservation and the Environment	Exemption of a person from an obligation to supply information which would result in the disclosure of a trade secret.	Supreme Court	144
<i>Noise Abatement Act 1972-1981</i> , s 40(3)	Minister for Health	Exemption of a person from an obligation to supply information which would result in the disclosure of a trade secret.	Supreme Court	157
<i>Petroleum Act 1967-1981</i> , s 82(1)	Minister for Mines	Maintenance of register of permits, licences and access authorities. A permit, for example, authorises the holder to explore for petroleum.	Supreme Court	158

<i>Petroleum Pipelines Act 1969-1975</i> , s 54(1)	Principal Registrar in the Department of Mines	Maintenance of register of licences. A pipeline cannot be constructed except under a licence.	Supreme Court	159
<i>Petroleum (Submerged Lands) Act 1967</i> , s 88(1).	Minister for Mines	Maintenance of register of permits, licences, pipeline licences and access authorities. A permit, for example, authorises the holder to explore for petroleum	Supreme Court	160

4. Medical

None

5. Compensation

<i>Local Government Act 1960-1981</i> , s 684	Council of a municipality	Compensation and valuation (eg for damage done or materials taken for road making).	Two Arbitrators	172**
<i>Public Works Act 1902-1979</i> , s 47A(c)	Minister for Works or other authorised bodies	Payment of compensation for land taken under the Act, for water taken under s 13 etc (where the amount claimed exceeds \$6,000). ¹	Compensation Court	175
<i>Public Works Act 1902-1979</i> , s 29(3) (cb)	Minister for Works	Refusal to grant option to purchase resumed land to former owner where land no longer required.	Supreme Court	185
<i>Public Works Act 1902-1979</i> , s 29B(3)	Minister for Works	Fixing price of land where option to purchase granted to person from whom land resumed (where the amount of the purchase price in the option exceeds \$6,000). ¹	Supreme Court or Local Court (depending on the amount)	185

6. Industrial

None

¹ Where the sum does not exceed \$6,000 see page 88. See also para 5.13 above

7. Miscellaneous

<i>Aboriginal Heritage Act 1972-1980</i> , s 18(5)	Minister for Cultural Affairs	Consent to use of an aboriginal site by the owner of the land	Supreme Court	198*
<i>Bills of Sale Act 1899-1981</i> , s 13A(2)	Registrar	Refusal to extend time for registration of a bill of sale or debenture	Supreme Court	200
<i>Building Societies Act 1976-1978</i> , s 68(24)	Registrar of Building Societies	Refusal to consent to the removal or resignation of an auditor of a society.	District Court	201
<i>Business Names Act 1962-1976</i> , s 19(3)	Commissioner for Corporate Affairs	Cancellation of the registration of a business name.	Supreme Court	204
<i>Companies Act 1961-1979</i> , ss 12(6) and 286(7)	Commissioner for Corporate Affairs	Refusal to register a corporation or to register or receive any document or perform any act or make any decision, and direct payment of money to a claimant under s 286(6).	Supreme Court	213
<i>Companies (Cooperative) Act 1943-1979</i> , s 400(1)	Registrar of Companies	Exercise of various powers under the Act, eg registration of memorandum and articles of association.	Supreme Court	214
<i>Credit Unions Act 1979</i> , s 23(2)	Registrar of Credit Unions	Registration of a credit union or its proposed rules.	District Court	(Enacted since Survey)
<i>Indecent Publications and Articles Act 1902-1974</i> , s 10(4) and (8)	Chief Secretary	Determining whether a publication should be classified as a restricted publication or class of publication.	District Court	227
<i>Legal Contribution Trust Act 1967-1976</i> , s 28(2)	Legal Contribution Trust	Refusal to accept or deal with a claim resulting from a professional defalcation.	Supreme Court	232
<i>Machinery Safety Act 1974</i> , s 50(2)	Chief Inspector of Machinery	Determination of whether or not an inquiry should be <i>in camera</i> .	Supreme Court	233
<i>Maritime Archaeology Act 1973</i> , s 18(6)	Trustees of the Museum	Rewarding a person who first notifies the Director of the position of a ship that was, or appears likely to have been, lost before the year 1900, or of any relic the position of which was not previously known.	Supreme Court	236**

<i>Mental Health Act 1981</i> , s 73(1)	Director of Mental Health Services	Any person may apply to a Court for an order that a patient be discharged on the ground that he meets the criteria for discharge.	Supreme Court	(Enacted since Survey)
<i>Petroleum Act 1967-1981</i> , s 85(2)	Minister for Mines	Assessment of fees in respect of a memorandum.	Supreme Court	242
<i>Petroleum (Submerged Lands) Act 1967</i> , s 91(2)	Minister for Mines	Determining the amount of fee payable in respect of any memorandum.	Supreme Court	243
<i>Public Trustee Act 1941-1981</i> , ss 35(5) and 36(2)	Public Trustee	Exercise of certain powers with respect to persons who are incapable of managing their affairs.	Supreme Court	244
<i>Registration of Births, Deaths and Marriages Act 1961—1979</i> , ss 25(1) and 28(3)	Registrar General	Authorise or refuse to register a birth, where birth not registered within twelve months or child born outside the State.	Supreme Court	246
<i>Rights in Water and Irrigation Act 1914-1981</i> , s 45K(3)	Minister for Water Resources	Licensing and control of certain dams.	Supreme Court	(Enacted since Survey)
<i>Securities Industry Act 1975-1978</i> , s 62(8)	Commissioner for Corporate Affairs	Refusal of consent to removal or resignation of an auditor.	District Court	248
<i>State Energy Commission Act 1979-1981</i> , s 73(4)	Minister for Fuel and Energy	Refusal to exempt a person from an obligation to supply information.	Supreme Court	(Enacted since Survey)

* An asterisk indicates that the provision has been substantially amended since the Survey was published.

