ADMINISTRATIVE TRIBUNALS

CONSTITUTION, PROCEDURE

AND APPEALS

Seventh report of the
Public and Administrative
Law Reform Committee

PRESENTED TO THE MINISTER OF JUSTICE
IN APRIL 1974

SEVENTH REPORT OF THE PUBLIC AND ADMINISTRATIVE LAW REFORM COMMITTEE

ANALYSIS

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INTRODUCTION

1. Towards the end of 1973 the Committee undertook its review of the regulation-making powers and procedures of the Executive, a subject on which Mr G. Cain, senior lecturer in law at Victoria University of Wellington and formerly a senior Crown counsel, was invited to prepare a research paper. The Committee has discussed with Mr Cain various aspects of his paper, which the Committee commends as a highly informative and valuable work of particular value to those interested in this subject. The paper has been published as occasional pamphlet number seven by the Legal Research Foundation, whose address is care of School of Law, University of Auckland.

2. The Committee's study of this subject is contained in paras. 30 to 33.

3. We have also continued with our analysis of the constitution and procedures of and appeals from tribunals as well as of tribunals that were proposed in Parliamentary bills.

4. The Committee continued its consideration of the law governing compulsory acquisition of land and of the extent and nature of the hearing procedure pursuant to s.38A of the Town and Country Planning Act 1953. Both subjects were deferred pending the report of a departmental review committee which had been set up to study and make recommendations as to changes in the town planning legislation. We have now received that report. A solicitor questioned certain appeal procedures concerning rate postponement. Our consideration of this topic is set out in paras. 117 to 123.

5. During the course of the year we received a copy of the New South Wales Law Reform Commission's Report on Appeals in Administration (Government Printer 1973). This is a thorough report which mentions that there are some 1,500 examples of statutory power conferred by New South Wales legislation on public authorities. In respect of only 350 of these is there a right of appeal or a right in the nature of an appeal. Some are full rights of appeal but others are limited. The Committee believes that a comprehensive examination of New Zealand legislation would be worthwhile and might produce similar statistics.

CONSTITUTION AND MEMBERSHIP

6. From its constitution in July 1966 the Public and Administrative Law Reform Committee has to 31 March 1974 met on 59 occasions. Since our last report Mr A.C. Brassington has been elected deputy chairman of the Committee.

7. The Committee's present membership under the chairmanship of Dr J.L. Robson, C.B.E., Director of Criminological Studies of Victoria University of Wellington is,

Mr A.C. Brassington, barrister and solicitor of Christchurch, deputy chairman;

Mr E.L. Greensmith, C.M.G., solicitor, formerly Secretary to the Treasury;

Professor K.J. Keith, Professor of Law at Victoria University of Wellington;

Dr R.G. McElroy, C.M.G., barrister and solicitor of Auckland;

Mr R.G. Montagu, Senior Legal Adviser, Department of Justice;

Professor J.F. Northey, Dean of the Faculty of Law at the University of Auckland;

Mr G.S. Orr, Deputy Chairman of the State Services Commission;

Mr D.A.S. Ward, C.M.G., Parliamentary Counsel;

Mr R.M. Barlow of the Department of Justice is the Committee's Secretary.

8. We were pleased to record during the year that Professor Keith was appointed to a chair in law at Victoria University.

ACTION TAKEN ON RECOMMENDATIONS

9. In our first report we recommended that the jurisdiction of the Transport Licensing Appeal Authority should be absorbed by the then proposed Administrative Division of the Supreme Court. In the year preceding the Committee's second report we considered the Air Services Licensing Appeal Authority and saw an analogy between that Authority and the Transport Licensing Appeal Authority and therefore made in that report similar recommendations in respect of the Air Services Licensing Appeal Authority. We have reaffirmed these recommendations in subsequent reports. In the Committee's sixth report we recommended that appeals from the Harbour Ferry Licensing Authority, which are heard by the Transport Licensing Appeal Authority, should also be transferred to the Administrative Division.

10. The Minister of Justice, after consulting his colleague, the Minister of Transport, has now informed us that there would be no objections to Transport and Air Services Licensing Appeals being brought within the jurisdiction of the Administrative Division.

11. In communicating this information the Minister suggested that since one person is the Transport Charges Appeal Authority as well as the Transport Licensing and the Air Services Licensing Appeal Authorities, the Committee might reconsider the view it expressed in its first report on transport charges appeals. We stated in that report that we

considered that the fixing by the Secretary for Transport of charges for services was essentially an administrative function, more allied to price fixing procedures and was consequently not suitable for determination by the Administrative Division. The Committee is currently reviewing this earlier view and expects to report to the Minister in the near future.

12. During 1973 the Hospitals Amendment Bill was introduced into Parliament. The bill would have conferred on the Hospitals Review Committee broad powers to award costs against a complainant or appellant.

13. The Review Committee would have been able to order a complainant or appellant to pay the costs of hearing and determining a complaint or appeal (including the costs of the Hospital Board appearing as a party) whenever that Committee considered that the complaint or appeal was frivolous or vexatious, or was "one that should not have been made". The subjective phrase "one that should not have been made" would have conferred too wide a power capable of being used oppressively and unjustly. Access to such a review body should be simple and inexpensive and the possibility of having to meet heavy costs for an appeal lodged mistakenly but in good faith should not become a factor in a potential complainant or appellant deciding whether or not to exercise his rights.

14. The second point which concerned us was that the bill would have created a general and unrestricted power to deduct such costs from the salary of the complainant or appellant in addition to the usual power to recover costs as a debt. In failing to provide expressly for personal circumstances to be taken into account the bill would have made it possible for all of a person's salary to be withheld until the costs had been paid. Moreover, it appeared that the rate of deduction would be fixed by the Hospital Board. For these reasons and because the provision was contrary to the spirit and principle of the

Wages Protection Act 1964, the Committee considered such a power undesirable. However, if it were to be retained it should be exercised by an impartial and disinterested body, in this case the Review Committee, but only after taking into account the financial circumstances of the complainant or appellant.

