

## **EXECUTIVE SUMMARY**

- 1 On September 16 2003, the Legislative Council referred both the State Administrative Tribunal Bill 2003 and the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 to the Standing Committee on Legislation for consideration and to report back to the House by November 11 2003.
- 2 Over the course of its inquiry into the bills, the Committee received 48 written submissions, held public hearings involving a total of 24 witnesses, conducted site visits, and met with relevant parties in Melbourne and Sydney.

### **The Committee's General Observations on the Legislation**

- 3 The basic structure of the proposed State Administrative Tribunal is modelled closely on the Victorian Civil and Administrative Tribunal, although the types of matters dealt with by these two tribunals will vary considerably.
- 4 From the Committee's meetings in Melbourne and Sydney, it became clear to the Committee that the ability of an administrative tribunal to achieve the aims of timeliness, informality and economy, is almost entirely dependent on the skills and vigour of the tribunal's President. This suggests that the appointment of a suitable President will be critical in achieving the Government's aims for the State Administrative Tribunal.
- 5 The experience of the Victorian Civil and Administrative Tribunal illustrates a general reluctance by parties to certain administrative decisions to genuinely resolve issues at the original decision-making stage. The Committee is of the view that the State Administrative Tribunal should encourage a full consideration of the issues raised by an administrator's decision before lodgement of an application to review the decision.
- 6 Whilst judges and lawyers have supported the concept of judicial leadership, the Committee is not convinced by the arguments put forward in favour of the contention. The Committee remains concerned at the risk of excessive legalism and formality in proceedings in an organization where senior lawyers dominate. The Committee, however, does not propose any amendment to the State Administrative Tribunal Bill 2003 based on this view.
- 7 The Committee is of the view that it is important that both the State Administrative Tribunal Bill 2003 and relevant enabling Acts contain mechanisms to ensure that matters before the State Administrative Tribunal do not escalate into long, drawn-out, formal proceedings with appeals on technical points of law all the way to the High Court of Australia.

## **Matters Relating to the Practical Implementation of the Legislation**

- 8 There were two matters of concern to the Committee relating to the practical implementation of the proposed State Administrative Tribunal - the consultation on practical problems and the design of the tribunal's premises. The Committee has found that the consultation process was unsatisfactory in that it was inadequate, one-way and patchy. Some of the Committee's recommendations in relation to the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 came about as a result of the Committee's own public consultation, which quickly revealed the practical problems.
- 9 Chapter 10 deals with the concerns as to the structural design and location of the building which has led to unsuitable interior areas and inappropriate layout as well as poor access to the premises. Proper design of premises is a matter that was emphasised with the Committee by existing tribunals in Victoria and New South Wales.
- 10 The Committee has made 46 recommendations arising from its examination of the bills. This report also contains three minority recommendations of Hon Giz Watson MLC, which are not supported by the majority of the Committee.

## **Amendments Proposed by the Committee**

### *State Administrative Tribunal Bill 2003*

- 11 The Committee has recommended amendment to, or deletion of, the following clauses of the State Administrative Tribunal Bill 2003:
- Clauses 3, 11, 29, 39, 40, 64, 65, 86, 87, 89, 90, 92, 94, 104, 106, 115, 117, 118, 147 and 167.
- 12 The Committee has recommended the insertion of the following new clauses or schedules into the State Administrative Tribunal Bill 2003:
- New clauses 91A, 114A, 164A, 167A and New Schedule 1.

### *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003*

- 13 The Committee has recommended amendment to, or deletion of, the following clauses of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003:
- Clauses 234, 237, 238, 242, 314, 388, 747 to 780, 782, 783, 786, 787, 788 to 794, 983, 984, 986, 1043 to 1062, 1259, 1406 and 1407.

14 The Committee has recommended the insertion of the following new clauses into the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003:

- New clauses 309, 315, 416, 457, 781 and 795.

**Amendments Proposed by the Government and Supported by the Committee**

15 The Committee worked closely with the Government over the course of the inquiry with respect to the Government's proposed amendments to both bills.

16 The Committee has recommended that the State Administrative Tribunal Bill 2003 and the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 be amended by the Government's proposed amendments as set out in appendices 5 and 6 of this report.

17 The Government's proposed amendments as set out in appendices 5 and 6 also incorporate those amendments that the Government wishes to proceed with that are contained on Supplementary Notice Paper No 213, Issue No 1, September 10 2003 for the State Administrative Tribunal Bill 2003, and Supplementary Notice Paper No 214, Issue No 5, November 17 2003 for the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003.

*State Administrative Tribunal Bill 2003*

18 In Appendix 5, the Government has proposed amendment to, or deletion of, the following clauses of the State Administrative Tribunal Bill 2003:

- Clauses 3, 11, 32, 34 to 37, 39, 43 to 45, 48, 52, 54, 58, 60, 61, 63, 66, 75, 83, 91, 93, 99, 104, 155, 158, 164 and 166.

19 In Appendix 5, the Government has also proposed the insertion of the following new clauses into the State Administrative Tribunal Bill 2003:

- New clauses 79A, 159A and 166A.