** In the case of appeals marked with a double asterisk, it could be argued that the appeal could lie to the Administrative Law Division of the Local Court.

APPENDIX III
JURISDICTION SUGGESTED FOR ADMINISTRATIVE LAW DIVISION OF THE LOCAL COURT

STATUTE	APPEALS ORIGINATING FROM	SUBJECT MATTER	EXISTING APPELLATE BODY	PAGE OF WORKING PAPER SURVEY
1. Matters affecting public servants				
None				
2. Rates & Taxes				
<i>Agriculture and Related Resources Protection Act 1976-1981, s 54(2)</i>	Agriculture Protection Board	Determining the proportion of expenses to be borne by owners and occupiers of land for controlling declared plants or animals.	Local Court	20
3. Licences, authorities, permits or duties concerning -				
(a) Occupations and commercial activities				
<i>Aerial Spraying Control Act 1966-1978, s 8(1)</i>	Director of Agriculture	Refusal to grant or renew a pilot chemical rating certificate. A pilot cannot carry out aerial spraying unless he holds such a certificate.	Court of Petty Sessions	34
<i>Builders' Registration Act 1939-1979, s 12A(2)</i>	Builders' Registration Board of Western Australia	Orders relating to work carried out by a builder which is not proper and workmanlike.	Local Court	37
<i>Firearms Act 1973-1980, s 22(1)</i>	Commissioner of Police (or a member of the Police Force acting on his behalf)	Issue of licences to individuals, corporations, dealers, repairers, manufacturers, shooting galleries, etc.	Stipendiary Magistrate	49
<i>Gas Standards Act 1972-1979, s 13B</i>	State Energy Commission	Exercise of powers relating to a certificate of competency, permit or authorisation.	Minister for Fuel and Energy or an Arbitrator	(Enacted since Survey)

<i>Health Act 1911-1981</i> , s 37(1)	Local authority	Registration of persons as keepers of lodging-houses (s 147) or eating-houses (s 166).	The Commissioner of Public Health	53
<i>Pearling Act 1912-1975</i> , s 102(2)	Pearling Inspector	Forbidding the use of a ship for pearling.	Stipendiary Magistrate	72
(b) Premises				
<i>Health Act 1911-1981</i> , s 137	Local authority	Declaration that house is unfit for human habitation.	Court of Petty Sessions	93
<i>Local Government Act 1960-1981</i> , s 222(3)(d)-(h)	Council of a municipality	Refusal to grant a licence under Part VIII of the Act; eg bazaars, brick-making, using caravans.	A Stipendiary Magistrate	100
(c) Manufacture and control of foodstuffs				
<i>Health Act 1911-1981</i> , s 202(2)	A health surveyor, or other officer acting under the authority of the Commissioner of Public Health	Exercise of power to destroy imported food found to be unfit for human consumption (s 205).	Court of Petty Sessions	106
<i>Health Act 1911-1981</i> , s 202(2)	Medical officer of health or health surveyor.	Exercise of powers to seize and destroy unsound food.	Court of Petty Sessions	107
<i>Veterinary Preparations and Animal Feeding Stuffs Act 1976-1981</i> , s 40(3)	An inspector	Seizure and detention of any prohibited substance or product, ingredient, packaging or related matter which does not comply with the requirements of the Act.	Court of Petty Sessions	111
(d)(i) Land and its uses				
<i>Bread Act 1903-1973</i> , s 3B(7)	Chief Inspector of Factories and Shops	Licensing of bake-houses.	A Stipendiary Magistrate	86
<i>Dog Act 1976-1977</i> , s 26(5)	Council of a municipality	Exemption from limitation on the number of dogs that may be kept on premises.	Minister for Local Government	88

<i>Dog Act 1976-1977, s 27(7)</i>	Council of a municipality	Licensing of kennels and cancellation of licence.	Local Court ¹	89
<i>Factories and Shops Act 1963-1981, ss 23(4) and 29(3)</i>	Chief Inspector of Factories and Shops	Registration or renewal of registration of factory, shop or warehouse, and to grant permit to use premises pending registration or cancel registration.	Local Court	90
Local Government Act 1960-1981, s 350(5)	Council of a municipality	In the exercise of power to fix the levels of a street or way.	Local Court	155
(d)(ii) Conservation and environment				
<i>Clean Air Act 1964-1981, s 45(1)</i>	Air Pollution Control Council	Exercise of powers relating to premises capable of producing air pollution, and to issue, cancel or revoke a permit to carry out controlled operations, including abrasive blasting operations.	Local Court or the Minister for Health. ²	134*
<i>Metropolitan Water Supply, Sewerage, and Drainage Act 1909-1981, ss 57D(1) and 57G(7)</i>	Metropolitan Water Supply, Sewerage, and Drainage Board	To refuse dispensation from by-laws protecting underground water from pollution, to grant refuse, suspend, revoke or amend a licence for a well.	Local Court	138
(e) Other matters				
<i>Control of Vehicles (Off-road areas) Act 1978, s 33(1)</i>	Road Traffic Authority	Registration of a vehicle under the Act.	Court of Petty Sessions	(Enacted since Survey)
<i>Dog Act 1976-1977, ss 17(1), 24(3) and 36(3)</i>	Council of a municipality	Effect or renew the registration of a dog or cancel registration, or record the ownership of a dog or destroy a dog which is considered to be a danger to health.	Local Court	143
<i>Explosives and Dangerous Goods Act 1961-1981, s 52(1)</i>	Chief Inspector of Explosives and Dangerous Goods	Grant, issue, renew, suspend or cancel a licence or permit, such as a licence to store explosives.	Court of Petty Sessions	145

¹ Consideration could be given to conferring this right of appeal on the Town Planning Appeal Tribunal.