15. The bill was subsequently amended by omitting the provision for the Review Committee to order payment of costs on the grounds that the complaint or appeal was one that should not have been made and by providing that deductions of costs from salary shall be subject to any directions given by the Review Committee. These changes substantially met our objections.

RECOMMENDATIONS NOT YET ACTED UPON

16. The prospect of legislation to put into effect the Committee's recommendations in respect of Transport and Air Services Licensing and Harbour Ferry Services appeals has been reported in paras. 9 to 11 of this report, but so far as we are aware no legislation is pending to put into effect the recommendation that the jurisdiction of the Motor Spirits Licensing Appeal Authority should be transferred to the Administrative Division.

17. Our recommendation in respect of the Taxation Board of Review, originally formulated in our second report but reaffirmed with a modification in our fifth report (paras. 24 and 25), that there should be a right of appeal on fact or discretion as well as on law subject to a monetary limit has not yet been adopted. Nor has the proposal, contained in our third report, that appeals to the Supreme Court under the Land Act 1948 should go to the Administrative Division.

18. In our sixth report we expressed the view (para. 67) that appeals from the Local Government Commission should lie to the Administrative Division rather than to the Supreme Court in its ordinary jurisdiction. We are not aware of any legislative proposal to give effect to that recommendation.

APPLICATIONS FOR REVIEW : JUDICATURE AMENDMENT ACT 1972

19. This Act, which came into operation at the beginning of 1973, was based on a bill drafted by the Committee. Its prime purpose was to simplify the procedure by which persons complaining of excess or abuse of statutory power could have the action complained of reviewed by the Supreme Court. As expected, the new remedy has been sought on a number of occasions. It would be premature at this point to offer an opinion as to the overall significance of the change, but the Committee does intend to keep the operation of the Act under consideration and accordingly it notes those decisions which have come to its attention and briefly comments on some of them.

20. In dealing with one of the first applications - an unsuccessful attack on a deportation order - Quilliam J. indicated the way in which the grounds for relief were to be set out in the application. They should be stated in such a way that it is apparent to the other party just what the nature of the remedy sought really is. It should not be necessary to go to the supporting affidavit to elicit grounds inadequately stated in the application (Pagliara v Attorney-General [1974] 1 NZLR 86). Wilson J. addressed himself to this and to related procedural issues arising under the Act when asked to "set aside" a decision of the Arbitration Court on the ground of lack of jurisdiction.

He too stated that the applicant must specify the nature of the relief sought, though not necessarily the precise remedy itself; and, without ruling finally on the matter, he doubted whether the application before him complied with the Act since, he said, the relief sought was not relief of a nature which might have been sought before the passing of the Act. (New Zealand Engineering, Coachbuilding, Aircraft, Motor and Related Trades Industrial Union of Workers v Court of Arbitration [1973] 2 NZLR 534). His reading of the requirement that the application state the nature of the relief but need not refer to the precise remedy, might suggest that an applicant who had standing for a declaration but not for mandamus and who was seeking relief in the nature of mandamus might fulfill the locus standi requirement (cf. Environmental Defence Society v Agricultural Chemicals Board [1973] 2 NZLR 758).

21. The judgment of Cooke J. in Car Haulaways (New Zealand) Ltd. v McCarthy (judgment 8 August 1973, now on appeal) suggests that the power given to the Court in s.4(5) to refer the matter to the tribunal for reconsideration and determination in the light of the reasons stated by the Court may be a most useful addition to the review powers of the Court.

22. Other cases in which the procedure was used include: Brigham's Creek Farms Ltd. v New Zealand Milk Board [1974] 1 NZLR 147 (Wilson J., now on appeal) where the proceedings for mandamus, commenced before the Act came into force, to compel the Board to hear and determine an application for town milk supply permission, were treated as proceedings under the Act; Coleman v Hamilton City Council (judgment 26 November 1973, Wilson J.) concerning the defendant's power to issue a building permit in breach of the Code of Ordinances; Edwards v Onehunga High School Board (judgment 28 November 1973, Wild C.J., now on appeal) concerning the power of suspension of school pupils; Hardie v. Licensing

Control Commission (judgment 15 November 1973, Wild C.J.) relating to the procedure to be adopted by the Licensing Control Commission under the Sale of Liquor Act 1962, s.81; and Malvern and Ellesmere County Councils v Administering Committee of the Christchurch Tax Area (judgment 13 November 1973, Roper J) where an interpretation of the petrol tax legislation was sought.

23. The Committee recommended that the jurisdiction under the Judicature Amendment Act 1972 should be conferred on the Administrative Division of the Supreme Court (fourth and fifth reports). This recommendation was not accepted (see sixth report, para. 76). The Committee is interested to note that many of the applications for review are in fact being heard by members of that Division.

JURISDICTION OF THE ADMINISTRATIVE DIVISION

24. The Administrative Division of the Supreme Court continues to be recognised as the appropriate judicial body to hear appeals from administrative tribunals.

25. A right of appeal lies to that Division from the appeal authority constituted under the Plant Varieties Act 1973. Also an appeal on a question of law lies to the Administrative Division from the Social Security Appeal Authority under the 1973 social security and war pensions legislation.

26. A list of the statutes that confer jurisdiction on the Administrative Division of the Supreme Court is appended.

PROCEDURES AND CONSTITUTION OF ADMINISTRATIVE TRIBUNALS

27. In our sixth report we outlined the procedural principles that we considered should be used either as a minimum standard or as a guide by administrative tribunals, and by those responsible for drafting their rules. We reserved for further consideration the desirability of formulating a statutory code for specified tribunals. We have not reached a decision on this point but intend in the coming year to seek comments from tribunals and other organisations responsible for administrative tribunals as to the form and content of the principles we have outlined. We propose to enquire also about the extent to which tribunals comply with those principles and the grounds that they consider exist in particular cases for any departure from them. Opinion as to the merits of a statutory code will also be sought.

