ADMINISTRATIVE TRIBUNALS
CONSTITUTION, PROCEDURE AND APPEALS

THIRD REPORT OF THE PUBLIC AND ADMINISTRATIVE LAW REFORM COMMITTEE

Presented to the Minister of Justice in January 1970

THIRD REPORT OF THE PUBLIC AND ADMINISTRATIVE LAW REFORM COMMITTEE OF NEW ZEALAND

ANALYSIS OF FIRST THREE REPORTS

FIRST REPORT

Introduction and general -

Public and Administrative Law Reform Committee - paras 1 - 2

Administrative tribunals in New Zealand - paras 3 - 13

Types of tribunals - paras 14 - 18

Criticisms of existing system - paras 19 - 25

The Committee's approach - paras 26 - 34

Proposal for an Administrative Division of Supreme Court - paras 35 - 40

Meaning of point of law - para. 41

Membership of tribunals - para. 42.

Proposals Relating to Each Tribunal so far considered -

Land Valuation

Land Valuation Court - para. 43

Land Valuation Committees - para. 44

Recommendations - paras 45 - 48.

Town and Country Planning

Town and Country Planning Appeal Boards and local bodies - paras 49 - 52

Recommendations - paras 53 - 58.

Transport

District Transport Licensing Authorities - para. 59

Transport Licensing Appeal Authority - para. 60

Recommendations - paras 61 - 66

Transport Charges - paras 67 - 68

Recommendations - paras 69 - 71.

Trade Practices

Trade Practices and Prices Commission - paras 72 - 73

Trade Practices Appeal Authority - para. 74

Recommendations - paras 75 - 79.

Price Control

Price Tribunal - paras 80 - 81

Recommendations - paras 82 - 87.

Summary - para. 88.

Matters for Future Consideration - para. 89.

Appendix (Minority view of Mr G. S. Orr).

SECOND REPORT

Introduction and general -

Membership of Committee - para. 1

Programme - para. 2

Contents of first report - paras 3 - 4

Adoption of proposals - paras 5 - 9

Land valuation proceedings - para. 10

Sale of liquor - paras 11 - 12

New tribunal (Broadcasting Authority) - para. 13

Appeal from War Pensions Board - para. 14

Programme since first report - paras 15 - 16

Policy and scope - para. 17

Privy Council - paras 18 - 23

Acknowledgements - para. 24.

Proposals relating to tribunals studied -

Motor Spirits Licensing

Motor Spirits Licensing Authority - para. 25

Motor Spirits Licensing Appeal Authority - paras 26 - 28

Recommendations - paras 29 - 37.

Air Services Licensing

Air Services Licensing Authority - paras 38 - 39

Air Services Licensing Appeal Authority - para. 40

Recommendations - paras 41 - 44.

Liquor Licensing

Licensing Control Commission - paras 45 - 46

Licensing Committees - paras 47 - 48

Appeals - paras 49 - 51

Recommendations - paras 52 - 59.

Taxation

Taxation Board of Review - para. 60

Recommendations - paras 61 - 67

Allied tribunals - paras 68 - 69.

Cinematograph Films

Cinematograph Films Licensing Authority - paras 70 - 71

Cinematograph Films Licensing and Registration Appeal Authority - para. 72

Recommendations - paras 73 - 76

Cinematograph Films Censorship Board of Appeal - paras 77 - 78

Recommendations - paras 79 - 80.

Indecent Publications

Indecent Publications Tribunal - paras 81 - 84

Recommendations - para. 85.

Earthquake and War Damage

Earthquake and War Damage Commission - paras 86 - 87

Recommendation - para. 88.

Copyright

Copyright Tribunal - para. 89

Recommendation - para. 90.

Military Service

Military Service Postponement Committees - para. 91

Recommendations - paras 92 - 94

Conscientious Objection Committee - paras 95 - 96

Recommendation - para. 97.

Shops and Offices

Shops and Offices Exemption Tribunal - paras 98 - 99

Recommendation - para. 100.

Pharmacy

Pharmacy Authority - paras 101 - 102

Recommendations - paras 103 - 106.

Summary - para. 107

Future Programme - para. 108.

Appendix I

Appendix II

THIRD REPORT

Introduction and general -

Membership of Committee - para. 1

References to the Committee - para. 2

Contents of First Report - paras 3 - 4

Contents of Second Report - paras 5 - 7

Proposals which have been adopted - paras 8 - 9

Other proposals - paras 10 - 11

1969 Programme - para. 12.

Tribunals -

Animal Remedies

Animal Remedies Board - paras 13 - 14

Appeals - paras 15 - 17

Recommendations - paras 18 - 19.

Co-operative Dairy Companies

The Co-operative principle - para. 20

Co-operative Dairy Companies Tribunal - paras 21 - 23

Membership of Co-operative Dairy Companies Tribunal - para. 24

Appeals - para. 25.

Land Settlement

Land Settlement Board - paras 26 - 28

Land Settlement Committees - paras 29 - 30

Inquiries by the Board - para. 31

Rehearing - para. 32

Appeal to the Supreme Court - paras 33 - 34

Question of Law - para. 35

No Prerogative Writs - para. 36

Views of the Department of Lands and Survey - para. 37

Recommendations - paras 38 - 39.

Pharmacy Authority

Delays - paras 40 - 41

Recommendations - para. 42.

Timber Preservation

Timber Preservation Authority - paras 43 - 44

Appeals - para. 45

Views of the Department of Industries and Commerce - para. 46

Recommendation - paras 47 - 48.

War Pensions

War Pensions Board - para. 49

Appeals - para. 50

Procedure - para. 51

Recommendation - para. 52.

Use of land : some major jurisdictional questions

Town and Country Planning - paras 53 - 56

Urban Renewal - paras 57 - 61

Compulsory acquisition of land - para. 62.

A Statutory Code of Procedure for Administrative Tribunals? - paras 63 - 70.

The position of the Committee in its work of law reform - para. 71.

Future Programme - para.72.

Summary - para. 73.

INTRODUCTION AND GENERAL

Membership

1. In July 1966, the Minister of Justice set up the Public and Administrative Law Reform Committee under the chairmanship of Dr J. L. Robson, C.B.E., the Secretary for Justice. The other members of the committee are Mr A. C. Brassington, barrister and solicitor of Christchurch; Mr R. B. Cooke, one of Her Majesty's Counsel; Mr E. L. Greensmith, C.M.G., former Secretary to the Treasury; Dr R. G. McElroy, barrister and solicitor of Auckland; Professor J. F. Northey, Dean of the Faculty of Law at the University of Auckland; Mr G. S. Orr, Senior Crown Counsel; and Mr D. A. S. Ward, C.M.G., Counsel to the Law Drafting Office.

References to the Committee

2. The matters which were referred to us for our investigation under the programme approved by the Law Revision Commission included appeals from administrative tribunals, the constitution and procedure of such tribunals and the judicial control of administrative acts. As noted in our First Report, we considered the last of these matters to be less urgently in need of review than the others. Accordingly, our first two reports, and indeed this Third Report, have been concerned primarily with individual administrative tribunals and rights of appeal from these.