² The alternative appeal to the Minister for Health would be retained. This could be reconsidered by the ongoing review body.

<i>Poisons Act 1964-1981</i> , s 29(1)	Commissioner of Public Health	Licensing or permitting manufacture or sale of a poison or a prohibited plant.	Court of Petty Sessions	162
<i>Prevention of Cruelty to Animals Act 1920-1976</i> , s 7(4)	Any constable, or officer of a society	Direction to a person not to use an animal for work or labour if it is unfit to be so used.	Court of Petty Sessions	163
<i>Road Traffic Act 1974-1981</i> , s 25(1)	Road Traffic Authority	Refusal of various vehicle licences and transfers of those licences.	Court of Petty Sessions	164
<i>Road Traffic Act 1974-1981</i> , s 48(4)	Road Traffic Authority	Refusal to issue a drivers licence, or cancel, suspend or refuse to renew a driver's licence.	Court of Petty Sessions	165
<i>Western Australian Marine Act 1948-1980</i> , s 196	Harbour and Light Department	Refusal to grant a boat licence, transfer thereof, or permit under s 192, or revocation or suspension of a licence or permit	Stipendiary Magistrate	168

4. Medical

None

5. Compensation

<i>Public Works Act 1902-1979</i> , s 47A(c)	Minister for Works or other authorised bodies	Payment of compensation for land taken under the Act, for water taken under s 13 etc (where the amount claimed does not exceed \$6,000). ¹	Compensation Court	175
<i>Public Works Act 1902-1979</i> , s 29B(3)	Minister for Works	Fixing price of land where option to purchase granted to person from whom land resumed (where the amount of the purchase price in the option does not exceed \$6,000). ¹	Supreme Court or Local Court (depending on the amount)	185

¹ Where the sum exceeds \$6,000 see pages 80 and 81. See also para 5.13 above.

6. Industrial

None

7. Miscellaneous

<i>Aboriginal Heritage Act 1972-1980</i> , s 46(3)	Trustees of the Museum	Vesting of certain objects classified as Aboriginal cultural material in the Museum.	Local Court	197
<i>Fire Brigades Act 1942-1979</i> , s 54(2)	Western Australian Fire Brigades Board	Demand for provision of a fire hydrant at a specified location.	Stipendiary Magistrate	222
<i>Health Act 1911-1981</i> , s 36	Local authority	Recovery of expenses incurred for work done under the Act.	Court of Petty Sessions	224
<i>Hire-Purchase Act 1959-1980</i> , s 3(4g)	Commissioner for Consumer Affairs	Grant or refusal of relief from a breach by the owner of a provision of the Act.	Local Court	(Enacted since Survey)
<i>Hire-Purchase Act 1959-1980</i> , s 12A(2)	Commissioner for Consumer Affairs	Failure or refusal to give consent to take possession of goods.	Local Court	(Inadvertently omitted from Survey)
<i>Hire-Purchase Act 1959-1980</i> , s 36A(6)	Commissioner for Consumer Affairs	Grant or refusal of a claim for relief against the consequences of a breach of a hire-purchase agreement.	Local Court	(Inadvertently omitted from Survey)
<i>Indecent Publications and Articles Act 1902-1974</i> , s 12A(6)	A member of the Police Force	Seizure of publication appearing to be indecent or obscene.	Court of Petty Sessions	228
<i>Local Government Act 1960-1981</i> , s 49(1)	Clerk of a local authority	Rejection of application to amend the annual electoral roll.	Stipendiary Magistrate	(Enacted since Survey)
<i>Marketing of Eggs Act 1945-1977</i> , s 32(3)	Western Australian Egg Marketing Board	Making of payments to producers of eggs delivered to the Board	Local Court	237
<i>Motor Vehicle Dealers Act 1973-1979</i> , s 37B(2)	Commissioner for Consumer Affairs	Determination of dispute between purchaser and a dealer requiring payment of money, relief from payment of money or requiring performance of work.	Local Court (on questions of law)	(Enacted since Survey)

<i>Radiation Safety Act 1975-1981</i> , s 54(3)	An authorised officer	Seizure and detention of any radioactive substance or product which may be a danger to the life or health of any person.	Court of Petty Sessions	245
<i>Western Australian Marine Act 1948-1980</i> , s 58(1)(d)	Harbour and Light Department	Order unsafe ship to be detained.	The Court of Survey (consisting of a Local Court Magistrate and Assessors)	251

* An asterisk indicates that the provision has been substantially amended since the Survey was published.
 ** In the case of appeals marked with a double asterisk, it could be argued that the appeal could lie to the Administrative Law Division of the Local Court.

APPENDIX IV
JURISDICTION SUGGESTED FOR SPECIALIST APPELLATE TRIBUNALS

STATUTE	APPEALS ORIGINATING FROM	SUBJECT MATTER	EXISTING APPELLATE BODY	PAGE OF WORKING PAPER SURVEY
1. Land Valuation Tribunal				
<i>Agricultural Areas, Great Southern Towns, and Goldfields Water Supply Act 1947, s 2</i>	Minister for Water Resources	Objection to entry in a rate book or refusal to extend time for objection.	Land Valuation Tribunal	19*
<i>Country Areas Water Supply Act 1947-1981, ss 59 and 60</i>	Minister for Water Resources	Objection to entry in a rate book or refusal to extend time for objection.	Land Valuation Tribunal	22*
<i>Country Towns Sewerage Act 1948-1981, ss 62 and 63</i>	Minister for Water Resources	Objection to entry in a rate book or refusal to extend time for objection.	Land Valuation Tribunal	23*
<i>Land Drainage Act 1925-1981, ss 99 and 99A</i>	Drainage Board of a drainage district	Objection to entry in a rate book or refusal to extend time for objection.	Land Valuation Tribunal	24* and 25*
<i>Land Tax Assessment Act 1976-1980, s 36</i>	Commissioner of State Taxation	Assessment of land tax.	Land Valuation Tribunal	27*
<i>Local Government Act 1960-1981, ss 556 and 557</i>	Council of a municipality	Objection to entry in a rate book or refusal to extend time for objection.	Land Valuation Tribunal	28*
<i>Local Government Act 1960-1981, s 558A</i>	Council of a municipality	Refusal to declare rateable land to be urban farm land or re vocation of such a declaration.	Land Valuation Tribunal	29*
<i>Local Government Act 1960-1981, s 681</i>	Council of a municipality	Proceedings to resolve a question of general interest on the imposition of a rate throughout a district or ward or part thereof.	Land Valuation Tribunal	(Enacted since Survey)
<i>Metropolitan Water Supply, Sewerage, and Drainage Act 1909-1981, ss 87 and 88</i>	Metropolitan Water Supply, Sewerage, and Drainage Board	Assessment of rate or refusal to extend time for objection.	Land Valuation Tribunal	30*

