ADR Bulletin
ADR Bulletin

Volume 8 | Number 3 Article 3

11-1-2005

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Recommended Citation
Johnston, Peter (2005) "State Administrative Tribunal (WA): model non-adversarial tribunal or split personality?," *ADR Bulletin*: Vol. 8: No. 3, Article 3.
Available at: http://epublications.bond.edu.au/adr/vol8/iss3/3

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Dispute resolution in administrative tribunals

State Administrative Tribunal (WA): model non-adversarial tribunal or split personality?[1]

Peter Johnston

The establishment of the State Administrative Tribunal (SAT) represents a new phase of dispute resolution in Western Australia. While constituted as a tribunal and not a court,[2] it is important for those who will have dealings with it to appreciate certain aspects of its basic nature. This article seeks to analyse the essential characteristics of the SAT, both in terms of its legislative charter under the *State Administrative Tribunal Act 2004* (WA) (SAT Act) and as contemplated in various policy statements and commentaries regarding it. It asks whether the SAT, as the most recent entrant into the field of general Australian tribunals, is a state-of-the-art model for adoption in those jurisdictions in Australia and elsewhere that as yet lack a comprehensive system of administrative review. Alternatively, are there certain inherent contradictions in its constitution, mandate and structure that suggest further amendments or refinements may be necessary to ensure a more effective delivery of dispute resolution?

This critique is premised on two basic axioms of administrative review:

- Not all tribunals are alike
- Even within a single tribunal the mode of adjudication often varies according to the nature of the jurisdiction engaged in a particular dispute.

The title of the State Administrative Tribunal suggests that essentially it is intended to exercise administrative review; that is, its main function is to resolve disputes with government. Names, however, are not determinative of the nature of a body. The omission of a reference to 'civil' in its title should not, therefore, be taken to deny what is undoubtedly the case, namely that, in many respects, the SAT also wears the apparel of a body that determines civil disputes between non-government parties. As such, the further question arises: is the distinction between these different characters so disparate that it is likely to cause problems with respect to how the SAT discharges its functions, and whether it meets the expectations of government, the public and the business and professional communities?

Identification of potential schizophrenic strands within tribunals is, of course, nothing new. The Victorian Civil and Administrative Tribunal, as its name suggests, is structured in a way that explicitly recognises the distinctive character of its individual jurisdictions. Despite aspirations to the contrary, realism dictates that within, for example, its discrimination and equal opportunity division a dispute may be just as bitterly fought as it would be in the County Court. Guardianship applications, by way of contrast, usually fall towards the other, non-adversarial end of the spectrum.[3]

By way of further example, the Commonwealth's Administrative Appeals Tribunal (AAT), even though it is constitutionally required to be a non-judicial body that cannot exercise judicial power,[4] still exhibits tension and conflict between its various jurisdictions. Arguably, when adjudicating employees' compensation and major taxation disputes, the AAT, in both appearance and substance, manifests all the adversarial hallmarks of unflinchingly contested curial combat. Its resolution of social security applications, on the other hand, more closely approximates the ideal model of surrogate executive decision-making. As such, disposition of disputes extends across a spectrum of hearing methods, from the classically adversarial to the conciliatory, tribunal-directed resolution of the issues in contention.

The dominant consideration here is that bodies exercising decisional powers like tribunals are required, either by common law or by their own statutes, to act according to the rules of natural justice and procedural fairness.[5] This overarching consideration also conditions the operation of provisions found in most tribunal statutes that free tribunals from the constraints of the rules of evidence and the requirement to act in accordance with the substantial merits of the case.[6] Provisions of that kind do not confer a licence for the particular tribunal to act arbitrarily and without regard to concepts of fairness and relevance.

Natural justice is, of course, something that operates relative to the particular circumstances.[7] There is no absolute standard that requires a tribunal to go to exhaustive lengths to satisfy the demands of parties. Even in the case of hotly-contested matters such as discrimination complaints and compensation applications there are limits. In that respect, the recent practice direction issued by the AAT[8] requiring parties to stick to the estimated time of hearing, and allowing extensions of time to call further witnesses only in the most exceptional circumstances is a refreshing recognition that fairness to parties cuts both ways.

In the WA context, much has been made of the SAT's function of reviewing certain decisions[9] of government[10] officers and agencies.[11] This attribute has been lauded as one of the most significant advances resulting from the establishment of the SAT. To refer to the SAT's administrative review function, however, only partly reflects the Tribunal's total nature. To start with,

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a cursory glance at the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* is sufficient to satisfy an interested person of the wide range of non-administrative decisions that may be referred to the Tribunal. As s 14 of the SAT Act indicates, the Tribunal has jurisdiction[12] to make original decisions as well as exercising its review function.