Contents of First Report

3. Our First Report was presented to the Minister of Justice in January 1968 and the principal recommendation in this was for the setting up of

an Administrative Division of the Supreme Court[1] to hear appeals from specified administrative tribunals and to exercise the existing jurisdiction of the Court in the field of administrative law. Although we recommended the creation of an Administrative Division, we did not assume that it ought to be the appellate body for all tribunals. We have studied (and are studying) the functions, powers and procedures of each tribunal separately and have made such recommendations as to appeals and procedure as are appropriate to the particular circumstances of that tribunal.

4. In our First Report, we also recommended that the jurisdiction of the Land Valuation Court, the Transport Licensing Appeal Authority and the Trade Practices Appeal Authority should be absorbed by the Administrative Division. We further recommended that there be an appeal, with leave, to the Division from decisions of the Town and Country Planning Appeal Boards. Our study of the Transport Charges Appeal Authority and of the Price Tribunal led us to the conclusion that it was not appropriate for either of these jurisdictions to be absorbed by the Administrative Division or that there ought to be a right of appeal to the Division from these decisions.

Contents of Second Report

5. Our Second Report was presented to the Minister of Justice in January 1969. In that report we continued our analysis of selected individual tribunals and in particular the question of appeals from these. In each case, we gave first an outline of the present constitution, procedure and appeal provisions of the tribunals studied, and then stated our recommendations

(1) Mr Orr dissenting.

in respect of them. The tribunals dealt with in our Second Report were the Motor Spirits Licensing Authority and the Motor Spirits Licensing Appeal Authority; the Air Services Licensing Authority and the Air Services Licensing Appeal Authority; the Licensing Control Commission and the Licensing Committees; the Taxation Board of Review; the special tribunals set up to hear appeals against income tax assessment of co-operative dairy companies, milk marketing companies and pig marketing companies; the Cinematograph Films Licensing Authority, the Cinematograph Films Licensing and Registration Appeal Authority and the Cinematograph Films Censorship Board of Appeal; the Indecent Publications Tribunal; the Earthquake and War Damage Commission; the Copyright Tribunal; the Military Service Postponement Committees; the Conscientious Objection Committee; the Shops and Offices Exemption Tribunal; and the Pharmacy Authority.

6. We recommended that appeals from the Motor Spirits Licensing Authority, the Air Services Licensing Authority, the Licensing Control Commission, the Taxation Board of Review, the Cinematograph Films Licensing Authority and the Pharmacy Authority should lie to the Administrative Division. In the case of each of these tribunals we recommended that there should be an opportunity of appeal from the Administrative Division to the Court of Appeal on questions of law. As far as applications direct to the Supreme Court under s.32 of the Land and Income Tax Act 1954 were concerned, we considered that there should continue to be an appeal to the Court of Appeal on fact or discretion also. In addition, we recommended that the power of appellate bodies should be widened to enable them to refer back for reconsideration part or whole of a decision appealed against and to appoint counsel to assist if it appeared that otherwise only one side of the case would be argued.

7. We recommended no change in appeal procedure from the Cinematograph Films Censorship Board except on questions of law when we recommended that appeals should lie to the Administrative Division. We also recommended no change in appeal procedure from the Indecent Publications Tribunal, the Earthquake and War Damage Commission, the Copyright Tribunal, the Military Service Postponement Committees, the Conscientious Objection Committee and the Shops and Offices Exemptions Tribunal. With one small exception in the case of the Military Service Postponement Committees we also recommended no change in other aspects of these tribunals.

Proposals which have been adopted

8. As noted in our Second Report, certain proposals had at that stage been adopted by the Government.

(a) With two differences in respect of procedure, our proposal for the creation of the Administrative Division of the Supreme Court was given effect by the Judicature Amendment Act 1968;

(b) Our proposals that the Land Valuation Court should be abolished and its jurisdiction transferred to the Administrative Division and that appeals should lie from the Administrative Division to the Court of Appeal were given effect by the Land Valuation Proceedings Amendment Act 1968;

(c) Our proposals that appeals against those decisions of the Licensing Control Commission and Licensing Committees which previously lay to the Supreme Court should lie instead to the Administrative Division, and that

the minimum value in respect of appeals against an order of the Commission requiring the alteration, repair, or rebuilding of licensed premises should be reduced to $2,000 were given effect by the Sale of Liquor Amendment Act 1968;

(d) Although it did not originate with us, the proposal that appeals from the new Broadcasting Authority should lie to the Administrative Division, which was given effect by the Broadcasting Authority Act 1968, accords with the principles underlying our first report;

(e) Similarly, the principles which we had suggested were reflected in the proposals that the class of persons to whom the War Pensions Board might order the payment of any pension or allowance unpaid at the death of the recipient should be widened, and that appeals should lie to a Magistrate's Court where an amount of $2,000 or less was claimed or to the Administrative Division of the Supreme Court if an amount of $2,000 or more was claimed. These proposals were given effect by the War Pensions Amendment Act 1968.

9. Since the presentation of our Second Report other proposals have been adopted. These are embodied in -

(a) The Cinematograph Films Amendment Act 1969. The Act transfers the jurisdiction of the Cinematograph

Films Licensing and Registration Appeal Authority to the Administrative Division of the Supreme Court and provides for appeal on points of law to the Court of Appeal from a decision of the Administrative Division in this field. The Act also provides for appeals on points of law to the Administrative Division from a decision of the Cinematograph Films Censorship Board of Appeal. This Act is based on the recommendation in our Second Report.

(b) The Animal Remedies Amendment Act 1969. This Act is based on our recommendation contained in this Report that appeals from the Animal Remedies Board should lie to the Administrative Division instead of to a Magistrate and assessors as at present. The Act provides for appeal being on grounds of fact, law and discretion and for the Judge to sit with assessors.

(c) Rules of the Administrative Division of the Supreme Court. We are pleased to note that a further step has been taken to implement our proposals with regard to an Administrative Division of the Supreme Court by the making of the Supreme Court (Administrative Division) Rules 1969. (S.R.1969/145). We are also pleased to note that the Division has now started hearing appeals.

Other proposals

10. As far as we are aware, no legislation is pending to put into effect the recommendations of the Committee in respect of the following -

Air Services Licensing Appeal Authority
Motor Spirits Licensing Appeal Authority
Pharmacy Authority
Taxation Board of Review
Trade Practices Appeal Authority
Transport Licensing Appeal Authority
Town and Country Planning Appeal Boards.

11. In certain cases we consider that action should be taken as a matter of urgency to implement our recommendations. This is particularly so with our recommendations in respect of the Town and Country Planning Appeal Boards for the reasons given in our discussion of this topic later in this Report.