28. The general acceptability of these procedural principles is indicated by their incorporation in recent legislation establishing or reconstituting certain administrative tribunals. Thus the Rent Appeal Act 1973, which allows for the setting up of rent appeal boards, contains provisions relating to notice, the conduct of the hearing, its public nature, adjournment, representation, evidence and the giving of reasons identical and essentially similar to those suggested in the report. (Questions might however be raised about the absence of a specific requirement to notify the parties of inspections and certain inquiries.) Similarly the provisions relating to the hearing, representation, evidence and the giving of reasons in the Social Security Amendment Act 1973 establishing the Social Security Appeal Authority (which also has jurisdiction under the war pensions legislation) confirm the general acceptability of the principles proposed. This is true also of the procedures of the appeal authority established under the

Plant Varieties Act 1973 and the Private Broadcasting Tribunal provided for in the Broadcasting Act 1973: the hearing, its public nature, evidence, representation, adjournment and the giving of reasons. The principles' general acceptability is also supported by the Minister of Justice's statement, when releasing the report, that the principles would be kept in mind when legislation was being drafted to establish new tribunals and by his commendation of the report to those interested or involved in the working of administrative tribunals.

29. The Committee also welcomes what would seem to be a growing consistent acceptance of a set of general rules relating to the appointment to and constitution of administrative tribunals. These rules, stated for instance in para. 42 of the Committee's first report, provide for the appointment of members either by or after consultation with the Minister of Justice, for a term of at least three years, for the legal qualification of the single member or of the chairman of a tribunal, for a standard set of grounds for removal of members of a tribunal, and for the provision of secretarial services by a department of State other than that immediately affected (usually the Department of Justice, through its Tribunals Division, or the Labour Department). The Plant Varieties Act meets all these requirements; the Broadcasting Act provides for the ad hoc appointment of a tribunal, which will probably be set up rarely, but otherwise the Act complies in substance; and the appointment to and constitution of the Social Security Appeal Board are consistent, except that the chairman need have no particular qualification. Nor need the chairman of rent appeal boards, in whose appointment, moreover, the Minister of Justice has no hand.

REGULATION-MAKING POWERS AND PROCEDURES

30. The Committee has fully considered Mr Cain's paper, referred to in the introduction to this report, and we have had the benefit of discussing the paper with him. Mr Cain compared New Zealand's procedures with those of other countries and tested the procedures in New Zealand against the views and recommendations of other inquirers and critics. New Zealand comes out relatively well from the examination but, as is frequently the case after any long period without a specific review, there is room for improvement as to detail.

31. In the course of its deliberations the Committee examined the guidelines currently in use for the drafting of regulations and discussed some of the problems encountered by those whose function it is to draft regulations and statutes. It weighed, too, the need for reasonable expedition in the dispatch of government business so far as regulations form part of that business. In the result the Committee, after making allowances for these matters, adopted most of Mr Cain's proposals, some with modification.

32. The Committee has not overlooked the growing use by governments in New Zealand in recent years of the regulation-making power to deal with major economic problems. This practice may at some time require a reconsideration of the justifications for delegating legislative power to the Executive. For the present the Committee has limited itself to the matters on which Mr Cain was asked to report.

33. Recommendations:

(1) Recital of specific enabling power (para. 5.03*)

It would be desirable drafting practice to state in the enacting formula of regulations the section or sections

* This and subsequent references are to G. Cain, Regulation-making Powers and Procedures of the Executive of New Zealand, Occasional Pamphlet number seven, Legal Research Foundation, Auckland, 1973.

of the Act authorising their making. It would be necessary, however, to guard against the possibility of the regulations being set aside as ultra vires and void because the wrong section was cited. We suggest an amendment to the Acts Interpretation Act 1924 providing that where any regulations purport to be made under the authority of a particular section of any Act, they shall not be held to be ultra vires that Act, notwithstanding that the section cited does not authorise their making, if power exists elsewhere within the Act to make them.

(2) Elimination of subjective enabling clauses (para. 5.04)

New Zealand adopted the objective form of enabling power in 1961 but in earlier statutes and in some later Acts the subjective form exists. Whenever possible, the opportunity should be taken when the offending Acts are amended to substitute the objective for the subjective form.

(3) Bringing into force of, termination of, and amendment to statutes by regulation (para. 5.06)

We believe that it is better, whenever possible, for Parliament to fix the date in an Act of its commencement. We recognise, however, that in the case of some new Acts or completely redrafted Acts the practice of fixing the date by Order in Council is unavoidable, having regard to the date of the passing of the Act and the time required to prepare and enact, after consultation with those affected, the detailed regulations necessary to enable the Act to operate effectively from its commencement. The Cain report rightly draws attention to the inconvenience that this practice causes and for that reason alone we think that it should be used sparingly.

The termination of an Act by Order in Council is another matter. In principle, it is not desirable. However, the only example we know of was the provision in the Stabilisation of Remuneration Act 1971 by which the Act was to expire on 30 June 1972, or on such earlier date as might be fixed by Order in Council. As this is such

an exceptional case, and no other case has been cited to us, we do not consider that any recommendation is necessary.

It is accepted that Parliament should not grant power to amend substantive provisions of an Act by Order in Council. Powers to alter machinery or procedural provisions in Schedules to an Act are generally acceptable, but should be used with circumspection.

If power to amend such a Schedule is exercisable by a Minister's notice, we agree that the notice should be published in the Statutory Regulations series, where it can be more readily traced than in the Gazette. We are informed that publication in the Gazette is not the usual practice.