So far as administrative review is concerned, although it is early days yet, it is clear that the great bulk of cases decided by the SAT have been reviews of governmental decisions, albeit predominantly at the local government level. To date, the greater proportion of its decisions comprise town planning disputes.[13]

Claims that the SAT engages in administrative review should not be taken to suggest that correction of governmental decisions is the Tribunal's sole and exclusive role. As is evident from the SAT Act 2003 the Tribunal also engages in what can be described as the exercise of a protective jurisdiction in the case of guardianship and administration applications. Those matters do not necessarily involve the government as a party although they have traditionally been regarded as having a public character.[14] Moreover, the Tribunal's supervisory jurisdiction over professional and occupational conduct also engages matters of public interest.[15]

Nevertheless, a large part of the Tribunal's activities will involve adjudication of essentially civil *inter parte* disputes between non-governmental persons. These include anti-discrimination complaints, commercial tenancy and strata title disputes.

The combination of the different kinds of subject matter into a single general tribunal was, as Justice Barker has demonstrated, consistent with the trend that has developed in Australian administrative review over the last 35 years. It represents the implementation of the scheme proposed in the 2002 Report to the Attorney General of the Task Force headed by Justice Barker.[16] That scheme was largely accepted by the State Government and Parliament.[17] Parliamentary acceptance, it should be noted, was qualified by the fact that various amendments were made to the government's original Bill as a result of recommendations of a Legislative Council Committee.[18]

Although in its conceptual foundations the SAT draws on the VCAT model, it is significantly different from both the Commonwealth's AAT and the NSW Administrative Decisions Tribunal. The administrative review functions of the latter tribunals arguably feature more prominently than is the case with either the Victorian or WA tribunals. Further, using the Commonwealth system as a reference point, it is evident that for various reasons the Commonwealth has seen fit to retain a number of specialist tribunals, including the Refugee Review, Migration Review and Veterans Review Tribunals. This is despite the recommendations in the *Better Decisions* report to which Justice Barker referred. The High Court has recognised that a salient characteristic of specialist tribunals like the Refugee Review Tribunal is their inquisitorial nature.[19]

The diversity displayed by this array of Australian tribunals substantiates the first axiom that was proposed at the outset: namely, not all tribunals are alike. The inclusion within generalist tribunals such as the SAT and VCAT of administrative review, public regulatory functions and civil adjudication, substantiates the second axiom: even within the same tribunal not all jurisdictions are alike.

Victoria and Western Australia have each adopted a model of a single comprehensive tribunal. In so doing, the resulting general tribunals are open to the criticism that the combination of disparate jurisdictions can create internal tensions within the adjudicating body. It is interesting to note that, as Justice Barker observes, the New Zealand Law Commission has recommended a relatively sophisticated clustering process whereby a number of tribunals and commissions with similar characteristics are subsumed within several larger structures.

One could be tempted to dismiss observations about the different characters of tribunals as truisms. However, these propositions contain the seeds of a potentially inherent contradiction that, unless satisfactorily resolved, could threaten the effectiveness of tribunals as well as compromise or frustrate the attainment of statutory objectives.[20] The critical issue for the SAT is: will the disparate nature of its various jurisdictions affect the way that it discharges its collective functions?

The thesis of this article is that, despite its ostensibly schizophrenic nature, the SAT, provided it adapts its adjudication style according to the varying nature of proceedings before it, should be able to achieve expectations. This is not only true with respect to the different jurisdictional divisions within the SAT. It applies within each division so that a revenue dispute involving an unrepresented applicant can be treated differently from one where the contestants are represented by senior counsel.

The Task Force Report, on which the Government's SAT Bill was based, recognised that the Tribunal needed to adopt a diversity of approaches, according to the kind of jurisdiction and the nature of a matter before it.[21] Its capacity to do so depends on the extent to which it is constrained by its controlling legislation. This requires consideration of statutory objectives. As set forth in s 9 of the SAT Act, the main objectives of the Tribunal include achieving the resolution of questions, complaints or disputes; making and reviewing decisions, fairly and according to their substantial merits; and acting speedily and with as little formality and technicality as practicable.[22]

The potential for analytic confusion between the different roles of the SAT is manifest in s 19 of the Act. It deals with the relationship between the SAT's statutory powers of administrative review and judicial review. Section 19 allows a person aggrieved by a reviewable decision to seek either review through application to the SAT or by means of judicial review, but not both at once. This is subject to the exceptions in s 50(1) of the Act.[23] To pursue review in the SAT forecloses judicial review of the Supreme Court at the same time by way of prerogative writs.