1969 Programme

12. Since the presentation of our Second Report, we have continued our programme of studying selected administrative tribunals and, for the second consecutive year, our proposals concerning them have formed the greater part of our report. The tribunals studied since the Second Report are -

(a) Animal Remedies Board
(b) Co-operative Dairy Companies Tribunal
(c) Land Settlement Board
(d) Pharmacy Authority
(e) Timber Preservation Authority
(f) War Pensions Appeal Board

In addition, we have been studying the Public Works Act, Urban Renewal Appeals and the question of a code of administrative procedure. We have also considered in a preliminary way the general problem of judicial review of administrative action.

TRIBUNALS

ANIMAL REMEDIES

Animal Remedies Board

13. The Animal Remedies Board was established by the Animal Remedies Act 1967. "Animal remedy" means any drug, medicine, remedy or therapeutic preparation, or any biochemical substance, which is manufactured, imported or advertised for sale or is sold for any of the following purposes -

(a) Curing, diagnosing, treating, controlling or preventing any disease in animals; or

(b) Destroying or preventing parasites on or in animals; or

(c) Maintaining or improving the health, conditions, productivity or appearance of any animal -

but does not include any preparation, substance, or product which is used primarily as a food for animals.

14. The general functions of the Board are -

(a) Subject to the provisions of the Act, to exercise control over the manufacture, importation, sale and use of animal remedies;

(b) To ensure that animal remedies are efficient and safe for use on animals;

(c) To consider and determine applications under the Act for the issue of licences to manufacture or import animal remedies;

(d) To exercise and perform such functions,

powers and duties as are conferred or imposed on it under the Act or any other enactment.

The Board also has powers of research, analysis and dissemination of information.

<u>Appeals</u>

15. Section 34 of the Animal Remedies Act 1967 provides that any person affected by a decision of the Animal Remedies Board relating to -

(a) An application by him for a licence under the Act; or

(b) An application by him for renewal of a licence; or

(c) The revocation or suspension of his licence; or

(d) The refusal to give approval to any proposed label or advertisement, or to approve a proposed label or advertisement except subject to conditions; or

(e) The forfeiture, surrender or destruction of an animal remedy or ingredient of a remedy, or any label or container -

could appeal, the appeal to be heard by a tribunal appointed by the Minister of Agriculture, consisting of a Magistrate and two assessors, of whom one had to be nominated by the Board and one by the appellant.

16. By section 34(6) of the Animal Remedies Act the appeal tribunal, at the hearing of an appeal, had to observe the rules of natural justice, and had to hear all evidence tendered and representations made by or on behalf of the appellant, the Board, and other persons which it considered relevant to the subject

matter of the appeal, save that at any time during the hearing it could, if it considered it had sufficient evidence to arrive at a decision on the appeal, decide not to receive further evidence or representations.

17. Section 34(8) of the Act provided that at the hearing of any appeal, the appellant and the Board might be represented by an advocate or advocates. Section 34(11) of the Act provided that when considering any appeal under s.34, the appeal tribunal should have regard to the provisions of the Act and should, when arriving at its decision, make every effort to ensure that its decision was fully in accordance with the intent, meaning and spirit of the Act.

Recommendations

18. On the question of appeals from the Animal Remedies Board generally, we felt that as considerable sums could be at issue, it might be preferable for the appeal to lie to the newly-created Administrative Division of the Supreme Court. If, however, this was considered undesirable, we considered that the appropriate appointing authority should be the Minister of Justice instead of the Minister of Agriculture, since the Minister of Justice was the normal appointing authority for judicial or quasi-judicial officers.

19. Regarding s.34(6) of the Animal Remedies Act 1967 we thought it undesirable that the tribunal should be empowered to refuse to hear further evidence since further evidence might be very relevant to the issue. This power has now been excluded by the Amendment Act. We considered s.34(8) to be unnecessary in view of subsection (6) and this has also been excluded in the new Act. We questioned the need for s.34(11) since it was unusual to direct a tribunal how it should approach a case. This provision too is excluded from

the new Act. Our recommendation that the appeal should be heard by a Judge of the Administrative Division with two assessors appointed by the Minister of Justice, instead of by the Minister of Agriculture, was similarly adopted.

CO-OPERATIVE DAIRY COMPANIES

The co-operative principle

20. The co-operative movement in the dairy industry is well-developed in New Zealand. The industry is, in the main, in the hands of dairy farmers who have formed themselves into co-operative groups called Co-operative Dairy Companies, under the provisions of the Co-operative Dairy Companies Act 1949. The function of a Co-operative Dairy Company is the processing of members' raw material (milk, cream and butterfat). Accordingly, there must be provision for members no longer supplying ("dry" shareholders) to leave and for new members ("supply" shareholders) to enter, thus ensuring that members are active dairy farmers. This is accomplished by giving the companies power to:

(a) Resume shares up to the limit of one-fifth of the total number of shares issued.

(b) Settle the price of the resumed shares by agreement up to the maximum of the paid up value of the shares.

Co-operative Dairy Companies Tribunal

21. In 1949, the Committee on Co-operative Dairy Company legislation reported that shareholdings in dairy companies at that time were in a chaotic state. Returns submitted in 1949 by 236 companies showed that

they had 25,637 dry shareholders as compared with 37,030 supplying shareholders. The 1949 Committee found that only one-third of the companies could resume all dry shares, and still keep within the statutory one-fifth limit upon such resumptions and that two-thirds of the companies would require legislation to resume their dry shares.

22. The Committee recommended that an independent tribunal be established to deal with the problem. This recommendation found expression in the Co-operative Dairy Companies Act 1949. The jurisdiction of the Co-operative Dairy Companies Tribunal comes into effect when:

(a) A company desires to resume shares beyond the limit of one-fifth of the total issued shares; or

(b) A company and shareholder cannot agree on the price for surrendered shares.

The Tribunal also has a minor function of cancelling the forfeiture of shares when "untraceable" shareholders re-appear and apply for cancellation of forfeiture. The main work of the Tribunal has been in considering applications for approval to exceed the statutory one-fifth limit placed on the resumption of shares. A company's position, performance and prospects are fully considered at the Tribunal hearing and parties are entitled to be represented by counsel.

23. The Tribunal's jurisdiction to fix the fair value of shares does not arise unless and until there has been an actual surrender of shares. An intention to surrender is not sufficient. There has to be a disagreement on the price, with one or both parties resorting to the Tribunal. In fixing the value of shares, the Tribunal is bound to follow the ten

requirements laid down in section 21 of the Co-operative Dairy Companies Act 1949. In recent years, the Tribunal has had little work to do as compared with the work it undertook in the years following the passing of the Co-operative Dairy Companies Act in 1949.

Membership of Co-operative Dairy Companies Tribunal

24. In our First Report, we considered Tribunals in general terms, and one of the conclusions we reached was that members of Administrative Tribunals should be appointed for a term of not less than three years and that there should be standard grounds for removal. The Co-operative Dairy Companies Tribunal members hold office during the pleasure of the Minister of Justice, who also appoints one of the members as Chairman of the Tribunal.