(4) Delegates (para. 5.07)

The usual delegate in New Zealand is the Governor-General in Council and this complies with the principle that the delegation of power should be to a trustworthy delegate. There are however a number of delegations to Ministers of the Crown and others. The delegate should be chosen with care and the choice of a Minister as delegate should be generally limited to machinery matters. It is undesirable that civil servants should be empowered to make regulations for anything other than routine machinery matters.

(5) Consultation (para. 5.11)

It is the practice in New Zealand for other interested departments of State and outside bodies to be consulted on regulations but in only a few instances does the legislation require prior consultation. The Committee favours the practice of consultation and suggests that in appropriate statutes the practice be given legislative form. At this stage, however, we see little merit in a general statutory requirement for "consultation as far as possible".

(6) Publicity (para. 5.12)

Regulations are published in the Statutory Regulation series. Any question whether an instrument is a regulation is decided by the Attorney-General. So far as the Committee is aware this power has not given rise to any controversy but it considers that in principle the power of final determination should lie with the Courts.

We see a need to continue the present distinction between those instruments which must be published and those that may be published. However, the power of the Attorney-General to exempt any regulation from the requirement of printing and sale "if in his opinion it is unnecessary or undesirable" should be restricted, and the circumstances in which the power may be exercised should be prescribed.

We accept the desirability of a general reprint of the regulations as soon as practicable.

We agree that constant attention should be paid to bringing regulations to the notice of those affected by them but we have no solution better than existing practice for this continuing problem.

(7) Date of commencement and prior publication (paras. 5.14, 5.15)

In view of our next recommendation we do not consider any change in the present practice is necessary.

(8) Defence if offence committed between making and publication (para. 5.16)

We subscribe to the general proposition that the citizen should be protected from prosecution for the breach of an unpublished regulation. There should be enacted a provision that it shall be a defence to a criminal prosecution that the regulation offended against was not published at the time of the commission of the offence.

(9) Tabling of Regulations (para. 5.17)

All regulations are required by s.8 of the Regulations Act 1936 to be laid before Parliament but the effect of failing to do so is not clear. We believe that the provision is, and ought to be, directory and not mandatory. One reason for this view is that the requirement of tabling is to assist Parliamentary scrutiny and is not intended to be a means of giving notice to persons affected. We do not find ourselves in accord with the Australian provision that failure to lay results in the regulations being void and of no effect.

We agree that tabling is desirable and we are aware that through an oversight some regulations either have not been tabled at all or have not been tabled within the prescribed time. Some central agency of the Executive should be charged with the responsibility of ensuring compliance with the Act.

(10) Scrutiny of Regulations (paras. 5.18, 5.21)

The present procedures and practices for scrutinising regulations appear to be satisfactory and we have no recommendation to make.

(11) Confirmation of Taxing and Emergency Regulations (paras. 5.08, 5.23)

In general, taxing by regulation ought to be avoided and New Zealand is normally free of this undesirable practice. Where it exists, however, such taxing regulations and emergency regulations should be subject to confirmation by an Act.

(12) Sub-delegation (para. 5.28)

In principle a delegate should not sub-delegate his powers. Although sub-delegation is not common in New Zealand instances of power to do so exist and we recognise its occasional necessity. It should, however, be kept to a minimum.

(13) Hidden or retrospective penalties (para. 5.29)

While we agree with the principle, no action seems necessary at this stage.

REVIEW OF TRIBUNALS

34. Our consideration of all the tribunals listed in the 1965 Department of Justice booklet "The Citizen and Power" is almost complete. We will also review legislation that has been enacted since 1965 to ensure a complete study of statutory tribunals.

Aircraft Accident Investigations

35. The Civil Aviation Act 1964 established an Office of Air Accidents Investigation under a Chief Inspector of Air Accidents who has the duties and functions imposed or conferred on him by the Civil Aviation (Investigations of Accidents) Regulations 1953.

36. The regulations provide for two forms of inquiry which may be described as formal and informal. The informal inquiry is by far the more frequent.

Informal inquiries

37. Provision exists under regulation 9 for an inspector to investigate the causes and circumstances of an aircraft accident and for this purpose he has the powers set out in regulation 10. The purpose of the investigation, as evidenced by regulation 11, is to establish the cause of the accident so that appropriate measures may be taken for the preservation of life and the avoidance of similar accidents in the future. Although an investigation is intended to be remedial, in fact the majority of air accidents are attributable to human failings. As a result the inspector becomes, as the Chief Inspector acknowledges, "concerned with a matter of blameworthiness despite the principal objective of non-concern with personal liability."(1) As the findings could adversely affect the reputation or livelihood of a person the dictates of natural justice require that such a

(1) Letter of 14 November 1973

person should be given the right to a fair hearing before a decision is made and this is provided for in regulation 10. Subclause (3) of that regulation reads -

> "(3) Where it appears to the Inspector that any degree of responsibility for the accident may be attributed to any person, and if it appears to the Inspector to be practicable to do so, that person, or if he be deceased, his legal personal representatives shall be given notice that blame may be attributed to him and be permitted to make a statement or give evidence and to produce witnesses and to examine any witness from whose evidence it appears that he may be blameworthy".

The Committee is concerned with the subjective nature of the discretion reposing in the words "if it appears to the Inspector to be practicable to do so". The Committee considers that the right to be heard should not be lightly disregarded and should be open to judicial review. The Committee therefore recommends that those words be deleted and the words "if practicable" substituted. We understand that such an amendment would better reflect the present practice of the Office of Air Accidents Investigation.

38. We have also been told of certain practical difficulties arising out of the words "any degree of responsibility" and the inordinate delays that often occur before a person exercises the right to make representations or call evidence.