<i>Rights in Water and Irrigation Act 1914-1981, s 40(2)</i>	An Irrigation Board	Objection to entry in a rate book or refusal to extend time for objection.	Land Valuation Tribunal	31*
<i>Valuation of Land Act 1978-1981, s 33</i>	Valuer- General	Valuation of land.	Land Valuation Tribunal	(Enacted since Survey)
<i>Valuation of Land Act 1978-1981, s 35</i>	Valuer- General	Refusal to extend the time for service of an objection against a valuation or notice to treat an objection as an appeal.	Land Valuation Tribunal	(Enacted since Survey)
<i>Valuation of Land Act 1978-1981, s 36(1)</i>	Valuer- General	Question of general interest as to proper principles of valuation of land.	Land Valuation Tribunal	(Enacted since Survey)
<i>Water Boards Act 1904-1981, ss 88 and 89</i>	A Water Board	Objection to entry in a rate book or refusal to extend time for objection.	Land Valuation Tribunal	32*

2. Legal Aid Review Committee

<i>Legal Aid Commission Act 1976-1979, s 49(1)</i>	A Legal Aid Committee or an officer of the Commission	Provision of legal aid.	A Legal Aid Review Committee	230
<i>Legal Aid Commission Act 1976-1979, s 49(2a)</i>	A Legal Aid Committee or an officer of the Commission	Determination of certain fees payable to a private practitioner.	A Legal Aid Review Committee	231*

3. The Licensing Court of Western Australia

<i>Liquor Act 1970-1979, s 99(3)</i>	A supervisor of licensed premises or a health surveyor	Requirement that licensee carry out minor repairs.	Licensing Court of Western Australia	99
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4. The Quota Appeals Committee

<i>Dairy Industry Act 1973-1981</i> , ss 30(8), 31(1) and 39(3)	Dairy Industry Authority of Western Australia	Setting quota for the production of milk, transfers of quotas, cancellation and variations of a quota.	Quota Appeals Committee	42
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5. The Town Planning Appeal Tribunal

<i>City of Perth Parking Facilities Act 1956-1981</i> , s 15D(1)	Council of the City of Perth	Licensing of a parking station or facility.	Minister for Local Government	87 [§]
<i>Industrial Development (Resumption of Land) Act 1945-1981</i> , s 7(5)(d)	Land Resumptions for Industries Committee	Approval of an application which requires land to establish an industry.	Local Court	116 [§]
<i>Local Government Act 1960-1981</i> , ss 235(4) and 295(3)(d) and 4(d)	Council of a municipality	Licensing an extractive industry, approval of a subdivision featuring streets for use by the public, refusal to consent to disposal of subdivisional lots before roads etc are constructed.	Minister for Local Government	118 [§]
<i>Metropolitan Region Town Planning Scheme Act 1959-1981</i> , s 35F	Metropolitan Region Planning Authority	The approval subject to conditions or refusal of application to carry out development in a planning control area.	Town Planning Appeal Tribunal or the Minister for Urban Development and Town Planning ¹	(Enacted since Survey)
<i>Metropolitan Region Town Planning Scheme Act 1959-1981</i> , s 43(3)	Metropolitan Region Planning Authority or a local authority	Notice to remove or alter any building erected on land in contravention of the Metropolitan Region Scheme.	Minister for Urban Development and Town Planning	(Inadvertently omitted from the Survey)
<i>Town Planning and Development Act 1928-1981</i> , s 7B(6)(a)	Council of a municipality	Refusal to grant permission to carry out development in a region outside the metropolitan region which is subject to an	Minister for Urban Development and Town Planning	126 [§]

<i>Town Planning and Development Act 1928-1981</i> , s 7B(8)(b)	Council of a municipality	Requiring owner of land to remove or pull down any building or work or to cease any development which is in contravention of an interim development order.	Minister for Urban Development and Town Planning	127 [§]
<i>Town Planning and Development Act 1928-1981</i> , s 44	Various bodies responsible for town planning decisions including local authorities, Town Planning Board and Metropolitan Region Planning Authority.	Various town planning decisions.	Town Planning Appeal Tribunal or the Minister for Urban Development and Town Planning ¹	130
6. Medical Boards				
<i>Miner's Phthisis Act 1922-1929</i> , s 8(2)	Minister for Mines	Prohibition on employment of a person in a mine who is suffering from tuberculosis	A Board	62
<i>Mine Workers' Relief Act 1932-1981</i> , s 14(4)	Mines Medical Officer	Diagnosis of an illness of a person who has been examined under the Act.	A Medical Board	195

* An asterisk indicates that the provision has been substantially amended since the Survey was published.