(a) Views of Department of Agriculture

The Department of Agriculture, whose views we sought, explained that the basis of membership seems to have developed into one of appointments being made by virtue of the offices held by members. It is not necessary to trace the historical development of this and it suffices to say that one of the members of the Tribunal is now always the Director of the Dairy Division and another is the Registrar of Companies. The third member is always a senior member of the Dairy Board.

(b) Recommendation

The fact that members have hitherto been appointed on an office-holding basis does not necessarily imply that this will continue. There is nothing in the Co-operative Dairy Companies Act 1949 to prevent appointments being made from

outside the office-holding field, though it is reasonable to assume that appointments will continue to be on a high level. In theory, no objection can be raised to our suggestion that the term of office be for a fixed term. Nevertheless, in view of the fact that the work of the Tribunal is now limited, and that the present system of appointment of members appears to be working satisfactorily, we think that a change is unnecessary.

Appeals

25. The decisions of the Co-operative Dairy Companies Tribunal are final and binding on all parties to the hearing. (Co-operative Dairy Companies Act 1949 s.19(1)). Proceedings before the Tribunal cannot be held bad for want of form, and no appeal can lie from any decision of the Tribunal, nor, except on the ground of lack of jurisdiction, can any proceeding or decision of the Tribunal be challenged, reviewed, quashed or called in question in any Court. We sought the Department of Agriculture's view on these matters and also considered whether there should be an appeal from the Tribunal to the Administrative Division.

(a) One-fifth limit on resumed shares

(i) Views of the Department of Agriculture

The Department pointed out that an application to the Tribunal for authority to resume shares in excess of one-fifth of the total issued shares entailed not only a detailed study of the company's standing and prospects, but also of the bearing of the company's operations on the dairy industry in the immediate and neighbouring districts. In effect, it was argued that a hearing

amounted to an inquiry into the state of the dairy industry in the locality, how the company fitted into this, and ways and means of strengthening the co-operative principle of vesting in working dairy farmers the ownership, control and operations of dairy companies. Because of the strong "industry" feature of the Tribunal, it was argued that there could be difficulties in an appellate authority reviewing matters of fact, merit and especially discretion which the Tribunal would take into account in reaching a decision. Even with a special Court, such as the Administrative Division of the Supreme Court, difficulties could still be encountered, even if the special Court had the help of lay members or assessors.

(ii) Recommendation

We agree with the view that it would not be feasible to provide for appeals against a Tribunal decision on an application by a company for authority to exceed the one-fifth limit on the resumption of shares.

(b) Share Prices

The Tribunal's second main function is to fix the fair value of shares surrendered to a company, where the company and the shareholder cannot agree on the price of shares.

(i) Views of the Department of Agriculture

The Department of Agriculture considered that the primary function of the Tribunal in fixing the fair value of shares was

one of arbitration rather than one of adjudication. The essence of arbitration was that the decision of the arbitrator was accepted by parties to the arbitration as being binding on them, and the granting of appeal rights would run counter to this basic principle of arbitration.

(ii) Recommendation

We agree with this contention and recommend that there be no changes with regard to the Co-operative Dairy Companies Tribunal or appeals therefrom.

LAND SETTLEMENT

Land Settlement Board

26. This Board was established by the Land Act 1948. Its functions are to carry out the provisions of the Act for the administration, management, development, alienation, settlement, protection, and care of Crown land; and to undertake, control and carry out all negotiations for the purchase of land by the Crown under this Act, and the performance and completion of all contracts of purchase entered into by the Crown.

27. The Board consists of the Minister of Lands, eight Government officials, a nominee of the New Zealand Returned Services Association (Inc.) and not more than two other persons appointed by the Minister of Lands for a term of not more than 5 years. The New Zealand Returned Services Association's representative is a member of the Board only for the purposes connected with the settlement of servicemen or discharged servicemen.

28. In the exercise of its functions the Board must have regard to any representations that may be made by the Minister and shall give effect to any decision of the Government conveyed to it in writing by the Minister. The Board may summon witnesses and hold an inquiry in relation to any matter within its jurisdiction.

Land Settlement Committees

29. In order to assist the administration of the Land Act 1948 the Board may appoint one or more Land Settlement Committees for each land district. Each committee comprises the Commissioner of Crown Lands for the district, who is the chairman, and two other members appointed for three years who may be reappointed. Associate members may also be appointed from time to time to provide expert knowledge of advantage to the committee.

30. The Board may delegate any of its powers to any committee of the Board, to any land settlement committee or to any officer or officers of the Lands Department.

Inquiries by the Board

31. For the purpose of hearing and determining any matter, question, doubt or difference in relation to any matter within the Board's jurisdiction or for the purpose of arriving at a decision upon any application submitted to it or making any inquiry into breaches of the Act, the Board may summon witnesses and hold an inquiry.

Rehearing

32. The Board may, if it thinks that justice requires it, grant a rehearing of any decision of the Board or any determination of an administrative nature if the

person aggrieved applies within 21 days after notification of the decision or determination. The Board may then reverse, alter, modify or confirm the previous decision or determination.

Appeal to the Supreme Court

33. Section 18 of the Land Act (as amended by s.5 of the Land Amendment Act 1965 and s.2(4) of the Land Valuation Proceedings Amendment Act 1968) provides that where any lessee or licensee under any lease or licence granted under the Act considers himself aggrieved by any decision of the Board affecting the lease or licence, he may appeal to the Supreme Court, if, within one month after being notified of that decision, he gives notice of appeal to the Board, and also to such persons (if any) as have appeared before the Board as opponents of the case or claim or application to which the decision relates, and also give security, to be approved by the Registrar of the Court, for the costs of the appeal:

Provided that no such appeal shall lie -

(a) Where by any provision of the Act the decision of the Board is final;

(b) Where under the Act there is a right of appeal against the decision of the Administrative Division of the Supreme Court;

(c) Against any decision of the Board in relation to the allotment of land;

(d) Where the Board has made a determination of an administrative nature.

34. The appeal is in the form of a case agreed upon by the Board and the appellant or, if they cannot agree, the Court is to hear the appeal without a case stated. If it thinks fit, the Court may, instead of

deciding the question of fact itself, order the question to be tried by a jury. After the hearing, the Court has to give its decision, and the Board shall reverse, alter, modify or confirm its own decision accordingly. There is no power to refer the matter back to the Board with appropriate directions.

Question of law

35. Under section 19 of the Land Act the Board may itself or at the instance of a party, in any case of doubt upon a question of law, submit a case to a Judge or Judges of the Supreme Court who, after hearing the parties or their counsel, or without so doing, as the Judge or Judges think fit, shall certify their opinion to the Board. The Board is required to be guided by this opinion.

No Prerogative Writs

36. Section 173 of the Act provides that no order or other proceedings concerning matters contained in the Act may be quashed or vacated for want of form only or be removed or removable by certiorari or any writ or any process whatsoever in the Supreme Court.