This article contends that while administrative review before the SAT will be concerned essentially with the merits of a decision, it is reasonably arguable that the Tribunal is also able

to review government decisions on many, if not all, of the classical administrative law grounds.

This follows from the nature of the hearing in the SAT's review jurisdiction – a review is to be conducted by way of a hearing *de novo*, the purpose of which is to reach the 'correct and preferable decision' at the time of review. The use of the expression 'correct *and* preferable decision' in s 27(2), instead of the more usual 'correct *or* preferable',[24] creates interpretive confusion.[25] As originally enunciated in cases such as *Drake v Minister for Immigration and Ethnic Affairs*,[26] the composite expression, in the context of administrative review by Commonwealth bodies like the AAT, differentiated between the legally correct decision and a preferable discretionary decision. The first is appropriate for cases where the fulfilment of stipulated statutory conditions, correctly interpreted, requires a single outcome and other cases where the task of the decision-maker, vested with a discretionary power, is to determine the best and optimal decision upon evaluation of various criteria.

Of course, in the case of Commonwealth tribunals, interpreting legislation in order to determine the correct legal decision is permissible as part of its administrative function.[27] Commonwealth tribunals are, however, unable to exercise powers of judicial review since that involves breach of the separation of powers doctrine.[28]

Unlike Commonwealth tribunals, State tribunals such as the SAT are subject to no such constitutional constraint. In particular, depending on whether there is anything in the SAT Act to ground a contrary construction, the SAT, in making the correct legal decision, is arguably authorised to consider wider grounds of legality, such as error of law amounting to jurisdictional error[29] (including where the original decision-maker commits a breach of the rules of natural justice, asks the wrong question, or takes into account irrelevant considerations). Further, it is arguably open to the SAT to determine whether a decision was *not* correct because it involved an error of law in the sense of not being made within the relevant statutory power.[30]

This interpretation effectively incorporates and subsumes a form of judicial review within the SAT's review function. That form of judicial review may be distinguished from the traditional kinds of judicial review associated with the prerogative writs.[31] It should be noted that the Tribunal has been granted power to make declarations to complement the other orders that it may make on review.[32]

It may be argued that this broad and enabling construction is contradicted, firstly, by the fact that the SAT Act provides that a review is to be in the nature of an appeal *de novo*; and further, that such an appeal takes into account the circumstances existing at the time of the review.[33] While the construction of the expression 'appeal *de novo*' is problematic, there is no reason for necessarily excluding legality review from its ambit. Nor do the provisions requiring an applicant to opt between Tribunal review and judicial review exclude the possibility that the former can embrace review of a kind that assimilates judicial review.

The powers given to the Tribunal, in s 29(3) of the SAT Act, to affirm, vary or set aside the original decision, or to substitute its own, do not preclude review on administrative law grounds; they would appear to be equally appropriate whether a decision is administratively or judicially reviewed. Finally, the fact that, under s 105(2) of the SAT Act, an appeal can only be taken to the Western Australian Court of Appeal or the Supreme Court on grounds involving a question of law should not affect the situation. If the SAT sets aside a decision as incorrect on the ground of an error of law, the superior State courts can exercise appellate jurisdiction with respect to the Tribunal's decision even though it may be precluded from exercising judicial review concerning the original administrative decision.

In fact one rationale behind s 19 is that it is intended to ensure an expeditious and single-shop determination of an application. It therefore makes sense that the SAT, appropriately constituted by a judicial member, can contemporaneously review both the merits and the legality of an original decision. This view may draw support from the use of term 'correct and preferable decision.' Given that the differences between the alternate forms of this expression have been the subject of considerable prior debate, the choice of the correct and preferable variation should be taken to be deliberate and, therefore, wider and more comprehensive in its scope.[34]