[§] This symbol indicates a right of appeal which the Commission proposes be conferred on the Tribunal. Consistent with existing rights of appeal to the Town Planning Appeal Tribunal a policy decision would have to be made as to whether there should be an alternative appeal to the Minister for Urban Development and Town Planning pursuant to s 39 of the *Town Planning and Development Act 1928-1981*: para 5.6 above.

¹ The alternative appeal to the Minister for Urban Development and Town Planning would be retained. This could be reconsidered by the ongoing review body.

APPENDIX V

RIGHTS OF APPEAL WHICH SHOULD BE CONSIDERED BY AN ONGOING REVIEW BODY

STATUTE	APPEALS ORIGINATING FROM	SUBJECT MATTER	EXISTING APPELLATE BODY	PAGE OF WORKING PAPER SURVEY
1. Matters affecting public servants				
<i>Government Employees' Pensions Act 1948-1967</i> , s 10(1)	Superannuation Board	Any decision of the Board relating to pensions for certain employees.	Public Service Appeal Board	3
<i>Government Employees (Promotions Appeal Board) Act 1945-1980</i> , s 5(1)	A "promoting authority"	The appointment of a person to a vacancy or new office by way of promotion.	Promotions Appeal Board	4*
<i>Government Railways Act 1904-1980</i> , ss 52(3) and 77	Western Australian Government Railways	Disciplining of officers or servants.	An Appeal Board	5
<i>Government School Teachers Arbitration and Appeal Act 1979</i> , s 27(1)	Government School Teachers Tribunal	Any decision, award or order of the Tribunal.	Western Australian Industrial Appeal Court (Error of law or excess of jurisdiction)	(Enacted since Survey)
<i>Government School Teachers Arbitration and Appeal Act 1979</i> , s 29	Director-General of Education or the Minister	Fixing salary, promotions, and disciplining of teachers.	Government School Teachers Tribunal	(Enacted since Survey)
<i>Local Government Act 1960-1981</i> , s 158(6)	Council of a municipality	Upon termination of the services of certain officers of a council an enquiry may be held at the request of the officer. If the council proceeds to terminate the officer's service in spite of a report substantially favourable to him, the Minister may direct the Council to pay the officer compensation.	A person appointed by the Governor. When available, a stipendiary magistrate is appointed.	6
<i>Police Act 1892-1981</i> , s 33E	Commissioner of Police or other officer appointed by the Commissioner	Disciplinary action against a police officer or police cadet.	Police Appeal Board	7*

<i>Public Service Act 1978-1980</i> , ss 35(1) and 36	Authority recommending promotion of officer to	Promotion of officer to fill vacancy.	Promotions Appeal Board	(Enacted since Survey)
<i>Public Service Act 1978-1980</i> , s 47	Permanent Head of a Department	Disciplinary action.	Public Service Board	(Enacted since Survey)
<i>Public Service Act 1978-1980</i> , s 51	Public Service Board	Disciplinary action.	Public Service Appeal Board	(Enacted since Survey)
<i>Public Service Arbitration Act 1966-1978</i> , s 16(1)	Public Service Board or other Government authority	Review of salaries whenever a new award is made or any other appeal which the Arbitrator is authorised to hear.	Public Service Arbitrator	13*
<i>Public Service Arbitration Act 1966-1978</i> , s 26(1)	Public Service Arbitrator	The making of industrial awards, orders or decisions.	Western Australian Industrial Appeal Court (Error of law or excess of jurisdiction)	12
<i>Public Service Arbitration Act 1966-1978</i> , s 32(2)	Public Service Board or other Government authority	Various powers referred to in s 32(2) relating to public servants, for example, a decision to dismiss a person.	Public Service Appeal Board	14*
<i>Railways Classification Board Act 1920-1977</i> , s 15(lb)	Railways Classification Board	Classification or reclassification of position or office.	Promotions Appeal Board	15
<i>State Energy Commission Act 1979-1981</i> , s 91	State Energy Commission	Disciplinary action.	Appeal Board	(Enacted since Survey)
2. Rating and Taxes				
<i>Land Tax Assessment Act 1976-1980</i> , s 22(2)	Commissioner of State Taxation	Power to exempt all or any part of land from assessment	Treasurer	26
<i>Stamp Act 1921-1980</i> , s 73(2)	Commissioner of State Taxation	Exercise of discretion conferred by paragraph (c) of the proviso to s 73(1) of the Act, which relates to the assessment of duty on a conveyance or transfer under which no beneficial interest passes.	Treasurer	(Inadvertently omitted from the Survey)
<i>Stamp Act 1921-1980</i> , s 75(8)	Commissioner of State	Exercise of discretion conferred by s 75(6)(c)	Treasurer	(Inadvertently omitted)

Taxation

of the Act, which relates to the exemption from duty under s 75 of a conveyance or transfer under which no beneficial interest passes.

from the Survey)