Views of the Department of Lands and Survey

37. We sought the views of the Department of Lands and Survey on the following points -

(a) Whether appeals from the Land Settlement Board should be heard by the Administrative Division of the Supreme Court. The Department was opposed to such a move if all decisions of the Land Settlement Board were to be subject to appeal. If, however, only those appeals to the Supreme Court which were already provided for were

to be heard by the Division, then the Department could see no objection to this.

(b) The number of inquiries initiated by the Board and the committees under s.16 of the Act and whether the section operated satisfactorily.
The Department considered that the number of occasions on which inquiries were conducted under section 16 were extremely rare but that, should the need arise, the provisions of the section could be operated satisfactorily.

(c) How often delegation was made to a single officer by the Board under its powers under s.15 of the Act and whether such an extensive degree of delegation was justifiable.
The Department replied that much day-to-day work had to be delegated in order to provide a satisfactory service to individuals with whom it had dealings. The operations of the Department would be severely handicapped if the day-to-day routine matters were not delegated.

(d) How often the power to submit questions of law to a Judge under s.19(1) was exercised, and whether it was justified.
The Department replied that it had no knowledge of such a power having been exercised but that it was a useful provision to have.

(e) Whether the wide restrictions contained in s.173 of the Act should remain.
The Department argued that the provision had stood since 1877 and they saw no reason for amending it.

Recommendations

38. In our view all appeals from the Land Settlement Board should go to the Administrative Division. With regard to s.16 of the Act, we have noted the Department of Lands and Survey's view and feel that no recommendation is required. We accept the Department's view on the desirability for delegation, bearing in mind that delegation is to Commissioners of Crown Lands. We consider however that some statutory restriction is desirable. We suggest that the power given to a Judge or Judges of the Supreme Court by s.19 is undesirable in its present form. In our view the Judge or Judges should not be empowered to decide the question of law, without first hearing the parties or their counsel if these desire to be heard. We consider that the "no certiorari" clause (s.173) is also most undesirable. However, we will be considering the whole question of prerogative writs in future reports and, as the matter does not appear to be urgent, we make no recommendation at the present time.

39. We have expressed to the Department of Lands and Survey our view that appeals should go to the Administrative Division and that in respect of the other matters mentioned above, we should like to be consulted when the Land Act is next revised.

PHARMACY AUTHORITY

Delays

40. We studied the Pharmacy Authority in our Second Report and recommended that appeals therefrom should lie to the Administrative Division of the Supreme Court. (see paragraphs 101-6). We have since had referred to us the case of Boots the Chemists (N.Z.) Limited v. Tews Pharmacy Ltd. and Others [1969] N.Z.L.R. 890 which raised the question of delays in

such cases. In his judgment at p.918, McCarthy J. commented -

> "Having surveyed this history, one is prompted to ask whether this degree of contesting, which was on one occasion rather contemptuously referred to as a merry-go-round, serves the community well. Is it in the public good that an administrative decision (for that is what it was in the main) of a relatively minor character, a decision of a type of which vast numbers are made yearly in any complex developed society, should absorb all this time before it is final? No doubt decisions such as those of the Authority should be subject to review, but should not the community be entitled to ask that such issues be disposed of with reasonable celerity? I say nothing of the extra load which is added to the administration of justice by such extensive judicial processes."

41. The case arose out of an application by Boots for authority under the Pharmacy Amendment Act 1954 to open a pharmacy at Porirua City. Of the land made available by the Department of Lands and Survey in the proposed town centre, two sections were expressly offered for chemists' shops. Applications were made and, in the ballot which followed, Mr C. S. Tews and Boots were each successful in securing one of the two sections. This was in 1962. Under the Pharmacy Amendment Act 1954, it was necessary for Boots to obtain a licence to carry on the business of a pharmacy because they were operating other pharmacies throughout New Zealand. Boots duly applied to the Pharmacy Authority, but before the application could be heard, the Chemists Service Guild of New Zealand sought a writ from the Supreme Court to prevent the Authority hearing the application. By consent, the matter was then removed to the Court of Appeal where it was heard in

November 1965. This was some three years after the ballot and why there was this lapse of time is not explained. The Court of Appeal made the declaratory order sought by the Chemists' Guild. Boots appealed to the Privy Council. The appeal was heard in December 1966 and judgment delivered in February 1967. The Privy Council allowed the appeal and held Boots entitled to be heard by the Pharmacy Authority. The Authority (Stilwell J.) granted Boots' application, but, on appeal to the Supreme Court, Roper J. reversed the decision. Finally, in June 1969, Boots appealed successfully to the Court of Appeal against the decision of Roper J. We were asked to consider McCarthy J.'s comments with particular reference to the public interest.

Recommendations

42. Although it apparently took seven years to dispose of the case, a closer analysis shows that from the time it first came before the Pharmacy Authority to the time the Court of Appeal gave judgment, only two years passed and this, we consider, was not unreasonable. Of the remaining five years, two were taken up with the question of jurisdiction which went to the Privy Council and, in our view, the right to challenge a tribunal's jurisdiction and to go to the highest court, if need be, should not be removed. This leaves three years unexplained but we consider that we would not be justified in commenting on delays which are not clearly and directly attributable to legal procedures. There may have been good reasons known to the parties which involved delay. We therefore make no recommendation about the delays in this particular case but reaffirm the recommendation in our Second Report that appeals from the Pharmacy Authority should go to the Administrative Division.

TIMBER PRESERVATION

Timber Preservation Authority

43. The Authority, established by the Timber Preservation Regulations 1955, comprises eleven members, of whom five are members of Government departments and six are appointed on the nomination of outside interests. Every person appointed must, in the opinion of the appointing Minister, possess some special knowledge or qualifications which would be of advantage to the Authority. Nominated members are appointed for a term of two years and Government members hold office at the pleasure of the Minister. The Authority may regulate its procedure as it thinks fit.

44. The principal function of the Authority is to secure and maintain a high standard of timber preservation. In particular, it may grant, revoke, or suspend authorisation of any preservative treatment. Any authorisation granted by the Authority may, at its discretion, be varied or suspended for a period not exceeding one month. The Authority is required to give the holder of an authorisation at least fourteen days notice in writing of its intention to revoke an authorisation and to state its reasons for the proposed revocation.

Appeals

45. By Regulation 9(3) of the Timber Preservation Regulations 1955, an objection to any revocation lies to the Minister of Industries and Commerce within fourteen days after the date of the giving of the notice of revocation. Regulation 9(4) provides that upon receipt of any such objection, the Minister shall appoint "a suitable person" to inquire into and determine the subject matter of the objection, and that person may call for such reports as he requires to

acquaint himself with the facts of the case, and may require the Authority to affirm, vary, or reverse its previous decision.