*State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003*

20 In Appendix 6, the Government has proposed amendment to, or deletion of, the following clauses of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003:

- Clauses 15, 72, 73, 111, 116, 144, 193, 215, 223, 237, 248, 298, 299, 309, 351, 378, 415, 426, 461, 470, 474, 476, 490, 522, 527, 530, 581, 585 to 587, 591, 593, 595, 598, 609, 634, 637, 638, 640 to 670, 672, 688, 691, 701, 714, 736, 742, 745, 782, 784, 813, 819, 821, 823, 834, 862, 875, 884, 886, 887,

925, 951, 952, 956, 982, 990, 1023, 1073 to 1078, 1081, 1083, 1085, 1093, 1094, 1137, 1140, 1141, 1149, 1155, 1159 to 1163, 1165, 1173, 1178, 1183 to 1185, 1190, 1199, 1200, 1204, 1233, 1238, 1247 to 1252, 1258, 1259, 1265, 1270, 1280, 1284, 1285, 1300, 1310, 1325, 1379, 1409 and 1410.

21 In Appendix 6, the Government has also proposed the insertion of the following new clauses into the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003:

- New clauses 12, 298, 299, 300 (x2), 301, 582, 585 to 587, 588, 604, 618, 672, 687 to 689, 690 (x2), 691 (x3), 692 (x3), 693 (x2), 694, 695, 986, 1198, 1252 and 1411.

## RECOMMENDATIONS

22 Recommendations are grouped as they appear in the text at the page number indicated:

Page 39

**Recommendation 1: The Committee recommends that the Government give consideration to extending the general administrative law principles relating to the provision of reasons for decisions, as contained in Subdivision 2 of Division 3 of Part 3 of the State Administrative Tribunal Bill 2003, to all administrative decision-making in Western Australia.**

Page 42

**Recommendation 2: The Committee recommends that the Government give consideration to extending, either through legislation or by non-statutory means, the 90-day time limit on the handing down of reserved decisions by the proposed State Administrative Tribunal, to all court and tribunal jurisdictions in Western Australia.**

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**Recommendation 3: The Committee recommends that the State Administrative Tribunal Bill 2003 be amended by the Government's proposed amendments as set out in Appendix 5 of this report.**

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**Recommendation 4: The Committee recommends that the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 be amended by the Government's proposed amendments as set out in Appendix 6 of this report.**

Page 78

**Recommendation 5: The Committee recommends that clauses 86 and 87 of the State Administrative Tribunal Bill 2003 be amended to apply a costs penalty in certain types of decisions to be reviewed by the proposed State Administrative Tribunal against those parties that have made no genuine attempt to resolve the matter when the original decision was made. This could be effected in the following manner:**

**Clause 86**

Page 51, after line 16 — To insert —

“

(3a) Without limiting anything else that may be considered in making an order for the payment by a party of the costs of another party where the matter that is the subject of the proceeding comes within the Tribunal’s review jurisdiction, the Tribunal is to have regard to —

- (a) whether the party (in bringing or conducting the proceeding before the decision-maker in which the decision under review was made) genuinely attempted to enable and assist the decision-maker to make a decision on its merits;
- (b) whether the party (being the decision-maker) genuinely attempted to make a decision on its merits.

”.

**Clause 87**

Page 52, after line 5 — To insert —

“

(aa) section 86(3a) applies to the party; or

”.

**Recommendation 6: The Committee recommends that Clause 29 of the State Administrative Tribunal Bill 2003 be amended to provide for certain reviewable decisions to be returned to the original decision-maker in those circumstances that the proposed State Administrative Tribunal is of the opinion that a matter before the Tribunal is substantially different to that which was dealt with by the decision-maker. This can be effected in the following manner:**

Page 21, after line 24 — To insert —

“

(9) To avoid doubt it is declared that this section and section 27 do not extend to requiring or enabling the Tribunal to deal with a matter that is different in essence from the matter that was before the decision-maker.

”.

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**Recommendation 7: The Committee recommends that a new Clause 167A be inserted into the State Administrative Tribunal Bill 2003 to provide for a parliamentary inquiry into the proposed State Administrative Tribunal after it has been in operation for two years. This can be effected in the following manner:**

Page 96, after line 4 — To insert —

“

**167A. Legislative Council inquiry**

As soon as practicable after the end of the period of 2 years after the day on which section 7 comes into operation an inquiry into the jurisdiction and operation of the Tribunal is to be conducted by —

- (a) a committee of the Legislative Council established to conduct that inquiry; or
- (b) an existing committee of the Legislative Council upon which the function of conducting that inquiry is conferred by that House.

”.

**Recommendation 8: The Committee recommends that clauses 115, 117 and 118 of the State Administrative Tribunal Bill 2003 be amended to allow for the appointment of public sector employees as members of the proposed State Administrative Tribunal. This can be effected in the following manner:**

**Clause 115**

Page 68, before line 17 — To insert —

“

(5) A person who is a public sector employee may be appointed to be a non-judicial member in respect of matters in the Tribunal’s original jurisdiction that are

—

- (a) of a class prescribed by the regulations; and
- (b) specified in the instrument of appointment,

and a person so appointed is not allowed to be a sitting member of the Tribunal, or perform any function as a Tribunal member, in relation to any other matter.

”.

**Clause 117**

Page 69, after line 13 — To insert —

“

(5) A determination cannot be made under this section in respect of a person appointed under section 115(5) unless the Minister for Public Sector Management approves of it being made.

”.

**Clause 118**

Page 70, line 1 — To insert after “member” —

“ (other than a person appointed under section 115(5)) ”.