3. Licences, authorities, permits or duties concerning -

(a) Occupations and commercial activities

<i>Aerial Spraying Control Act 1966-1978</i> , s 13A(8)	An inspector	Prohibition on further use of method of working, aircraft or apparatus for spraying.	Minister for Agriculture	(Enacted since Survey)
<i>Business Franchise (Tobacco) Act 1975-1981</i> , s 13A(1)	Commissioner of State Taxation	Issue or transfer of a wholesale tobacco merchant's, a group tobacco or a retail tobacconist's licence.	Treasurer	(Enacted since Survey)
<i>Fisheries Act 1905-1981</i> , s 17(4)	Licensing Officer	Issue, renewal, transfer or cancellation of licences under the Act.	Minister for Fisheries and Wildlife	50
<i>Fisheries Act 1905-1981</i> , s 35K(1)	Director of Fisheries	Exercise of powers under Part III B of the Act, such as the issue of a processor's licence.	Minister for Fisheries and Wildlife	(Enacted since Survey)
<i>Local Government Act 1960-1981</i> , s 200(4)	Council of a municipality	Licences with respect to caravans and camping.	Minister for Local Government	(Enacted since Survey)
<i>Pearling Act 1912-1975</i> , s 16(3)	Licensing Officer	Licensing ships, pearl divers, diver's tenders, beachcombers or shell buyers.	Minister for Fisheries and Wildlife	72
<i>State Energy Commission Act 1979-1981</i> , s 56(5)	State Energy Commission	Power to grant permission to trade in liquid petroleum gas.	Minister for Fuel and Energy	(Enacted since Survey)
<i>Veterinary Surgeons Act 1960-1977</i> , s 26F(2)	Veterinary Surgeons' Board	Licensing of animal welfare societies or other bodies to treat sick or injured animals.	Minister for Agriculture	83
(b) Premises				
<i>Fisheries Act 1905-1981</i> , s 35K(1)	Director of Fisheries	Exercise of powers under Part III B of the Act to grant or refuse a permit to construct or establish a processing plant.	Minister for Fisheries and Wildlife	(Enacted since Survey)

<i>Health Act 1911-1981,</i> s 37	Local authority	Registration of lodging-houses (s 147), eating-houses (s 165) or morgues (s 133).	Commissioner of Public Health	94
<i>Health Act 1911-1981,</i> s 192(2)	Local authority	Registration of premises for use for an offensive trade.	Commissioner of Public Health	96
<i>Mines Regulation Act 1946-1974,</i> s 23E(1)	An inspector of mines	Adequacy or standard of dust control or ventilation on or in a mine.	Senior Inspector for the district	101
<i>Western Australian Meat Industry Authority Act 1976,</i> s 22(1)	Western Australian Meat Industry Authority	Approval of construction or operation of an abattoir or additions to an abattoir which affects its through-put or capacity.	Minister for Agriculture	103
(c) Manufacture and control of foodstuffs				
<i>Marketing of Eggs Act 1945-1977,</i> ss 32H(1) and 32J(3)	Western Australian Egg Marketing Board	Licensing of producers and cancellation or variation of licences.	Minister for Agriculture	108
<i>Marketing of Potatoes Act 1946-1974,</i> s 19A(1)	Western Australian Potato Marketing Board	Licence for production of potatoes for sale.	Minister for Agriculture	109
<i>Veterinary Preparations and Animal Feeding Stuffs Act 1976-1981,</i> s 35	Registrar of Veterinary Preparations and Animal Feeding Stuffs	Registration of products or cancellation of registration of products.	Minister for Agriculture	110
<i>Wheat Marketing Act 1947-1978,</i> s 22(5)	Western Australian Wheat Marketing Board	Refusal to accept wheat on the ground of inferior quality.	An officer of the Department of Agriculture nominated by the Minister	112
(d)(i) Land and its uses				
<i>Land Act 1933-1980,</i> s 27	Minister or a departmental officer	Exercise of various powers under the Act.	Governor	117

<i>Local Government Act 1960-1981</i> , s 359(3)	Commissioner of Main Roads	Refusal to approve construction of a cross-over.	Minister for Local Government	152
<i>Metropolitan Region Town Planning Scheme Act 1959-1981</i> , s 33A(4)	The Metropolitan Region Planning Authority	Proposal to amend a Metropolitan Region Scheme not constituting a substantial alteration to the Scheme.	Minister for Urban Development and Town Planning	(Enacted since Survey)
<i>Metropolitan Water Supply, Sewerage, and Drainage Act 1909-1981</i> , s 711(2)	Metropolitan Water Supply, Sewerage, and Drainage Board	Service of Notice requiring a sub-divider to enter into an agreement with regard to the cost of works.	Minister for Water Resources	(Inadvertently omitted from the Survey)
<i>Mining Act 1978-1981</i> , s 32(2)	Warden	Permits for mining tenements and fixing sums of money to be paid.	Minister for Mines	(Enacted since Survey)
<i>Mining Act 1978-1981</i> , s 56(2)	Warden	Application for a prospecting licence.	Minister for Mines	(Enacted since Survey)
<i>Mining Act 1978-1981</i> , s 94(3)	Warden	Application for a miscellaneous licence.	Minister for Mines	(Enacted since Survey)
<i>Plant Diseases Act 1914-1981</i> , s 18(1)	An inspector	Requirement of owner or occupier of an orchard to take measures to prevent the spread of any disease.	Minister for Agriculture	122
<i>Plant Diseases Act 1914-1981</i> , s 22(4)	Chief, Division of Horticulture	Certification that plants growing in an orchard have not been cultivated or cared for in a bona fide and husband-like manner for twelve months.	Minister for Agriculture	123
<i>Strata Titles Act 1966-1978</i> , s 20(2)	A local authority or the Town Planning Board	Issue of certificates relating to subdivision of a strata plan.	Ministers for Local Government and Urban Development and Town Planning	(Inadvertently omitted from the Survey)
<i>Town Planning and Development Act 1928-1981</i> , s 7A(6)(a)	Metropolitan Region Planning Authority	Refusal to grant permission to a person to carry out development in a metropolitan region which is subject to an interim development order. ¹	Minister for Urban Development and Town Planning	124
<i>Town Planning and Development</i>	Metropolitan Region	Requiring owner of land to remove or pull	Minister for Urban	125

<i>Act 1928-1981, s 7A(8)(b)</i>	Planning Authority	down any building or work or to cease any development which is in contravention of an interim development order. ¹	Development and Town Planning	
<i>Water Boards Act 1904-1981, s 44</i>	A Water Board	Construction of waterworks.	Minister for Water Resources	132
(d)(ii) Conservation and environment ²				
<i>Country Areas Water Supply Act 1947-1981, s 12D</i>	Under Secretary of Public Works Department	Decisions with respect to clearing licences.	Minister for Water Resources	(Enacted since survey)
<i>Environmental Protection Act 1971-1980, s 43(2) and (3)</i>	Environmental Protection Authority	Publication of proposals for environmental protection or enhancement.	Environmental Appeal Board ³	136
<i>Soil Conservation Act 1945-1981, s 34(1)</i>	Commissioner of Soil Conservation	Issue of soil conservation order or issue of an interim order.	Minister for Agriculture	139
<i>Waterways Conservation Act 1976-1980, s 46(11)</i>	Waterways Commission	Issue of licence under the Act or revoke or suspend any licence, for example, a licence to do anything, the doing of which would otherwise constitute an offence against the Act.	Minister for Conservation and the Environment	140

¹ This provision is of no application as a town planning scheme has been adopted for the Metropolitan Region.