Views of the Department of Industries and Commerce

46. We sought the views of the Department of Industries and Commerce on the question of appeals from the Authority, and in particular on the question of the appointment of "a suitable person" by the Minister. The Department replied that, since its setting-up in 1955, no appeal had been made against any decision of the Authority. This was largely because before any decision was made that might be contentious, affected parties were given the opportunity of studying the Authority's proposals and discussing any problems that might arise. The Department went on to say that representatives of all sections of the industry having representation on the Authority were of the opinion that no grounds existed for change and that the Authority considered that the present avenue of appeal was adequate.

Recommendation

47. The provisions in respect of appeals seem to be weighted against the timber preservers who come into conflict with the Authority. Very substantial sums may well be involved in setting-up timber preservation plants and it is arguable, as suggested by Mr G. S. Orr, in his "Report on Administrative Justice in New Zealand" (published by the Government Printer, 1964) Chapter 3, para. 35, that owners or operators should receive more protection than the Regulations afford. Moreover, no qualifications are set out for the appellate body.

48. Nevertheless, in deference to the Department's view that the avenue of appeal is adequate, we recommend no change at present. We note that appointments

are made by the Minister of Industries and Commerce which suggests that issues are likely to be of a technical rather than a legal nature.

WAR PENSIONS

War Pensions Board

49. The War Pensions Act 1954 empowers the Minister of Defence to appoint such number of war pensions boards as he thinks fit. A board consists of three or four members appointed by the Minister and holding office during his pleasure. Not less than one member of each board is to be a registered medical practitioner and one member is to represent the New Zealand Returned Services Association (Inc.). When determining whether a claimant is eligible for a war pension, a War Pensions Board, or an Appeal Board as the case may be, must decide in accordance with substantial justice and the merits of the case and shall not be bound by any technicalities or legal forms or rules of evidence.

Appeals

50. Appeals against certain decisions of a Board lie to a War Pensions Appeal Board. The Minister of Defence may appoint one or more such Boards, consisting of three members who hold office during his pleasure. Two members of each appeal board must be medical practitioners, one of whom is to be appointed on the nomination of the New Zealand Returned Services Association (Inc.). The Chairman of the Board is appointed by the Minister of Defence. The Appeal Board has all the powers of the Pensions Board in determining an appeal and its decision is final and conclusive. A claimant may, however, obtain a further review of his application if he satisfies the Secretary of War

Pensions that it is in the interests of justice that it should be reconsidered.

Procedure

51. Regulation 30(2) of the War Pensions Regulations 1956 provides that "with the consent of the Chairman but not otherwise" the appellant may be represented by counsel or by any other person.

Recommendation

52. It appears to us that the Act is administered liberally and that the Returned Services Association keeps a close watch on the administration of the Act and would complain if dissatisfied. We sought the views of Sir Douglas Hutchison, the Chairman of the War Pensions Appeal Board, on the question of Regulation 30(2). It appears that in fact the point has never arisen in practice. If counsel do not formally ask leave to appear, the point is never raised, and if they do ask, leave is granted as of course. Although it might be tidier for the consent requirements to be dispensed with by statute, we are satisfied that in practice the point gives no difficulty and we therefore make no recommendation.

USE OF LAND : SOME MAJOR JURISDICTIONAL QUESTIONS

TOWN AND COUNTRY PLANNING

53. The volume of adjudication required in the town planning field is ever-increasing. In 1969 Parliament was forced to make further provision for this work: the effect of the Town and Country Planning Amendment Act 1969 is that there are now two permanent Appeal Boards and one Special Board. The intention is understood to be that the Special Board will sit less regularly than the others; but there is no reason to suppose that it will be merely a temporary phenomenon.

54. The planning issues with which the two Boards deal arise between local authorities and objecting land-owners; or between land-owners seeking some planning dispensation or permission and other land-owners or citizens opposed to the application; or even, though more rarely, between two local authorities, or a local planning authority and the Government. Decisions of the Boards affect the environment and circumstances in which large sections of the community live, work or seek recreation. They are decisions of enduring influence, if anything more significant for the future than for the present. Indisputably this has become one of the major jurisdictions in New Zealand.

55. In our First Report (para. 56) we concluded that decisions of the Appeal Boards should not be final in all cases, especially as the hearing at local body level is so rudimentary that often the Appeal Board is in fact giving the matter its first judicial consideration. We recommended that an appeal should lie, with leave, to the Administrative Division of the Supreme Court. No doubt there is room for legitimate differences of opinion as to whether leave should be needed or as to the criteria for granting leave; but as to the desirability of some right of appeal we do not think there can be any real argument, nor has any been drawn to our attention. The Ministry of Works has recorded the view that it is not opposed to a right of appeal in cases involving questions of law or principles of Town and Country Planning, although it does not favour going any further than that. The increase in the number of cases and the resultant establishment of three Boards add to the urgency of the matter, for the following reasons -

(a) It is as well known as it was inevitable that differences of opinion and approach should develop between two Boards of concurrent jurisdiction. With three Boards the tendency is hardly likely to diminish. As far as possible any system of administration of justice should try to avoid

the creation of several tribunals of equal status, subject to no ultimate authority capable of resolving inconsistencies. It seems manifestly wrong that the fate of an appeal on a specified departure or conditional use application might depend on which of the three Boards happened to sit next in the area concerned. It is arguable that the four Judges assigned to the Administrative Division might similarly differ in their decisions. However, the recommendations in our First Report (para. 36, sub-para. (vi)) meet this point. They were to the effect that, in the interests of consistency, when hearing important cases, a full Court, comprised of at least three Judges, should sit and that in some fields (of which this is one) the Judges of the Division should specialise as far as reasonably possible.

(b) Linked with the first point is the fact that these Boards are usually presided over by persons who hold or have held the office of Stipendiary Magistrate. While we recognise the quality and efficiency of much of the work that has been done, it is no disrespect to mention that decisions of Magistrates on cases much less important than the average planning case are open to appeal to the Supreme Court. The desirability of some similar right of appeal is certainly no less apparent in the planning field.

(c) To dispose of their formidable programmes the Boards have to work under a degree of pressure that cannot be conducive to ideal justice. We are satisfied that it is right to provide the opportunity of securing a second judicial opinion on some of the cases in the somewhat calmer and more deliberate atmosphere of the Administrative Division.

56. It must be emphasised that the strength of our recommendation of provision for appeal to the Administrative Division does not imply that we would expect

a flood of appeals. After all, most town planning questions, and nearly all the minor ones, are settled at local authority level; relatively only a comparatively small percentage (we believe probably about ten to fifteen per cent) go to the Appeal Boards; and of these again quite a small percentage would be likely, in our view, to be carried to the Administrative Division. But we think that the parties should not be denied all opportunity of a full judicial review at a high level, and that the number of appeals would not be insignificant. Having regard to the natural tendency to associate appeal rights with the rights of citizens, we add in this context that there may well be some occasions on which local planning authorities will justifiably wish to test, in the Administrative Division, Appeal Board decisions adverse to their planning proposals.