39. As virtually all accidents are attributable in some degree to human error, the provisions of the subclause must be observed in all such cases however small or unimportant the error. This is unnecessary but a procedure should be adopted whereby differences of opinion over what is or is not small and unimportant might be determined. What we propose is that the inspector advises the person concerned of the finding and if that person's reputation or livelihood is likely to be adversely affected he shall have the right to be heard. Any disagreement over the right of audience should be determined by a magistrate. Our detailed views have been

conveyed to the appropriate authority and we recommend that the regulations be amended to provide accordingly.

40. On the problem of delays, we suggested that the regulations might provide for an inspector to give reasonable notice to a person to make his statement on or before a specified time or to produce his evidence at a time and place then specified. There should be a power of adjournment. The regulations should provide and the notice should state that on failure to make a statement or produce evidence before or on the fixed date, the person wishing to be heard loses his right to do so.

41. We believe, however, that an appeal should lie to a Magistrate's Court against an unreasonable refusal to grant an extension of time.

Formal inquiries

42. The formal inquiry is held in public before a Court of Inquiry consisting of a magistrate or other judicial officer as president and not less than two assessors possessing aeronautical engineering or other special skill or knowledge. The court is an ad hoc body appointed by the Minister of Civil Aviation and Meteorological Services. An inspector may be appointed an assessor.

43. The court is a fact-finding tribunal and is not concerned with the civil or criminal liability of any person though proceedings under either head may follow the inquiry. Hence those concerned could be adversely affected by the court's findings.

44. The regulations make detailed provision for the conduct of the inquiry, the nature of evidence that may be received, the powers of the court to summon witnesses, persons who must or may be joined as parties, and the examination and cross-examination of witnesses. The court is deemed to be a commission of inquiry and by virtue of

section 10 of the Commissions of Inquiry Act 1908 disputed points of law arising in the course of an inquiry may be referred to the Supreme Court.

45. These provisions seem to provide adequate safeguards and except for the reservations noted below we have no recommendations to make on the constitution, membership or procedures of a Court of Inquiry established under the regulations.

46. The reservations we have relate to the appointment of the members of the court. Under regulation 13(3) an inspector may be appointed an assessor. This possibility patently infringes an important principle of administrative law that no-one should be a judge in his own cause. Inspectors are appointed by the Minister (regulation 9(1)) and are subordinate to a Chief Inspector. The Minister sets up the Court, he is a party to the inquiry (regulation 19) and by virtue of regulation 20 plays a leading role in the inquiry. In addition the Chief Inspector has the duty of assisting at all public inquiries and it is clearly envisaged that he would be the chief witness. In these circumstances the impartiality and independence of the Court might be questioned. We see no purpose in and no need for special representation of the Inspectorate on the Court.

47. Accordingly we recommend that subclause (3) of regulation 13 be revoked.

48. We have, too, the situation where the Minister of Civil Aviation and Meteorological Services is inevitably a party to the inquiry and appoints the members of the Court. A preferable procedure would be that followed in other cases, namely, that the Minister of Justice should appoint the members after consultation with the Minister of Civil Aviation. We recommend accordingly.

Apprenticeship Committees

49. Local Apprenticeship Committees, constituted under the Apprentices Act 1948, have jurisdiction over all apprenticeship contracts. In the absence of such a committee a District Commissioner has that jurisdiction. In all cases an appeal lies from the Committee or Commissioner to the Court of Arbitration save on the cancellation of a contract or the suspension or discharge of an apprentice for misconduct, in which case the appeal is to a magistrate.

50. Our investigation disclosed that the number of appeals to the Court of Arbitration is very small. Most of them are concerned with such matters as the employer withholding increments due to failure by the apprentice to meet or maintain certain standards, usually in respect of education, and with general questions as to what matters should appropriately be included in apprenticeship contracts. Very rarely did counsel appear, the apprentice generally appearing for himself or with a parent, guardian or family friend. This informal procedure coupled with the virtual absence of questions of law and the lack of any complaints about the present procedure has prompted us to conclude that there is no need to recommend any change to either the procedure or the appellate structure.

Coal Mines Council

Industrial disputes

51. Under the Coal Mines Act 1925 it is the function of the Coal Mines Council to settle industrial disputes. The Minister of Mines may refer matters to the Council as may organisations representing employers and employees. The Council may regulate its procedure in such manner as it thinks fit and it may move on its own initiative.

52. The Council consists of three members appointed from time to time by the Minister of Mines. One of the three is appointed by the Minister as chairman. Each member holds

office during the pleasure of the Minister. The chairman is a senior member of the Mines Department and the other members represent respectively the interests of employers and of workers. The emphasis is on selecting persons who are familiar with the industry. The Act itself states that in making appointments to the Council the Minister must have regard to the desirability of having a member especially conversant with matters affecting owners of coal mines and a member especially conversant with matters affecting workers in coal mines.

53. The bulk of the work involves local disputes. Most disputes are settled locally but where a matter is not so settled then it may be referred to the Council.

54. The Council is required to take such steps as it considers necessary to ascertain all matters relating to any industrial dispute referred to it and to determine the merits of the dispute. The Council must permit all the parties to a dispute and their representatives to appear before it and to be heard.

55. The practice is for the parties to make written and oral submissions at the hearing and to be questioned by the Council. Decisions are made by the Council in committee.

56. There is no provision for legal representation and we understand that no section of the industry is seeking to be represented at hearings by legal representatives.

57. Except on the ground of lack of jurisdiction, no proceedings or decision of the Council can be challenged, reversed, quashed or called in question in any Court.

58. The Council sometimes directs that the fundamental cause of a particular dispute should be discussed at the annual National Agreement Conference held by employers and employees in the mining industry.

59. The machinery in several respects does not accord with desirable principles as we see it. For instance, the appointments are made at pleasure, there is no requirement that there be prior consultation with the Minister of Justice before appointments are made and there is an extensive privative clause. However, it would appear that the machinery has worked well and in an area which has seen a good deal of industrial conflict in the past. In these circumstances we do not make any recommendation for change.