² There are two cases where the legislation speaks of an appeal but where it cannot be classified as a true appeal. Under s 26A(3) of the *Fisheries Act 1905-1981* the Director of Environmental Protection may make recommendations to the Minister for Fisheries and Wildlife concerning his decision to prohibit an activity which may pollute an adjacent aquatic environment. Under s 16(4) of the *Rights in Water and Irrigation Act 1914-1981* an application may be made to the Minister for Water Resources to reconsider his original decision relating to the grant or refusal of a licence to take, use or dispose of water from any water-course, lake, lagoon, swamp or marsh.

³ See footnote 2 on page 37.

(e) Other Matters

<i>Child Welfare Act 1947-1981</i> , s 112(4)	Director of the Department for Community Welfare	Cancellation of licence of persons to have care, charge or custody of any child under six years.	Minister for Community Welfare	38
<i>Construction Safety Act 1972-1978</i> , ss 17(4) and 18	Chief Inspector of Construction Safety or other inspectors of construction safety	Direction or order in respect of construction work.	A Board of Reference or an Arbitrator	142
<i>Electricity Act 1945-1979</i> , s 25(2)(a)	A supply authority	Requirement to meet certain specific obligations eg to maintain service apparatus.	State Energy Commission	219
<i>Fertilizers Act 1977</i> , s 18	Registrar of Fertilizers	Registration or cancellation of registration of fertilizers, it being an offence to sell any unregistered fertilizer.	Minister for Agriculture	146
<i>Health Act 1911-1981</i> , s 37	Local authority	Suspension or cancellation of any licence issued under the Act or registration after conviction for offence against the Act (s 357).	Commissioner of Public Health	149
<i>Health Act 1911-1981</i> , s 187(2)	Local authority	Authorisation of the establishment of an offensive trade.	Commissioner of Public Health	148
<i>Local Government Act 1960-1981</i> , various sections	Council of a municipality	Exercise of various powers including requiring owner to fence land, ordering demolition of building, requesting provision of fire escape.	Minister for Local Government	150
<i>Local Government Act 1960-1981</i> , various sections	Council of a municipality	Exercise of powers in relation to buildings, eg to pull down or alter a building (s 401(1)).	Referees appointed under the Act by the Council and the Governor	153
<i>Machinery Safety Act 1974</i> , s 53	An inspector	Giving of directions or orders with respect to machinery safety.	A Board of Reference or an Arbitrator	156
<i>Pharmacy Act 1964-1980</i> , s 40A(3)	Pharmaceutical Council of Western Australia	Exercise of powers under s 40A(1)(a) and s 40A(1)(b) to approve goods and services which may be supplied by a pharmacy.	Minister for Health	161

4. Medical

None

5. Compensation

<i>Bee Industry Compensation Act 1953-1980</i> , s 14(g)	Beekeepers' Compensation Fund Committee	Refusal to pay compensation or assessment of amount of compensation for bees etc destroyed in accordance with the Act.	Minister for Agriculture	170
<i>Local Government Act 1960-1981</i> , s 532(3b)	Council of a municipality	Assessment of contribution towards road making and maintenance by Co-Operative Bulk Handling Ltd.	Minister for Local Government	171
<i>Pig Industry Compensation Act 1942-1972</i> , s 8(3)	Chief Veterinary Surgeon	Payment of compensation for a pig destroyed in accordance with the Act.	Minister for Agriculture	174

6. Industrial

<i>Industrial Arbitration Act 1979-1981</i> , s 48(11)	A Board of Reference	Matters arising out of an industrial award.	Western Australian Industrial Commission in Court Session	(Enacted since Survey)
<i>Industrial Arbitration Act 1979-1981</i> , s 49(2)	Western Australian Industrial Commission constituted by a Commissioner	Any decision of the Commission relating to industrial matters.	Full Bench of the Commission	(Enacted since Survey)
<i>Industrial Arbitration Act 1979-1981</i> , s 84(2)	An Industrial Magistrate	Any decision of a Magistrate relating to the enforcement of awards and orders of the Commission.	Full Bench of the Commission	(Enacted since Survey)
<i>Industrial Arbitration Act 1979-1981</i> , s 90(1)	President or the Full Bench of the Commission or the Commission in Court Session	Any decision relating to industrial matters.	Western Australian Industrial Appeal Court (Error of law or excess of jurisdiction)	(Enacted since Survey)
<i>Industrial Training Act 1975-1980</i> , s 37C	Director of Industrial Training	Exercise of powers relating to the employment of a probationer or apprentice.	Western Australian Industrial Commission	(Enacted since Survey)