If this construction of the SAT's powers is correct, it provides an interesting perspective on the interrelationship between administrative review and judicial review. In the Commonwealth sphere, the distinction between the two is virtually mutually exclusive, being mandated by Chapter III of the *Commonwealth Constitution*. The High Court and Federal Court have constantly reiterated that in conducting judicial review it is impermissible for a court to enter into a review on the merits of an administrative decision.[35] If the SAT is not confined to simple merits review it considerably widens the bases on which the SAT can arrive at the correct decision. For example, the traditional administrative law ground of *Wednesbury* unreasonableness is notoriously difficult to establish. It is not enough to claim that an administrative decision, in the opinion of the court, is unreasonable; it is necessary to demonstrate that it is so manifestly unreasonable that no reasonable decision-maker could have made it if properly understanding the matter. The vexed issue of the place of proportionality in the *Wednesbury* analysis, can, however be outflanked and avoided. By resorting simply to merits review the SAT could introduce considerations of proportionality in concluding that an administrative decision is not the preferable choice.[36] Whether the SAT will embrace this broader view of its review function has yet to be seen.

If it does, there will be greater scope for the SAT to exercise a normative role that extends beyond the settlement of individual disputes with government. So long as the field of reviewable government decisions is relatively small the potential for conflict between the SAT and Government is unlikely to prove problematic. Correspondingly, the capacity of the SAT to provide an accountability mechanism, as presaged by Justice Barker, will also be somewhat

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restricted. That would change if the range of reviewable decisions was extended to cover more ministerial and departmental decisions.[37]

The extent to which a body like the SAT can engage in policy review is itself a matter of some contention. Where the AAT is concerned, a conservative view has been taken about the freedom of that Tribunal to engage in high-level policy critique.[38] Section 28 of the SAT Act requires the Tribunal to take into account policy certified by Ministers. That, however, would not preclude the SAT identifying, if it saw fit, deficiencies or problems in implementing such policies. In that regard the avenue provided by the President's annual report to Parliament, although significant, seems unlikely to have a substantial effect on future government policy unless the range of reviewable government decisions is considerably enlarged.[39]

If the SAT's scope for review does extend to what is effectively judicial review that will affect, if only partially, the way the Tribunal is perceived. In such cases the Tribunal may be expected to provide a more court-like forum. One would hope, however, that where government decisions are under review, the State's representatives will not see their task as providing a fully-contested, adversarial opposition to the application.[40]

This has wider ramifications about how one should view the SAT. Justice Barker has emphasised that it is intended to operate as a tribunal rather than as a court. Its methodologies, appeal procedure, freely available access to mediation procedures and the like, all contribute to the expectation that it will provide quick, fair and accountable decision-making and review without the impediment of normal curial proceedings. That aspiration is most likely to be achievable with regard to those aspects of the Tribunal's activities where straightforward issues of administrative review, or relatively simple contests between individuals, are concerned. Reconciliation of the different demands imposed on the SAT by reason of its different jurisdictional strands is possible if the Tribunal adapts its process to the requirements of each particular situation.[41] It remains to be seen whether in the highly contentious jurisdictions, such as discrimination cases and review of high level government decisions, a more adversarial and curial process may be required.

Returning to the questions posed at the beginning of the article, it is undoubted that the WA SAT does provide a model for the development of future generalist tribunals. Many of the innovations and features referred to by Justice Barker represent the latest thinking and practice concerning tribunal administration. If, in addition, the SAT has the capability for determining both merits and legality issues, it represents an attractive development in Australian, non-Commonwealth, tribunal jurisprudence.

As regards the schizophrenic problems associated with the vesting of different kinds of jurisdiction in a single adjudicative body, the SAT can be expected to adapt its procedures to accommodate the varying needs of litigants within its distinct divisions. The challenge in that regard is that procedures should not become too prescriptive, either as a result of legislative amendments or unnecessarily inflexible practice rules and directions. Of course, one option to mitigate the problems of diversity within a single tribunal is to maintain a small number of tribunals, clustered around commonalities and specialties, as is proposed in New Zealand. ❖

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Endnotes

1. This article is adapted from a paper presented by the author at the 8th Annual Australian Institute for Judicial Administration Tribunals Conference, 2005.

2. The distinction between tribunals and courts is elusive and is often defined in negative terms: tribunals are adjudicative bodies that are not courts. The identification of a Commonwealth body as a tribunal or court is relevant to the separation of powers doctrine in the Constitution; *Brandy v The Human Rights and Equal Opportunity Commission* (1994) 183 CLR 245; *Attorney General (Cth) v Breckler* (1999) 197 CLR 83. The issue of what kinds of bodies can be characterised as State courts is itself a problematic inquiry, although usually only of significance for the purpose of deciding whether the body can exercise the Chapter III judicial power of the Commonwealth. In the latter case the principle in *Kable v Director of Public Prosecutions* (NSW) (1996) 189 CLR 51 may apply, although in the case of the SAT there would appear to be no room for its application.