Page 90

**Recommendation 9: The Committee recommends that the President of the proposed State Administrative Tribunal develop guidelines for constituting a Tribunal with a member or members who may be public sector employees.**

Page 98

**Recommendation 10: The Committee recommends that Clause 11 of the State Administrative Tribunal Bill 2003 be amended to remove the requirement that at least one tribunal member on every tribunal must be a lawyer. This can be effected in the following manner:**

Page 9, lines 4 and 5 — To delete the lines.

Page 9, lines 19 to 25 — To delete the lines.

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**Recommendation 11: The Committee recommends that Clause 1259 of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 be amended to ensure that minor taxation matters are dealt with through the minor matters procedure of the proposed State Administrative Tribunal as recommended by the Committee’s Recommendation 12, subject to the retention of a very limited right of appeal by the Government on a specific question of law to the Supreme Court. This may be effected in the following manner:**

**Clause 1259**

Page 572, line 7 — To insert after “(2)” —

“ or (2aa) ”.

Page 572, line 18 — To insert after “alone” —

“ unless subsection (2aa) applies ”.

Page 572, after line 18 — To insert the following subsections —

“

(2aa) A proceeding brought before the State Administrative Tribunal under this Act is included in the operation of section 91A of the *State Administrative Tribunal Act 2003* if it is —

- (a) a proceeding of a kind described in paragraph (a) of the definition of “minor proceeding” in subsection (1) of that section or included by regulations referred to in paragraph (b) of that definition;
- (b) a proceeding for the review of a directly reviewable decision; or
- (c) a proceeding for the review of a decision of the Commissioner under section 47 in connection with extending time for payment of tax or approving payment of tax in instalments,

but the effect of a no appeals election made under that section in relation to the proceeding is modified as described in subsection (2ab).

(2ab) The no appeals election does not prevent the Commissioner from making an appeal under the *State Administrative Tribunal Act 2003* Part 5, without leave, against the decision in the proceeding on a question of law if the Treasurer —

- (a) certifies in writing that the question is significant for the protection of the revenue of the State; and
- (b) agrees to indemnify each other party to the proceeding in respect of any cost involved in the appeal,

but a decision made by the Supreme Court in dealing with the appeal does not affect the decision in the proceeding from which the appeal arose and the matter cannot be sent back to the State Administrative Tribunal for reconsideration.

”.

**Recommendation 12: The Committee recommends that a new Clause 91A be inserted into the State Administrative Tribunal Bill 2003 to provide for a minor matters procedure. This can be effected in the following manner:**

Page 54, after line 15 — To insert —

“

**91A. Minor matters procedure**

(1) In this section —

**“legally qualified person”** means —

- (a) a legal practitioner or a person entitled to practise as a legal practitioner in any other place; or
- (b) any other person who, in the opinion of the Tribunal, has such qualifications or experience in law (whether acquired in Western Australia or in any other place in or outside Australia) as would be likely to afford an advantage in the proceeding;

**“minor proceeding”** means —

- (a) a proceeding in which a monetary value can be ascribed to the matter in issue other than —
  - (i) a proceeding in which that monetary value exceeds the specified amount;
  - (ii) a proceeding dealing with a decision of a vocational regulatory body or a matter brought before the Tribunal by a vocational regulatory body or by another person under a vocational Act; or
  - (iii) a proceeding of a kind that an enabling Act excludes from the operation of this section;
- (b) a proceeding of a kind that the regulations include in the operation of this section; or

- (c) a proceeding of a kind that an enabling Act includes in the operation of this section;

**“specified amount”** means \$7 500 and, on and after 1 January 2009, means \$10 000.

(2) At or before an initial directions hearing in a minor proceeding the applicant may make one or more of the following elections in relation to the proceeding —

- (a) a no legal representation election;
- (b) a no hearings election;
- (c) a no appeals election.

(3) If the applicant makes a no legal representation election, a party —

- (a) cannot be represented by a legally qualified person; and
- (b) cannot be represented by any other person except as authorised by section 39(1)(a) to (e).

(4) If the applicant makes a no hearings election, the Tribunal is to conduct the proceeding in accordance with section 60(2).

(5) If the applicant makes a no appeals election, any decision in the proceeding is final and is not subject to appeal or review whether under Part 5 or otherwise.

(6) Without limiting section 166, the rules may provide for the practice and procedure to be followed in a proceeding in relation to which an election is made under subsection (2) and, for that purpose, may include provisions that modify the operation of this Act.

”.

**Recommendation 13: The Committee recommends that Clause 39 of the State Administrative Tribunal Bill 2003 be amended to expand the class of persons who may represent a party as of right before the proposed State Administrative Tribunal to various experts. This can be effected in the following manner:**

Page 28, after line 13 — To insert —

“

- (ca) the person has particular knowledge or experience relevant to the matter that is being dealt with (other than experience obtained as or representing a party in another Tribunal proceeding);

”.

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**Recommendation 14: The Committee recommends that Clause 40 of the State Administrative Tribunal Bill 2003 be amended to address the representation of persons before the proposed State Administrative Tribunal who are of age but not of legal capacity to represent themselves. This can be effected in the following manner:**

Page 28, line 28 — To delete “child” and insert instead —

“ person who is not of full legal capacity ”.

Page 28, line 30 — To delete “child’s” and insert instead —

“ person’s ”.