<i>Long Service Leave Act 1958-1973</i> , s 18	Board of Reference	Exercise of various powers relating to long service leave.	Western Australian Industrial Commission in Court Session	194
<i>Western Australian Coal Industry Tribunal Act 1978</i> , s 13(1)	Western Australian Coal Industry Tribunal	A decision or settlement of the Tribunal with respect to the coal industry.	Western Australian Industrial Commission in Court Session	(Enacted since Survey)
7. Miscellaneous				
<i>Aboriginal Heritage Act 1972-1980</i> , s 19(2)	Trustees of the Museum	Recommendation that an Aboriginal site should be declared to be a protected area.	Minister for Cultural Affairs	(Enacted since Survey)
<i>Audit Act 1904-1978</i> , s 43(1)	Treasurer	Surcharge of an officer of the public service for a deficiency or loss.	Governor	199
<i>Audit Act 1904-1978</i> , s 43(1)	Auditor General	Making of a disallowance for money paid without proper authority.	Governor	199
<i>Cemeteries Act 1897-1980</i> , s 13(3)	Trustees of a cemetery	Apportionment of cemetery for burial of persons of same religious denomination.	Minister for Local Government	205
<i>Censorship of Films Act 1947-1979</i> , s 22(1)	Censor	Exercise of various censorship powers.	Chief Secretary	206
<i>Child Welfare Act 1947-1981</i> , s 47(2)	Minister for Community Welfare	Refusal to order release of a child from the care or control of the Department for Community Welfare.	Children's Court	207
<i>Child Welfare Act 1947-1981</i> , ss 47A(5), 47B(2), 47C(3) and 47D(2)	Minister for Community Welfare	Committal of a child to the care of the Department for Community Welfare.	Children's Court	208
<i>Child Welfare Act 1947-1981</i> , s 76	Children's (Suspended Proceedings) Panel	Exercise of powers to deal with certain first offenders.	Children's Court	210
<i>Community Welfare Act 1972-1978</i> , s 17	Director of Community Welfare	Protection and management of affairs of a person who is disadvantaged.	Minister for Community Welfare	212
<i>Cremation Act 1929-1968</i> , s 8(6)	A medical referee	Refusal to issue a permit for cremation of a dead human body.	Commissioner of Public Health	216

<i>Education Act 1928-1979</i> , s 20E(1)	Minister for Education	Exercise of powers relating to children requiring special education, or having severe disorders.	Children's Court	218
<i>Electricity Act 1945-1979</i> s 29(1)	An inspector	Prohibit use of electric works or service apparatus belonging to a supply authority or electrical fittings belonging to a consumer.	State Energy Commission	220
<i>Fire Brigades Act 1942-1979</i> , s 27(2)	Western Australian Fire Brigades Board	Classification of a brigade and method of fire protection to be established in a fire district.	Chief Secretary	221
<i>Fuel, Energy and Power Resources Act 1972-1975</i> , s 58	Various bodies or persons who may act or make decisions or give directions under Part III (Emergency Provisions) of the Act	Actions, orders, decisions or directions given under Part III of the Act.	Minister for Fuel and Energy	223
<i>Health Act 1911-1981</i> , s 37(1)	Local authority	Exercise of powers under the Act which do not involve the recovery of expenses.	Commissioner of Public Health	225
<i>Main Roads Act 1930-1980</i> , s 13A(3)	Commissioner of Main Roads	Recommendation that a road be declared a highway or main road or that plans for a new highway or main road be approved.	Minister for Transport	234
<i>Main Roads Act 1930-1980</i> , s 33B(2)(a)	Commissioner of Main Roads	Control of advertisements near roads.	Minister for Transport	235
<i>Mine Workers' Relief Act 1932-1981</i> , Schedule 2, paragraphs 13 and 14	State Government Insurance Office	Any act, decision or omission under the Act, for example, to pay benefits to mine workers.	Mine Workers' Relief Act Appeal Board	246
<i>Registration of Births, Deaths and Marriages Act 1961-1979</i> , s 18(5)	Registrar General	Refusal to allow a search to be made or to issue a certified copy or extract.	Chief Secretary	246
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<i>State Energy Commission Act 1979-1981</i> , s 68(10)	An inspector	Prohibit the use of an installation or apparatus which is unsafe or does not conform with the requirements of any Act.	State Energy Commission	(Enacted since Survey)

* An asterisk indicates that the provision has been substantially amended since the Survey was published.

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s 29B(3)
s 47A(c)

Radiation Safety Act 1975-1981

s 12(1)
s 54(3)

Railways Classification Board Act 1920-1977

s 15(lb)

Real Estate and Business Agents Act 1978-1980

s 23(1)

Registration of Births, Deaths and Marriages Act 1961-1979

s 18(5)
ss 25(1) and 28(3)

Registration of Identity of Persons Act 1975

s 6(3)

Rights in Water and Irrigation Act 1914-1981

s 40(2)
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Road Traffic Act 1974-1981

s 25(1)
s 48(4)

Second-hand Dealers Act 1906-1948

s 4

Securities Industry Act 1975-1978

s 62(8)

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Security Agents Act 1976-1979

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Settlement Agents Act 1981

s 23(1)

s 57(2)

Soil Conservation Act 1945-1981

s 34(1)

Stamp Act 1921-1980

s 33(1)

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State Energy Commission Act 1979-1981

s 56(5)

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Strata Titles Act 1966-1978

s 20(2)

Superannuation and Family Benefits

Act 1938-1981

s 85(1)

Taxi-cars (Co-ordination and Control) Act

1963-1980

s 16(3)

s 23E(4)

Town Planning and Development Act

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s 7A(6)(a)

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s 7B(6)(a)

s 7B(8)(b)

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Transport Act 1966-1981

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Valuation of Land Act 1978-1981

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Veterinary Preparations and

Animal Feeding Stuffs Act 1976-1981

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Veterinary Surgeons Act 1960-1977

s 22(1)

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Water Boards Act 1904-1981

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Waterways Conservation Act 1976-1980

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Western Australian Coal Industry

Tribunal Act 1978

s 13(1)

Western Australian Marine Act 1948-1980

s 58(1)(d)

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Western Australian Meat Industry

Authority Act 1976

s 22(1)

Wheat Marketing Act 1947-1978

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