Disciplinary matters

60. There is provision under the Coal Mines Act 1925 enabling the Minister of Mines to direct that a formal investigation be held by a Court into cases where the holder of a certificate of competency has been convicted of an offence against the Act, or is incompetent, or has been guilty of negligence or of misconduct. The Court consists of a stipendiary magistrate and has the powers of a Magistrate's Court as for summary offences. There is provision for the appointment of assessors by the Minister and by the holder of the certificate of competency. An appeal lies to the Supreme Court.

61. The machinery seems to accord with desirable principle except that the Act should place a duty on the Minister of Mines to consult the Minister of Justice before he proceeds with the appointment of a stipendiary magistrate as a chairman of the tribunal.

Commissioner of Patents

62. We considered the powers of the Commissioner of Patents under the Patents Act 1953, the Trade Marks Act 1953, the Designs Act 1953 and the regulations made pursuant to those Acts. We studied the procedure for hearing objections, the extent of the right of appeal from such decisions and whether the hearing at first instance should properly be a function of the Commissioner of Patents.

63. From inquiries among those working in various capacities in the patent field we concluded that there was no criticism of the procedure prescribed by the legislation or of the practice adopted by the Commissioner. Accordingly the Committee decided to make no recommendation.

Committee of the Board of Health

64. Provision is made in s.143 of the Hospitals Act 1957 for a committee to hear appeals by licensees or managers of private hospitals or by a medical practitioner from decisions of the Director-General of Health in respect of private hospitals. As that committee had never functioned we decided that there would be little point in taking further action.

Compulsory Acquisition of Land

65. In past reports we have advocated reform of this area of the law and we have previously reported that discussions were being held with the Ministry of Works and Development to this end.

66. Last year we forwarded to the Ministry a copy of Mr R.I. Barker's paper(1) with an indication that we favoured the adoption of procedures similar to those incorporated in United Kingdom legislation, and followed in Canada, which provided for a public inquiry to hear objections. The department's views were requested.

67. Subsequently we were informed that the department was studying the question of the possible benefits of combining the hearing of objections to a notice of intention to take land with the hearing of objections and appeals to requirements under the Town and Country Planning Act for the designation of land as a public work. We were told that that study was of necessity combined with a review then being undertaken by

(1) (1969) N.Z.L.J. 251

a special review committee in relation to the Town and Country Planning Act.

68. It is our intention to continue the review of this matter.

Educational Tribunals

69. Within the educational system there are a number of tribunals established for a variety of purposes. In this report we consider tribunals dealing with the discipline, the assessment and classification and the appointment of schoolteachers and administrative staff. There are other bodies that are still to be studied, for example, those exercising disciplinary powers over pupils. Nor have we considered the power to suspend teachers, this power will be considered when we review public service tribunals.

70. In our study of the various tribunals we tested them against the principles that -

(i) The chairman should be qualified in law;
(ii) The Minister of Education should be under a statutory duty to consult the Minister of Justice before proceeding with the appointment of a chairman;
(iii) All members should be appointed for a fixed term;
(iv) A party should be allowed to be represented by a lawyer; and
(v) Reasons for decisions should be given.

71. As in the past we have not attempted to confine the tribunals within a theoretical straitjacket but rather we have looked at the particular circumstances of each tribunal. This approach is reflected in the view we have adopted in respect of each tribunal.

72. In our review we have not found the need for radical changes. We mention where in our view some changes are called for. We appreciate the willingness of the department to consider carefully various points we have made.

Disciplinary tribunals

Primary schoolteachers

73. Under s.159 of the Education Act 1964 an Education Board must notify a teacher of a charge and where it subsequently decides to proceed with the charge, depending on whether or not within a reasonable time the teacher admits or denies the truth of the charge, it is required to refer the matter to an investigating committee. The Board has power to suspend pending the hearing and determination of a charge.

74. The investigating committee consists of not more than four persons including one appointed by the appropriate teachers' organisation. The committee investigates and reports to the Board which has power to impose a penalty within the range of those provided by the Education Act. There is provision for representation by counsel.

75. We were concerned whether the three members of the committee appointed by the particular Education Board, the other member being appointed by the teachers' organisation, were normally members of the Board itself. Our inquiries of the department established that all Boards had been advised in 1967 to go outside their own membership when making appointments to such a committee. This course is preferable.

76. The next point of concern was whether in fact the committee in reporting to the Board made recommendations as to penalty, whether the teacher concerned received a copy of the report and notes of the evidence and if so whether he was permitted to make submissions to the Board in respect of the report. We are informed that a Board would expect a committee to make recommendations including, if the committee thought fit, a recommendation as to penalty.

77. It is the practice for the teacher concerned to be given copies of the committee's report and of the notes of evidence. A Board would be prepared to hear, and take account of, representations by the teacher at that stage.

78. Finally, in respect of this tribunal we were concerned whether the discretion to allow costs, irrespective of success was properly placed in the Minister. We understand that this question will be further considered by the department in the course of a review that it is making of this tribunal.

Teachers other than primary teachers

79. Under regulations made in 1969 a separate disciplinary code governs teachers employed in secondary schools, technical institutes, and the New Zealand Technical Correspondence Institute. There is provision for the setting-up of a Teachers Disciplinary Board to deal with complaints against a teacher. The Board consists of three members. The chairman must be a barrister or solicitor of seven years' practice and is appointed by the Minister of Education for a fixed term. The other members are appointed on an ad hoc basis. One member is appointed by the appropriate teachers' organisation and one by the association which represents controlling bodies.

80. Legislation prescribes the offences for which teachers may be subjected to a disciplinary board. These include disobedience, negligence, gross inefficiency, absence without leave and conduct which is unbecoming a member of the teaching service.