3. I hesitate to use the term 'inquisitorial' at this point although it stands in contradistinction to 'adversarial' procedure. 'Inquisitorial', as Creyke R and Bedford N 'Inquisitorial v Adversarial Processes in Australian Tribunals' (forthcoming publication) have demonstrated, has a variety of meanings which are not always apt to describe circumstances where those presiding over tribunal hearings take the initiative and responsibility for determining factual issues and resolving the claim.

4. *R v Kirby; Ex parte Boilermakers' Society of Australia* (the *Boilermakers'* case) (1956) 94 CLR 254.

5. See, for example, s 32(1) *SAT Act*.

6. In the case of the SAT, s 32(2)-(5) of the *SAT Act*.

7. *Kioa v West* (1985) 159 CLR 550, at 612 (Brennan J); *Sullivan v Department of Transport* (1978) 20 ALR 323; *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) 206 CLR 57, at [39] (Gleeson CJ and Hayne J).

8. Hearing Policy: Listing and Adjournment Practice Direction, 19 April 2005. With similar intent, s 32(7)(d) of the *SAT Act* provides that the Tribunal 'may limit the time available for presenting the respective cases of parties before it at a hearing to an extent that it considers would not impede the fair and adequate presentation of the cases.' The circular qualification, 'would not impede the fair and adequate presentation of the cases,' would seem to import natural justice limitations but the provision conditions such limitations to what the Tribunal subjectively considers fair.

9. These comprise decisions designated as 'reviewable decisions' by a

relevant State law or the SAT Act itself.

10. Section 6 of the SAT Act provides that the Crown is bound by the Act. The retention of the term 'Crown' reflects a conservatism that appears anachronistic in the light of recent comments by members of the High Court regarding that expression; see *Sue v Hill* (1999) 199 CLR 462, [83]-[94] Gleeson CJ, Gummow and Hayne JJ), *Commonwealth v State of Western Australia* (1999) 196 CLR 392, [106]-[121] (Gummow J).

11. See Barker M and Simmons R, 'Delivering administrative justice in WA' (2004) *Reform* Issue 84, 23; Eckert J, 'Detailed overview of the SAT legislation' (2005) *Brief* (WA Law Society) 6; State Administrative Tribunal Bill 2003, Second Reading Speech, J. McGinty, Attorney General, Parliamentary Debates, Legislative Assembly, 24 June 2003, 9102b-9104a.

12. Although it might be more appropriate to use the word 'power' than 'jurisdiction', this article generally adopts 'jurisdiction' to reflect its usage in s 14 of the SAT Act.

13. On a crude statistical survey of the number of applications decided by the SAT up until late May 2005, approximately 47 per cent of decisions involved town and metropolitan planning applications. Of the remainder, strata title, guardianship and occupational licence (particularly crowd controller licencing) matters featured prominently. Administrative reviews of governmental decisions were relatively rare, *Yennert Pty Ltd v Department of Fisheries* [2005] WASAT 31, relating to fisheries management, being one exception.

14. They can be traced back to the *parens patriae, wardship* jurisdiction of the Supreme Court. It was because of that historic connection that the Guardian and Administration Board, which previously exercised the jurisdiction now vested in the SAT, was closely associated with the Supreme Court under the *Guardianship and Administration Act 1990* (WA). Because of the vulnerable nature of the persons subject to administration orders this kind of application has always been regarded as requiring especially sensitive determination, although when control of property as between relatives of the persons is in issue, applications can take on all the adversarial attributes of an inter-party dispute.

15. These cover both disciplinary proceedings directed to professional misconduct as well as occupational licensing disputes. Interestingly, one of the more frequently invoked SAT jurisdictions to date has been that concerned with the fitness of persons engaged in security and crowd regulation. Where professionals such as lawyers and doctors are concerned, one can expect proceedings to be strongly contested, as was the SAT decision in *Medical Board of Western Australia and Roberman* [2005] WASAT 81.

16. The WA Civil and Administrative Review Tribunal Task Force Report (May 2002).

17. Its proposals are discussed by Johnston P, 'State Developments in Administrative Law Western Australia: Slouching towards Bethlehem:' [2003] AIAL Forum, Canberra, July 2003.