Page 125

**Recommendation 15: A minority of the Committee (Hon Giz Watson MLC) recommends that the Government should give consideration to allowing third party appeals to the proposed State Administrative Tribunal in environmental matters.**

Page 125

**Recommendation 16: A minority of the Committee (Hon Giz Watson MLC) recommends that the Government should give consideration to removing the proposed State Administrative Tribunal’s power to require undertakings as to costs or damages when a party seeks an injunction in an environmental matter.**

**Recommendation 17: The Committee recommends that Clause 64 of the State Administrative Tribunal Bill 2003 be amended to allow the parties to make submissions to the proposed State Administrative Tribunal in circumstances where the Tribunal wishes to engage advice or professional services at the parties' expense. This can be effected in the following manner:**

Page 42, after line 23 — To insert —

“

(3) Subsection (2) does not apply in relation to a party unless, before obtaining the assistance, the Tribunal advised the party of —

- (a) its intention to obtain the assistance;
- (b) the likely costs of obtaining the assistance; and
- (c) the likely amount of the party's payment or contribution,

and gave the party an opportunity to be heard on the matter.

”.

**Recommendation 18: The Committee recommends that Clause 65 of the State Administrative Tribunal Bill 2003 be amended to remove the liability of the parties to pay for the appointment of a special referee and to clarify the effect of a special referee's decision on the State Administrative Tribunal. This can be effected in the following manner:**

Page 42, lines 29 to 31 — To delete the lines and insert instead —

“

(2) The Tribunal may either adopt a special referee's decision or opinion, in whole or in part, or reject it.

”.

**Recommendation 19: The Committee recommends that a new Clause 164A be inserted into the State Administrative Tribunal Bill 2003 to recognize the inter-relationship between the proposed State Administrative Tribunal and the Ombudsman. This can be effected in the following manner:**

Page 95, before line 7 — To insert —

“

**164A. Arrangements with Parliamentary Commissioner**

(1) In this section —

**“Parliamentary Commissioner”** means the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971*.

(2) The President and the Parliamentary Commissioner may enter into arrangements regarding the following —

- (a) the co-operative exercise of the respective functions of the Tribunal and the Parliamentary Commissioner;
- (b) measures to be taken by the Tribunal and the Parliamentary Commissioner to increase public awareness of the functions of the other.

(3) The Tribunal and the Parliamentary Commissioner are authorised to perform their functions in conformity with any relevant arrangements entered into under subsection (2).

”.

**Recommendation 20: The Committee recommends that Clause 94 of the State Administrative Tribunal Bill 2003 be amended so as to limit the application of the penalty for non-compliance to only those orders where the clause has been expressly stated to apply in the terms of the order. This can be effected in the following manner:**

Page 57, after line 10 — To insert —

“

(2a) Subsection (1) does not apply in relation to a decision unless —

- (a) the Tribunal, in the decision, declares that subsection (1) applies; or
- (b) after a person fails to comply with the decision, the Tribunal makes an order declaring that subsection (1) applies and the failure continues after notice of that order is served on the person.

”.

Page 141

**Recommendation 21: The Committee recommends that Clause 92 of the State Administrative Tribunal Bill 2003 be deleted to remove from the proposed State Administrative Tribunal the power of entry and inspection. This can be effected in the following manner:**

Page 54, line 16 to page 55, line 21 — To delete the clause.

Page 150



**Recommendation 22: The Committee recommends that Clause 89 of the State Administrative Tribunal Bill 2003 be amended so that injunctions may only be issued by a judicial member of the Tribunal and on an interim basis only. This may be effected in the following manner:**

Page 52, line 14 — To insert after “an” —

“ interim ”.

Page 52, lines 17 to 20 — To delete —

“

—

- (a) in the case of an interim injunction, a legally qualified member;  
and
- (b) in any other case,

”.

Page 151

**Recommendation 23: The Committee recommends that Clause 90 of the State Administrative Tribunal Bill 2003 be amended to limit the application of a declaration to the parties and certain subsequent transactions involving the parties. This can be effected in the following manner:**

Page 53, after line 26 — To insert —

“

(5) A declaration made under subsection (1) is binding, according to its terms,  
on—

- (a) the parties to the proceeding; or
- (b) such of them as are specified in the declaration,

and not otherwise.

”.

**Recommendation 24: The Committee recommends that Clause 388 of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 be deleted to remove the proposed State Administrative Tribunal’s access to certain information provided to the Department of Fisheries by commercial fishers. This can be effected in the following manner:**

**Clause 388**

Page 169, lines 17 to 19 - To delete the clause.

**Recommendation 25: The Committee recommends that Clause 104 of the State Administrative Tribunal Bill 2003 be amended to ensure that all personal rights matters before the State Administrative Tribunal may be appealed as of right to the Supreme Court of Western Australia. This can be effected in the following manner:**

Page 63, before line 23 — To insert —

“

(13) Despite subsection (2), if the Tribunal’s decision —

- (a) is made under a relevant Act or in a proceeding for the review of a decision made under a relevant Act; and
- (b) has the effect of depriving a person of the person’s capacity to lawfully pursue a vocation,

an appeal under this section may be brought on any ground whether it involves a question of law, a question of fact or a question of mixed law and fact.

(14) In subsection (13) —

**“relevant Act”** means —

- (a) an Act specified in Schedule 1, if it is an enabling Act; or
- (b) an enabling Act prescribed by the regulations for the purposes of subsection (13).

”.

**Recommendation 26: The Committee recommends that clauses 314, 782 and 783 of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 be amended to give further effect to the Committee’s Recommendation 25:**

**Clause 314**

Page 145, line 26 — To delete “, 133 and 134” and insert instead —

“ and 133 ”.