81. The procedure followed after a complaint is lodged against a teacher is for the controlling board to appoint a person or a subcommittee to make a preliminary investigation. This procedure was discussed in Furnell v Whangarei High

Schools Board.[1] A report is subsequently submitted to the Board and if the Board believes that an offence under the Education Act has been committed then details are given to the teacher the subject of the complaint and his suspension becomes mandatory. He is given reasonable time to make a statement, in person or in writing, to the Board after which the Board decides whether the charge should be referred to the Director-General of Education for consideration or to a Teachers Disciplinary Board for hearing and determination. The Director-General may also refer the charge to the Disciplinary Board. The Board has power to determine the matter and to impose a penalty within the scope of the Education Act. It may award costs.

Right of appeal - teachers

82. There is a right of appeal for primary and secondary teachers to a body styled the Teachers Court of Appeal from decisions of either the Teachers Disciplinary Board or an Education Board. The appellate body consists of three members. The chairman is a stipendiary magistrate and is appointed by the Minister of Education. One member is nominated by an organisation representing teachers and one by the respondent Board.

83. Appeals are heard by way of rehearing. There is power to order the attendance of witnesses and to fine for failure to attend. There is power to award costs. Appellant may appear himself or be represented by some other person.

84. It is the practice of the Court to give reasons for its decisions.

(1) [1971] NZLR 782 (C.A.);
[1973] 1 All E.R. 400 (P.C.)

Administration and clerical staff

85. There is an appeal board to hear appeals by full-time officers of Education Boards against summary dismissal or termination on grounds other than the attainment of the prescribed retiring age. The appeal board consists of three members. The chairman is appointed by the Minister of Education and must be a barrister and solicitor of not less than seven years' practice. One member is appointed by the Education Board and another by the Education Officers' Association Incorporated.

Our views

86. We consider that the legislation relating to the Teachers Disciplinary Board, the Teachers Court of Appeal and the Officers Appeal Board should place on the appointing Minister a duty to consult the Minister of Justice before the former appoints the chairman.

87. Members of the Teachers Disciplinary Board are not appointed for fixed terms and this runs counter to one of the principles we have put forward in the past. However, it would be difficult to apply this rule to the ordinary members because they change from time to time depending on the particular case which arises. The legislation should require that the chairman be appointed for a fixed term.

88. The Education Department is considering the question of extending to primary teachers the system described earlier which exists for teachers employed in secondary schools, technical institutions and the New Zealand Technical Correspondence Institute. This is a more satisfactory procedure if only because of the requirement for an independent chairman who is legally qualified.

Cancellation of teachers' registration for misconduct:

89. Section 135 of the Education Act provides that if in the opinion of the Director-General any person whose name appears on the teachers' register has been guilty of immorality, or gross misbehaviour, or gross inefficiency, or other conduct unfitting him for employment as a teacher, the Director-General may, with the approval of the Minister of Education, cancel the certificate and registration of that person. Before cancellation takes effect the Director-General must give not less than 42 days notice of cancellation to the person affected and must set out the grounds with sufficient particularity. The teacher has a right of appeal to a magistrate appointed by the Minister of Justice. There is a right to be represented by some other person or by counsel. The Committee has no evidence that this procedure operates other than satisfactorily and we make no further comment.

Assessment and Classification

Teachers Appeal Board

90. This Board of three persons has the specialised function of passing upon the qualitative assessments of the merits of primary and secondary teachers. The chairman is appointed by the Minister of Education. One person represents the Department of Education and one the appropriate teachers' organisation. Appellant may conduct his own appeal or may be represented by someone who is a teacher. Reasons for decisions are not given.

Our views

91. From the department's comments on our questions we concluded that -

(i) The nature of the work did not call for the appointment of a legally qualified chairman. It was far more important that members should have

broad knowledge of the education service. We also took into account the difficulty experienced in recent times in securing the services of suitable chairmen who are legally qualified.

(ii) Although the Minister of Education is responsible for the administration of the Education Act the Minister of Justice should be involved when consideration is being given to the appointment of chairmen. As noted above (para.29) this principle has recently been followed by Parliament in several instances. Although there could be practical difficulties in appointing the ordinary members of the Board for fixed periods the chairman should be appointed for a specific term.

(iii) It is not necessary for provision to be made for legal representation in proceedings before the Board as the appeal primarily involves a subjective assessment of the appellant in the light of his day by day work in the school. The teacher advocate knows the assessment system and the criteria being applied and through his experience acquires considerable relevant knowledge. In addition we take into account that there is no indication that teacher organisations are dissatisfied with the present system.

(iv) We should not, in the absence of criticism or pressure from the teacher organisations, recommend that reasons be given for the Board's decisions.

Review Committee (established under the Education Boards' Employment Regulations 1958)

92. This committee consists of six members, two of whom represent the Department of Education, two the Education Boards' Association Incorporated and two the Education Officers' Association Incorporated.

93. Most of its work is administrative in character; it reviews salary scales and makes qualitative assessments of officers and of positions.

94. There is, however, a judicial element in one of its tasks. Where a full-time officer is dissatisfied with any determination in respect of his grading made by the Review Committee, he may apply to have the determination reconsidered. He is entitled to appear and present his case either with or without an advocate. It is not the practice of the committee to give reasons for its decisions. The committee may order that the officer's reasonable costs in attending should be met by his controlling board.

Our views

95. As a general principle it is unsound that the Review Committee hears appeals against its own decisions. However, the department points out that the staff are directly represented upon the committee and that this arrangement would have to cease if there were a right of appeal given to the usual type of independent body. They also point out that the appeals are heard in a less formal and more friendly atmosphere.

96. We understand that this machinery has been considered by the Educational Development Conference working party on organisation and administration of education, and that it forms a separate report (not designed for publication) which has been presented directly to the Minister of Education. The report will be very carefully studied by the department, the Education Boards and the Education Boards Officers'

Association. It is understood that it does not offer any simple solution. We propose to defer further consideration for the meantime.