URBAN RENEWAL

57. By the Urban Renewal and Housing Improvement Amendment Act 1969, local authorities are given power to designate comprehensive urban renewal areas. Within such an area re-development is intended to be co-ordinated in accordance with the local authority's plan and unless that plan provides otherwise no re-development can occur without conditional use approval under the Town and Country Planning Act 1953. The new Act is designed to encourage urban renewal projects by local authorities, who are required to have a physical and financial programme for each part of any renewal area. The Act may be said to represent the positive aspect of town planning, rather than the more negative aspect (control of the activities of landowners) which is the main characteristic of the Town and Country Planning Act itself. Be that as it may, control in an urban renewal area will be strict; for

except to the extent that the local authority's plan specifically so provides, no development at all will be permitted there as of right.

58. The machinery for designating an area includes application to the Minister of Housing for approval and the preparation for the area of a plan and code of ordinances, to be incorporated in the district planning scheme. Rights of objection and appeal under the town planning legislation are consequentially likewise incorporated.

59. It will be seen that the new legislation is closely connected with the ordinary town planning legislation. There can be no argument but that logically the same appeal rights should apply; although, in view of the more thorough-going or drastic nature of urban renewal plans and controls, the case for appeal to the Administrative Division is perhaps even stronger here.

60. The Committee was consulted by the Ministry of Works when the new legislation was about to be introduced, and we express our gratitude for this co-operation. The Ministry had in mind the possibility of providing for appeals direct to the Administrative Division, without any intermediate recourse to the Appeal Boards. The Committee would not have regarded this proposal as necessarily unacceptable, but recognises that there is substance in the view which ultimately prevailed - namely, that the appeal structure should logically be the same in both these connected fields and that an appeal to the Administrative Division in urban renewal cases should be introduced at the same time as an appeal in ordinary town planning cases. There was also some risk of overloading the Administrative Division with work if it had to hear urban renewal cases directly

on appeal from local authorities. The Committee therefore regards the new Act, which does not provide for appeals to the Administrative Division, as reasonable in this respect; but as a temporary measure only. We trust that at an early date both the urban renewal and the town planning legislation will be amended to permit such appeals.

61. We would add that in the urban renewal field, as in various others, the policy element in decisions is not, in our view, a sufficient argument against giving the Administrative Division jurisdiction. The broad policy that urban renewal is to be encouraged is implicit in the legislation. The Division should be at least as capable as the Town Planning Appeal Boards of weighing the demands of that policy against the interests of property owners in any particular case. Nor would there be force in any contention that the Division must lack a necessary expert knowledge: we believe that most observers of the work of Appeal Boards would agree that the qualities found most valuable in a Chairman are the approach and powers of application of an experienced lawyer.

COMPULSORY ACQUISITION OF LAND

62. In a paper delivered to the New Zealand Centennial Law Conference and published in 1969 New Zealand Law Journal 251, Mr R. I. Barker of the Auckland Bar drew attention to a number of apparent injustices and anomalies in the provisions of the Public Works Act 1928 governing the compulsory taking of land and compensation therefor. Several of his suggested reforms fall within our field, and we are studying his views and those expressed by others in discussion of the paper at the Conference and subsequently. For example, whilst we have not yet formed a final opinion, we are inclined to regard as unanswerable the argument

that an acquiring authority should not be the body empowered to hear and determine, on the merits, objections to its own proposals for acquisition. On the face of it, this is a breach of the principle that no man should be the judge in his own cause. We have consulted the Ministry of Works on this matter and find that the Ministry is disposed to share our prima facie view, at any rate with regard to local authorities: the Ministry has reservations with regard to acquisitions by the Crown. This is one of those matters wherein it is easier to see what is unsatisfactory in the existing system than to devise a remedy acceptable to all. The whole question of compulsory acquisition procedure is one of the more important ones on which we hope to evolve positive recommendations in the coming year.

A STATUTORY CODE OF PROCEDURE FOR ADMINISTRATIVE TRIBUNALS?

63. Up to the present time we have concentrated mainly on rights of appeal from administrative tribunals sitting at first instance and on the appropriate body to hear such appeals. We have also made certain recommendations as to the composition and jurisdiction of tribunals. However, as we indicated in our Second Report (para. 108), we regard the question of the procedure of administrative tribunals to be one of importance. We are now turning our attention to this topic.

64. As will be readily apparent from this and earlier Reports there is great diversity in the nature and functions of our various tribunals. This is, of course, a reflection of the widely differing kinds of social or economic questions with which they are concerned. It follows that the procedure appropriate for one tribunal may necessarily differ in important

respects from that appropriate for another. It is sufficient to point to the Town Planning Appeal Board on the one hand and, say, a Land Settlement Board on the other. In our First Report we recognised that one of the advantages of the administrative tribunal system is that it offers greater flexibility than is possible or normal under the ordinary courts. It must, however, be remembered that although some tribunals are required to implement policy broadly stated in the enabling statute, all should nevertheless decide questions before them in a judicial way. To ensure this there must be a fair hearing. This raises the question of what procedures should be followed by administrative tribunals to facilitate a fair hearing and a just decision.

65. In the great majority of cases no procedure is prescribed either by statute or regulation. An appreciable number of tribunals are, however, for the purpose of conducting any inquiry or hearing, deemed to have the power of a Commission of Inquiry. The Commissions of Inquiry Act 1908 was not in fact enacted to regulate the powers of administrative tribunals, then either unborn or in their infancy, but those of ad hoc inquiries. We need to consider whether the device of incorporating the provisions of a statute enacted for another purpose is a satisfactory method of defining the powers of administrative tribunals or whether the number and importance of these tribunals is such that a statute dealing specifically with their procedure and powers might be desirable. We should emphasise at this stage that it is widely recognised that it is neither desirable nor feasible to formulate a detailed code governing the procedure of all tribunals. It would, in our view, be quite impossible to force all administrative tribunals into one single detailed procedural mould.

66. Does this mean, however, that certain general rules covering fundamental matters only which are or should be common to all tribunals cannot be formulated? We think this merits investigation and are now embarking on this task. Needless to say, at this early stage we have no fixed views one way or another on a matter which clearly will require careful and detailed consideration.

67. It has been suggested elsewhere[1] by one of our members that an Administrative Tribunals Procedure Act could usefully make provision for the following matters as being essential to the procedure of all administrative tribunals. The basic requirements suggested are as follows -[2]

(i) NOTICE of the time, place, and issues to be given to all parties with adequate opportunity to prepare for the hearing.

(ii) EVIDENCE:

(a) Tribunals need not observe the strict rules of evidence but should admit and act upon evidence only if it is the kind on which reasonable persons are accustomed to rely in the conduct of serious affairs.

(b) All parties should have the right to call witnesses, introduce exhibits, cross-examine, and call rebuttal evidence.

(iii) OFFICIAL NOTICE: Tribunals may take notice of general, technical, or scientific facts

(1) G. S. Orr, "Report on Administrative Justice in New Zealand", Ch.11, p.66 et seq.