18. This is not the occasion to canvass the effect of those recommendations. Generally, the Committee's Report and amendments to the original Bill resulting from them suggest the Committee may not have understood important aspects of the Bill. In its public hearings the committee constantly portrayed the proposed tribunal as a 'one size fits all' body. Further, provisions such as s 93, which deals with 'minor proceedings', may create jurisdictional problems and prove difficult to implement.

19. *Minister for Immigration and Multicultural Affairs v Wang* (2003) 215 CLR 518, [132] (Kirby J); *Muin v Refugee Review Tribunal* (2002) 76 ALJR 966, [7] (Gleeson CJ).

20. For a comparative study of the effect of diverse roles in a general tribunal see Sharp N 'The chameleon tribunal: The Administrative Decisions Tribunal of New South Wales' (2003) 10 AJ Admin L 181.

21. The WA Civil and Administrative Review Tribunal Task Force Report (May 2002), at 130-131, emphasised that pursuit of the correct or preferable decision in a particular instance may require the SAT to 'cut its cloth' according to circumstances, whilst seeking to ensure procedural fairness.

22. With regard to the latter objective, a statistical analysis of the first four months of the SAT's operation discloses that a not insignificant proportion of the Tribunal's decisions were made 'on the papers'. The objective of speedy disposition may, however, be countervailing to that of fairness. Both objectives are relative. The SAT, with an eye to what is practicable, should be able the balance the two.

23. Under s 50(1) the SAT may make an order striking out an application and transferring it to another forum or court if it considers the latter is more appropriate.

24. 'Correct or preferable decision' is used, for example, in s 29(1B)(b) of the AAT Act 1975 (Cth) which comes into operation on 18 November 2005.

25. In both forms, the pursuit of 'the truth' is one justification for adopting an inquisitorial approach to fact-finding. The problem is whether the truth should be treated as an absolute or a relative goal. When measured against other criteria, such as the need for expedition, an approximation of the truth is perhaps all that is achievable.

26. (1979) 24 ALR 577 at 589 (Bowen CJ and Deane J).

27. It does not constitute a breach of the separation of powers doctrine: *R v Trade Practices Tribunal; Ex parte Tasmanian Breweries Pty Ltd* (1970) 123 CLR 361.

28. *Boilermakers' case* (1956) 94 CLR 254; *Re Adams and Taxation Review Board* (1976) 1 ALD 251.

29. Of the kind identified in *Re Minister for Immigration and Multicultural Affairs; Ex parte Yusuf* (2001) 206 CLR 32.

30. Error of law in this context should be distinguished from 'question of law' in s 59 of the SAT Act.

31. Arguably, s 19(1) itself is predicated on the distinction between common law writs and the kind of relief that the Tribunal may order. It defines 'judicial review proceedings' by reference to the traditional writs of certiorari, mandamus and prohibition; also, the remedy of declaration.

32. Section 91.

33. Section 27(1).

34. This construction treats the choice of the conjunctive form as intended to indicate, cumulatively, the widest compass for the Tribunal's review function rather than just express a

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semantic preference. It suffers the logical defect, however, that the terms 'correct' and 'preferable' are in many cases redundant if used conjunctively.

35. For example, *Re Minister for Immigration and Multicultural Affairs; Ex parte Yusuf* (2001) 206 CLR 32 at [8] (Gleeson CJ).

36. Johnston P 'Proportionality: *Wunderkind* or Problem Child?' (1996) 26 *UWA Law Rev* 138, 156-57.

37. Alternatively, if new jurisdictions are added, such as acting as a court of disputed returns in local government elections, it would also involve the SAT in more politically contentious disputes.

38. *Drake v Minister for Immigration and Ethnic Affairs* (1979) 46 FLR 158

39. In response, one could argue that the number of reviewable decisions is not the sole determinant of the normative impact of tribunal adjudication. Single decisions, for example in the revenue and resources jurisdictions, could be attended by great material consequences.

40. This engages the contentious issue of what expectations should be entertained about the State representatives' role as the model litigant. Under s 37(1) of the SAT Act the Attorney General may intervene in a Tribunal proceeding at any time. An interesting conflict could arise between the Attorney General's role as Minister responsible for ensuring that the Tribunal acts justly and within its powers and as Minister representing a governmental interest. The diverse roles of the Attorney General are discussed in Mantziaris C, 'The Federal Division of Public Interest Suits by an Attorney General' (2004) 25 *Adelaide Law Review* 211.

41. This could extend to the way in which Tribunal members write their decisions. Could the day come, for example, where an SAT decision is given in two or three pages, along the sparse lines of a decision by the French Conseil d'Etat?