**Clause 782**

Page 348, line 2 — To delete “repealed” and insert instead —

“

amended as follows —

(a) by deleting “Board” and inserting instead —

“ State Administrative Tribunal ”;

(b) by deleting “appeal to the Supreme Court” and inserting instead —

“

without leave, appeal under section 104 of the *State Administrative Tribunal Act 2003*

”;

”.

Page 348, line 4 — To delete the line.

Page 348, line 11 — To delete the line.

**Clause 783**

Page 348, line 17 — To insert after “decision” —

“ or order ”.

**Recommendation 27: The Committee recommends that a new Schedule 1 be inserted into the State Administrative Tribunal Bill 2003 to give further effect to the Committee's Recommendation 25. This may be effected in the following manner:**

**New Schedule 1**

Page 98, after line 21 — To insert —

“

Schedule 1 — Relevant Acts for section 104

[s. 104]

*Architects Act 1921*

*Builders' Registration Act 1939*

*Chiropractors Act 1964*

*Dental Act 1939*

*Dental Prosthetists Act 1985*

*Employment Agents Act 1976*

*Finance Brokers Control Act 1975*

*Fish Resources Management Act 1994*

*Hairdressers Registration Act 1946*

*Land Valuers Licensing Act 1978*

*Legal Practice Act 2003*

*Licensed Surveyors Act 1909*

*Medical Act 1894*

*Motor Vehicle Dealers Act 1973*

*Nurses Act 1992*

*Occupational Therapists Registration Act 1980*

*Optical Dispensers Act 1966*

*Optometrists Act 1940*

*Osteopaths Act 1997*

*Painters' Registration Act 1961*

*Pearling Act 1990*

*Pharmacy Act 1964*

*Physiotherapists Act 1950*

*Podiatrists Registration Act 1984*

*Psychologists Registration Act 1976*

*Real Estate and Business Agents Act 1978*

*Settlement Agents Act 1981*

*Taxi Act 1994*

*Travel Agents Act 1985*

*Valuation of Land Act 1978*

*Veterinary Surgeons Act 1960*

”.

**Recommendation 28: The Committee recommends that new clauses 315 and 416 be inserted into the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 to give further effect to the Committee’s Recommendation 25. This may be effected in the following manner:**

**New Clause 315**

Page 145, after clause 314 — To insert the following new clause —

“

**315. Section 134 amended**

(1) Section 134(1) is amended as follows:

- (a) by deleting “125, 126, 127 or 128(2)” and inserting instead —  
“ 126 or 127 ”;
- (b) by deleting all of the subsection after “appeal” and inserting instead —

“

under section 104 of the *State Administrative Tribunal Act 2003*.

”.

(2) After section 134(1) the following subsection is inserted —

“

(1a) An appeal may be brought on any ground that involves a question of law, a question of fact or a question of mixed law and fact.

”.

(3) Section 134(2), (3) and (4) are repealed.

”.

**New Clause 416**

Page 182, after clause 415 — To insert the following new clause —

“

**416. Section 3A inserted**

After section 3 the following section is inserted —

“

**3A. Inherent jurisdiction of Supreme Court not affected**

Nothing in this Act affects the inherent jurisdiction of the Supreme Court.

”

”

Page 174

**Recommendation 29: The Committee recommends that Clause 104 of the State Administrative Tribunal Bill 2003 be amended to ensure that government parties to matters before the State Administrative Tribunal are not able to use their greater financial resources to disadvantage other parties on an appeal to the Supreme Court. This can be effected in the following manner:**

Page 63, after line 22 — To insert —

“

(12) In the case of a decision in a proceeding coming within the Tribunal’s review jurisdiction, any leave to appeal granted to the decision-maker is to be granted on the condition that the costs of each other party are to be met by the decision-maker, unless the court considers that it would be unjust or unreasonable to impose that condition, whether generally or in respect of the costs of a particular party.

”

Page 207

**Recommendation 30: The Committee recommends that clauses 3, 106, 115 and 147 of the State Administrative Tribunal Bill 2003 be amended to provide for magistrates outside of the metropolitan area to be made *ex officio* members of the State Administrative Tribunal. This can be effected in the following manner:**

**Clause 3**

Page 4, after line 16 — To insert —

“

(aa) a magistrate performing functions as a member of the Tribunal;  
or

”.

Page 4, line 28 — To delete “or” and insert a comma instead.

Page 4, line 28 — To insert after “Deputy President” —

“ or an ex officio member ”.

Page 4, line 30 — To delete “or”.

Page 4, line 30 — To insert after “member” —

“ or an ex officio member ”.

Page 6, line 7 — To insert after “is” —

“ appointed, or authorised to perform functions, as ”.



**Clause 106**

Page 64, after line 8 — To insert —

“

(aa) ex officio members under Subdivision 3a;

”.

**Clause 115**

Page 67, line 28 — To delete “or” and insert a comma instead.

Page 67, line 28 — To insert after “Deputy President” —

“ or an ex officio member ”.

Page 68, lines 14 to 16 — To delete the lines.

Page 68, lines 19 and 20 — To delete “and, in the case of a magistrate, the Chief

Stipendiary Magistrate.”.

**Clause 147**

Page 83, line 5 — To insert after “than” —

“ — (a) ”.

Page 83, line 5 — To insert after “President” —

“

; or

(b) a magistrate performing functions as a member of the Tribunal.

”.