(2) Ibid para. 216.

within their specialised knowledge, provided they first give notice to the parties and opportunity to contest such facts.

(iv) SUBPOENAS: Tribunals and parties before them should have the right to summon witnesses.

(v) PUBLIC HEARINGS: All hearings should be in public except for strictly limited classes such as those affecting national security, intimate personal or financial matters, and professional capacity and reputation.

(vi) LEGAL REPRESENTATION: The right for parties to appear by counsel should be secured except in the few cases, such as industrial disputes, where the parties have agreed otherwise.

(vii) PRIVILEGE: All witnesses and counsel appearing before tribunals and the members thereof should be absolutely privileged from legal suit in respect of evidence given or statements made at tribunal hearings.

(viii) FINDINGS AND REASONS should be given either as of right or on timely request.

(ix) NOTIFICATION OF RIGHT OF APPEAL: Parties not represented by counsel should be advised of their rights of appeal and the time limits on appeal.

68. We think it convenient to take these proposals as a starting point in our consideration of this question. To assist us we have sought and obtained comments on

the proposal for such a Procedural Act from two overseas authorities, Professor H. W. R. Wade, Professor of English Law at Oxford University, and Professor Walter Gellhorn of Columbia University. We sought Professor Gellhorn's views because the foregoing proposals are in part drawn from certain State Administrative Procedure Acts in America. Professor Gellhorn has expressed scepticism about the usefulness of the Federal and State Administrative Procedure Acts in his country. His principal criticism is that because of the wide variety of administrative agencies operating in America an Administrative Procedure Act needs to be correspondingly wide to the point that it becomes at best no more than a guide.

69. Professor Wade has pointed out that in the United Kingdom the Council on Tribunals, which was established as a result of a recommendation of the Report of the Franks Committee, is required by statute to be consulted before procedural rules for tribunals are made. Draft rules are submitted for each tribunal separately by the Minister responsible. The Council then ensures that the rules include the necessary fundamentals. Professor Wade explains that this system is an alternative to the general Administrative Tribunals Procedure Act in the United Kingdom (though one fundamental right, the right to reasons for decisions, has been made statutory), and that it has the merit of flexibility. He does, however, say that an Administrative Tribunals Procedure Act along the lines referred to above has some attraction and might well, in his view, have provided a straighter and quicker path to uniformity of the right kind than has been found in the United Kingdom. He also thinks that there may still be a case for such an enactment there. Professor Wade has stressed that whatever system is adopted it must be flexible, so that if a general code of procedure is

enacted there should be some body empowered to give exemptions from it where necessary. He has also been good enough to make comments on each of the matters referred to above which we will duly take into account when considering this matter in more detail.

70. The primary question to be resolved is whether, having regard to the clear need for maintaining flexibility, an Administrative Tribunals Procedure Act can be drawn which will lay down a general code on basic matters, but which will not at the same time force administrative tribunals into a strait-jacket. We think this question can probably best be resolved if a draft Act is prepared and this will be one of our next tasks. We will then be in a better position to assess whether the proposal is likely to be practicable in New Zealand and to effect an improvement in the procedures of administrative tribunals. It may be, if it is found feasible and desirable to recommend such an Act, that its operation should extend initially only to such tribunals as are specifically named or, alternatively, to provide for the exemption, in whole or in part, of named tribunals.

THE POSITION OF THE COMMITTEE IN ITS WORK OF LAW REFORM

71. Since the committee was set up three years ago it has produced two reports and this is our third. A pleasing aspect of our work to date has been the increasing tendency of the Government to give us opportunities of studying and commenting on subjects within our own field of law, particularly by inviting us to peruse and advise upon aspects of proposed bills. We are grateful also to individuals who have advanced suggestions for our consideration. Their initiative has been stimulating to us.

F U T U R E   P R O G R A M M E

72. Our programme includes a study of selected tribunals with particular reference to procedure and appeals. We also propose to continue our consideration of a statutory code of procedure for administrative tribunals. This will probably prove to be our main task in the coming year. Also on our agenda is the question of prerogative writs and the entire system of judicial review of administrative action. Our tentative view is that in so far as they operate within the field of administrative tribunals, the traditional writs of certiorari, mandamus and prohibition should be abolished and replaced by one simple form of application for review. Another topic for study is the membership of tribunals, the relationship between tribunals and Government departments, and the question of how far administrative tribunals should be influenced by the policy of the administering department. These are questions which we have studied incidentally in examining individual tribunals, but when the opportunity occurs a more detailed investigation could yield results.

73. S U M M A R Y

(1) In this our Third Report, we first briefly recapitulate the recommendations made in our First and Second Reports and mention those proposals of the Committee which have been adopted and those which are still awaiting action. We then indicate our programme for the past year. (Paragraphs 3-12).

(2) Since our Second Report, we have continued our study of selected tribunals and again our recommendations

in respect of them make up an important part of this report. As before, our usual procedure in the case of each tribunal has been to consider the present constitution, functions and appeal provisions and then make recommendations for any improvements.

(3) We recommend that appeals from the Animal Remedies Board should lie to the Administrative Division (Paragraph 18) and this recommendation has already been adopted. We also reaffirm the recommendation in our Second Report that appeals from the Pharmacy Authority should go to the Administrative Division. (Paragraph 42).

(4) We make no recommendations at the present time with regard to the Co-operative Dairy Companies Tribunal, the Timber Preservation Authority and the War Pensions Board. (Paragraphs 24 and 25, 47 and 48, and 52). We recommend that appeals from the Land Settlement Board should lie to the Administrative Division but make no other recommendations in respect of the Land Settlement Board and the Land Settlement Committees. However, we would like to be consulted when the Land Act is next revised. (Paragraphs 38 and 39).

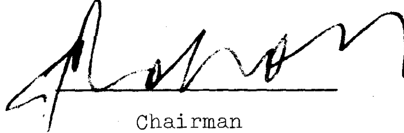
(5) In our First Report (paragraph 56) we recommended that appeals from the Town and Country Planning Appeal Boards should lie, with leave, to the Administrative Division. We are concerned that no steps have been taken to implement this recommendation and, because we regard the matter as urgent, have reaffirmed it in this report. (Paragraphs 53 - 56).

(6) Closely connected with the Town and Country Planning legislation is the new legislation relating to urban renewal. We do not criticise the new legislation for having provided for appeals only to the Town and Country Planning Appeal Board but we accept this as a temporary measure only. We regard an appeal to the Administrative Division of the Supreme

Court as desirable and recommend provision for this at an early date. (Paragraphs 57 - 61).

(7) We have begun studying several apparent injustices in the Public Works Act (Paragraph 62). We have also embarked on the larger task of considering whether there should be a Statutory Code of Procedure for Administrative Tribunals. (Paragraphs 63 - 70).

For the Committee



Chairman

Dated at Wellington 16th January 1970.