**Recommendation 31: The Committee recommends that a new Clause 114A be inserted into the State Administrative Tribunal Bill 2003 to give further effect to the Committee’s Recommendation 30. This can be effected in the following manner:**

Page 67, after line 24 — To insert —

“

**Subdivision 3a — Ex officio members**

**114A. Magistrates to be ex officio members**

(1) A magistrate is ex officio a member of the Tribunal.

(2) The President and the Chief Stipendiary Magistrate may enter into arrangements regarding the performance by magistrates of functions as members of the Tribunal.

(3) A magistrate is not authorised to perform any function as a member of the Tribunal except —

- (a) when performing functions as a magistrate, as directed by the Chief Stipendiary Magistrate, in a place that is prescribed by the regulations for the purposes of this section; and
- (b) as authorised by, and in conformity with, any relevant arrangements entered into under subsection (1).

”.

Page 210

**Recommendation 32: The Committee recommends that the proposed State Administrative Tribunal have a well-resourced duty lawyer scheme.**

Page 210

**Recommendation 33: The Committee recommends that the proposed State Administrative Tribunal provide for a duty Tribunal member to be assigned to act as a ‘chamber magistrate’, to assist applicants with procedural issues arising at the initial application stage.**

Page 212

**Recommendation 34: The Committee recommends that Clause 167 of the State Administrative Tribunal Bill 2003 be amended to extend the membership of the State Administrative Tribunal’s Rules Committee to include user group representatives. This may be effected in the following manner:**

Page 95, line 26 — To delete “and” and insert a comma instead.

Page 95, line 26 — To insert after “President” —

“

and 2 persons appointed by the Minister who are not Tribunal members but have knowledge and experience that is relevant to matters that may be decided by the Tribunal

”.

**Recommendation 35: The Committee recommends that clauses 234, 237, 238 and 242 of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 be amended to provide the Dental Board of Western Australia with a summary jurisdiction to deal with minor disciplinary matters. This may be effected in the following manner:**

**Clause 234**

Page 99 line 8 — To delete the line.

**Clause 237**

Page 104 line 26 — To delete “Role of State Administrative Tribunal” and insert instead —

**“ Proceedings ”**

**Clause 238**

Page 105 lines 3 to 8 — To delete the lines and insert instead —

“

- (a) by deleting all of the subsection before paragraph (a) and inserting instead —

“

- (1) There is proper cause for disciplinary action in respect of a registered person if —

”;

- (b) in paragraph (b) —
    - (i) by deleting “named”; and
    - (ii) by deleting “, in the opinion of the Board,”;
  - (c) in paragraph (c) —
    - (i) by deleting “other”;
    - (ii) by deleting “Board” before “by this Act” and inserting instead —
      - “ State Administrative Tribunal ”; and
    - (iii) by deleting “in the opinion of the Board”.
- ”.

Page 105 after line 8 — To insert —

“

(2) After section 30(1) the following subsections are inserted —

“

(1aa) The Board may allege to the State Administrative Tribunal that there is proper cause for disciplinary action, as mentioned in subsection (1), in respect of a person who is or was a registered person.

(1ab) If in a proceeding commenced by an allegation under this section in respect of a registered person, the State Administrative Tribunal is of the opinion that proper cause exists for disciplinary action the Tribunal may order that the name of the person be struck off the Register.

”.

”.

Page 105 after line 12 — To insert —

“

(b) by deleting “(1)” and inserting instead—

“ (1ab) ”;

Page 105 after line 26 — To insert —

“

(5) After section 30(2) the following subsections are inserted —

“

(2a) Instead of making an allegation to the Tribunal under subsection (1aa) or referring an allegation to the Tribunal under subsection (2), if the Board —

- (a) is of the opinion that a proceeding before the Tribunal is not warranted by the nature of the allegations;
- (b) has afforded to the person concerned the opportunity of giving an explanation to the Board either in person or in writing and is not satisfied by any explanation offered; and
- (c) has afforded to the person concerned the option of the matter proceeding before the Tribunal and that option has not been taken up,

the Board may deal with the matter as described in subsection (3)(a), (b), (c), or (d) except that it cannot order that a person be fined more than \$2 500 and it cannot make an order under subsection (3)(a) or (c) in respect of a person who is no longer a registered person.

(2b) The Board may, in addition to or instead of imposing 1 or more penalties under provisions referred to in subsection (2a), order the person concerned to pay all or any of the costs and expenses of or incidental to the proceedings.

(2c) The amount of any penalty, costs, or expenses that the Board orders under subsection (2a) or (2b) that a person pay is recoverable by the Board in any court of competent jurisdiction as a debt due to the Board.

”.

”.

Page 106 line 8 — To insert before “Board” —

“ the ”.

Page 106 line 10 — To delete “Tribunal specifies” and insert instead —

“ is specified ”.

Page 106 line 11 — To insert before “Board” —

“ the ”.

Page 106 line 13 — To delete “Tribunal specifies” and insert instead —

“ may be specified ”.

Page 106 line 14 — To insert before “Board” —

“ the ”.

Page 106 line 14 — To insert after “Board” —

“ thinks fit ”.

Page 106 line 16 — To delete “Tribunal” and insert instead —

“ is specified in the order ”.

**Clause 242**

Page 108 after line 10 — To insert the following proposed paragraph —

“

- (c) imposing any penalty or making any order as to costs or expenses under section 30(2a) or (2b),

”.

Page 237



**Recommendation 36: The Committee recommends that clauses 983, 984 and 986 of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 be amended to provide the Pharmaceutical Council of Western Australia with a summary jurisdiction to deal with minor disciplinary matters concerning pharmacists. This can be effected in the following manner:**

**Clause 983**

Page 456 after line 15 — To insert —

“

(4) Instead of making an allegation to the Tribunal under subsection (2), if the Council —

- (a) is of the opinion that a proceeding before the Tribunal is not warranted by the nature of the matter involved;
- (b) has afforded to the person concerned the opportunity of giving an explanation to the Council either in person or in writing and is not satisfied by any explanation offered; and
- (c) has afforded to the person concerned the option of the matter proceeding before the Tribunal and that option has not been taken up,

the Council may deal with the matter as described in subsection (3)(a)(iii) or (iv), (3)(b), or (3)(c) except that it cannot impose a fine of more than \$2 500.

(5) The Council may, in addition to or instead of imposing 1 or more penalties under provisions referred to in subsection (4), order the person concerned to pay all or any of the costs and expenses of or incidental to the proceedings.

(6) The amount of any penalty, costs, or expenses that the Council orders under subsection (4) or (5) that a person pay is recoverable by the Council in any court of competent jurisdiction as a debt due to the Council.

”.

**Clause 984**

Page 456 line 23 — To insert after “by” —

“

a penalty imposed under section 32(4), an order made under section 32(5) for the payment of costs or expenses, or

”.

**Clause 986**

Page 457, line 12 — To delete the line.

Page 240

**Recommendation 37: The Committee recommends that the Government undertake a review of the legislation for those vocational bodies whose disciplinary functions are to be transferred to the proposed State Administrative Tribunal in order to develop a summary jurisdiction within all of those bodies for minor disciplinary matters.**

Page 251

**Recommendation 38: The Committee recommends that a new Clause 309 be inserted into the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 to ensure that no fee is applied for the commencement of proceedings in the proposed State Administrative Tribunal's under the *Equal Opportunity Act 1984*. This can be effected in the following manner:**

Page 145, after clause 308 — To insert the following new clause —

“

**309. Section 107 amended**

After section 107(4) the following subsection is inserted —

“

(5) No fee is payable in respect of a proceeding commenced before the Tribunal under this Act.

”.

”.

**Recommendation 39: The Committee recommends that a new Clause 457 be inserted into the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 to ensure that no fee is applied for the commencement of proceedings in the proposed State Administrative Tribunal's under the *Guardianship and Administration Act 1990*. This can be effected in the following manner:**

Page 193, after clause 456 — To insert the following new clause —

“

**457. Section 119A inserted**

After section 119 the following section is inserted —

“

**119A. No fee for application to State Administrative Tribunal**

No fee is payable in respect of an application made to the State Administrative Tribunal under this Act.

”

”

Page 267

**Recommendation 40: The Committee recommends that Division 113 and clause 1407 of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 be deleted so as to remove racing penalty appeals from the jurisdiction of the proposed State Administrative Tribunal. This can be effected in the following manner:**

**Division 113**

Page 494, line 1 to page 501, line 31 - To delete the lines.

**Clause 1407**

Page 642, lines 1 to 8 - To delete the clause.

Page 292

**Recommendation 41: The Committee recommends that the Government undertake a re-examination of the structure of the Public Trustee's supervision of alternate administrators.**

Page 292

**Recommendation 42: The Committee recommends that as part of the deliberations of the Legislative Council committee of review established under the Committee's Recommendation 7, the review committee should consider the issue of the potential conflict of interest in the Public Trustee supervising other administrators.**

Page 311

**Recommendation 43: The Committee recommends that clauses 747 to 780 inclusive, Clause 786, and clauses 788 to 794 inclusive of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 be deleted so as to retain the existing Mental Health Review Board of Western Australia and provide for an appeal from that Board to the State Administrative Tribunal. This can be effected in the following manner:**

**Clauses 747 to 780 inclusive**

Page 337, line 9 to page 347, line 23 - To delete the clauses.

**Clause 786**

Page 349, lines 11 to 16 - To delete the clause.

**Clauses 788 to 794 inclusive**

Page 349, line 19 to page 353, line 20 - To delete the clauses.

Page 311

**Recommendation 44: The Committee recommends that clauses 787 and 1406 of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 be amended so as to give further effect to the Committee’s Recommendation 43. This can be effected in the following manner:**

**Clause 787**

Page 349, line 18 — To insert after “sections” —

“ 153, ”.

**Clause 1406**

Page 641, line 10 — To delete item 1 in the Table to clause 1406(2).

**Recommendation 45: The Committee recommends that new clauses 781 and 795 be inserted into the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 so as to give further effect to the Committee's Recommendation 43. This can be effected in the following manner:**

**New Clause 781**

Page 347, after clause 780 — To insert the following new clause —

“

**781. Part 6 Division 2A inserted**

After section 148 the following Division is inserted —

“

**Division 2A — Applications to State Administrative Tribunal**

**148A. Application for review**

(1) A person in respect of whom the Board makes a decision or order who is dissatisfied with the decision or order may, without payment of any fee, apply to the State Administrative Tribunal for a review of the decision or order.

(2) Any other person who, in the opinion of the State Administrative Tribunal, has a sufficient interest in the matter may, with the leave of the Tribunal and without payment of any fee, appeal to the Tribunal against the decision or order.

**148B. Constitution of State Administrative Tribunal, generally**

(1) Except as provided in section 148C, for the purpose of exercising jurisdiction conferred under section 148A the State Administrative Tribunal is to include —

- (a) a person who is a legally qualified member of the Tribunal;
- (b) a person who is a psychiatrist or, if subsection (2) allows it, a medical practitioner who is not a psychiatrist; and
- (c) a person who is neither a legally qualified member nor a medical practitioner.

(2) If a person who is a psychiatrist is not readily available but a medical practitioner is available, that other person may be included instead of the psychiatrist if the proceedings do not involve anything that requires a clinical judgment to be made about a patient's treatment.

#### **148C. Constitution of State Administrative Tribunal, psychosurgical matters**

For the purpose of exercising its jurisdiction under section 148A on an application for review of a decision or order under Part 5 Division 4, the State Administrative Tribunal is to include —

- (a) a person who is a legally qualified member;
- (b) a person who has experience and qualifications in neurosurgery and who was appointed to the State Administrative Tribunal after consultation by the Minister administering the *State Administrative Tribunal Act 2003* with the Minister administering the *Health Act 1911* after that Minister has consulted with the Royal Australasian College of Surgeons;
- (c) 2 persons who are psychiatrists; and
- (d) a person who is neither a legally qualified member nor a medical practitioner.

#### **148D. Proceeding before State Administrative Tribunal**

Schedule 2A has effect with respect to a proceeding before the State Administrative Tribunal when exercising jurisdiction conferred by section 148A.

#### **148E. Application for determination of question of law**

Where a question of law arises in proceedings before the Board, the Board may apply to the State Administrative Tribunal for determination of the question.

”.



## **New Clause 795**

Page 353, after clause 794 — To insert —

“

### **795. Schedule 2A inserted**

After Schedule 2 the following Schedule is inserted —

“

### **Schedule 2A — Provisions concerning a proceeding before the State Administrative Tribunal**

[Section 148D]

#### **1. Representation**

(1) A party to a proceeding before the State Administrative Tribunal may appear personally unless the State Administrative Tribunal, being of the opinion that the personal appearance of a person would be detrimental to the health of the person, orders that the person be represented.

(2) The State Administrative Tribunal may arrange for a person to be represented in proceedings before it if the person wishes the State Administrative Tribunal to do so.

#### **2. Closed hearings**

(1) A hearing before the State Administrative Tribunal is not open to the public unless the State Administrative Tribunal orders that it is open to the public.

(2) The State Administrative Tribunal may permit specified persons to be, or preclude specified persons (which may include witnesses) from being, present at a hearing.

(3) In this clause a reference to a hearing includes a reference to a part of a hearing.

### **3. Suppression of publication**

(1) A person is not to publish by any means —

- (a) any account of any proceeding or part of a proceeding before the State Administrative Tribunal commenced under this Act;
- (b) any evidence given before the State Administrative Tribunal in a proceeding commenced under this Act;
- (c) the contents of any document produced to the State Administrative Tribunal in a proceeding commenced under this Act; or
- (d) any other information relating to a proceeding before the State Administrative Tribunal commenced under this Act,

that might identify —

- (e) a person who is a party to the proceeding;
- (f) a person who is related to, or associated with, a party to the proceeding or is, alleged to be, in any other way concerned in the matter to which the proceeding relates; or
- (g) a witness in the proceeding.

(2) Except as permitted by regulations a person is not to publish by any means (other than by the display of a notice in the premises of the State Administrative Tribunal), a list of proceedings to be dealt with by the State Administrative Tribunal identified by reference to the names of the parties to those proceedings.

(3) Subclauses (1) and (2) do not apply to —

- (a) the communication to persons concerned in proceedings in any court or tribunal of any transcript of evidence or other document for use in connection with those proceedings;

- (b) the communication of any transcript of evidence or any other document to a body that is responsible for disciplining members of the legal or medical profession or to persons concerned in proceedings before such a body;
- (c) the communication to a body that grants assistance by way of legal aid of any transcript of evidence or any other document for the purpose of facilitating the making of a decision as to whether such assistance should be granted or continued in any particular case; or
- (d) the publishing of a publication genuinely intended primarily for the use of members of any profession, being —
  - (i) a separate volume or part of a series of law reports; or
  - (ii) any other publication of a technical character.

(4) Without limiting subclauses (1) and (2) the State Administrative Tribunal may in any particular case order that —

- (a) any evidence given before it;
- (b) the contents of any document produced to it; or
- (c) any other information relating to a proceeding before it,

must not be published, or must not be published except in the manner or to persons specified by the State Administrative Tribunal.

(5) A person who contravenes subclause (1) or (2) commits an offence and is liable to a fine of \$5 000.

”.

”.

**Recommendation 46: A minority of the Committee (Hon Giz Watson MLC) recommends that the proposed State Administrative Tribunal should determine appeals under the *Environmental Protection Act 1986*.**

**Recommendation 47:** The Committee recommends that the Government amend, as a matter of urgency, the *Freedom of Information Act 1992* so as to provide for a full merits review of decisions of the Information Commissioner by the State Administrative Tribunal. The Government should also streamline the appeal processes under the *Freedom of Information Act 1992* so as to eliminate some of the earlier stages of review.

**Recommendation 48:** The Committee recommends that, subject to the amendments recommended in this report, the State Administrative Tribunal Bill 2003 be passed.

**Recommendation 49:** The Committee recommends that, subject to the amendments recommended in this report, the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 be passed.