Appointment

Primary teachers appeals

97. The Primary Teachers Appointment Appeal Board is at the apex of a network of appointment tribunals for primary and intermediate schools. It has three members. The chairman is appointed by the Minister of Education. One member is appointed on the recommendation of the Education Boards' Association Incorporated and one on the recommendation of the teachers' organisation. These appointments are for 3 years. An appellant may present his case in person or be represented. As a rule witnesses are not heard. Reasons for decisions are not given.

98. An appeal lies to the Board after the appointments committee of an education area has made the provisional appointment to an advertised staffing position in that area. The appeal is in respect of non-appointment and there are various rights attaching to teachers with different classifications.

Our views

99. After studying the department's comments we are satisfied that -

(i) The key factor in determining the appeal is a subjective assessment of the relative suitability of the applicants in the light of the terms of the advertisement. It seemed to us that a knowledge of the appointments system is the paramount need and a legal qualification was less essential.

(ii) The Minister of Education should be required to consult with the Minister of Justice regarding the appointment of the chairman.

(iii) Legal representation is not called for in a specialised field such as this one where teacher advocates appear to be efficient and effective.

(iv) There is insufficient justification for a legal requirement that reasons be given. Teacher organisations have raised no objection.

(v) At present the clerk is provided by the department but in this case we see no objection as he provides no more than a routine servicing function and does not keep the notes or minutes and as the limited number of cases makes it convenient in practice.

Indecent Publications Tribunal

100. The Secretary for Justice requested the Committee's advice as to whether the Tribunals Division of the Department of Justice could properly undertake the servicing of the Indecent Publications Tribunal. When the Tribunal was established the department, as the department responsible for the administration of the Indecent Publications Act 1963, allocated the servicing functions, the most important of which is the provision of a secretary, to the staff of the Supreme Court. This decision was in accord with the policy we stated in our first report (see para. 66) that a tribunal should not be seen to be staffed by officers of departments which customarily appear before it.

101. Since our first report the Tribunals Division has developed to the position of servicing many administrative tribunals and is thus properly qualified to undertake the servicing of the Indecent Publications Tribunal. In recommending acceptance of this arrangement we consider we are not in conflict with the rule proposed in that report that in fact and appearance tribunals must be seen to be completely independent.

102. The Secretary for Justice and the Comptroller of Customs (or, with the leave of the Minister of Justice or the Chairman of the Tribunal, any person) are the statutorily designated authorities for referring books, recordings and such like to the Tribunal. By far the majority of books are referred directly by the Comptroller of Customs or by a solicitor, usually the publisher's, with the leave of the Minister of Justice. The Secretary for Justice seldom uses his own power of reference. He has, as have other interested bodies and organisations, made submissions on books that have been, or could become, the subject of some public controversy. The administrative relationship between the Secretary for Justice and the Tribunals Division is the same as that between the Secretary and the staff of the Supreme Court.

103. We had no hesitation in informing the Secretary for Justice that we would support his proposal as appropriate to the functioning of the Tribunals Division of his department.

Marine Farming

104. The Marine Farming Act 1971, like its predecessor the Rock Oyster Farming Act 1964, requires intending marine farmers to obtain a licence before embarking on a marine farming enterprise. Licences are granted by the controlling authority, who is in most cases the Minister and in others the relevant harbour board.

105. Provision is made for general notice of applications and for specific notice to stated organisations and individuals. Objections may be made and reports are obtained. The Act does not require, however, any formal procedure to be followed other than requiring the controlling authority to have regard to all submissions made by the objector and by the applicant and to "the rules of natural justice generally". The controlling authority is to uphold the objection if it is satisfied that the issue of a lease or licence would interfere unduly with any existing right of navigation, commercial fishing, existing or proposed recreational or scientific use of the foreshore or sea in the vicinity or would otherwise be contrary to the public interest or would unduly affect the use by the proprietor of adjoining land.

106. We understand there are 131 current leases for rock oyster farming. This indicates appreciable growth in marine farming activities and raises the question of a full and fair hearing for all interested parties including representatives of the general public and of those concerned about the environment.

107. We have yet to conclude our study of this topic although we tend to the view that there should be a hearing, perhaps before a magistrate and perhaps in the form that now exists under the Mining Act 1971, resulting in a report and recommendation to the Minister.

108. Our further study will include consideration of what persons should be entitled to object and whether there should be a right of appeal against the setting aside of areas for marine farms by the Minister. The current provisions for forfeiture of licences will be reviewed and consideration given to the question of the issue of licences at a lower level than that of the Minister.

109. We should be in a position to state our recommendations in our next report.

Noxious weeds

110. In our sixth report (para. 8) we recorded that we would consider the desirability of an independent authority hearing appeals under the Noxious Weeds Act 1950, instead of the present provision of the Act. Under s.5 of this Act an inspector may require any occupier of land on which noxious weeds are growing to clear that land within a specified period. The appeal authority is the local authority for the district where the land is situated, or such person as the local authority, or in some cases the Minister of Agriculture, may appoint in that behalf. The decision of the appeal authority is final.

111. The Act also provides that upon the determination of the appeal, the inspector is to serve a further notice upon the occupier. Non-compliance with the requirements of the inspector under the further notice renders the occupier liable to prosecution in a Magistrate's Court. From the decision of the magistrate imposing a penalty there is a right of appeal to the Supreme Court.

112. Our enquiry of the Ministry of Agriculture and Fisheries as to the desirability of appeals under the Noxious Weeds Act 1950 being to an independent person or body was referred to in our last report (para. 8). This question was considered by a special Committee of Inquiry into Noxious Weeds Administration which reported in 1973. That committee supported a right of appeal to an independent authority and proposed that the appeal should be to the Noxious Plants Council or to a designated authority, suggesting by way of example a solicitor of the Supreme Court, whose decision

would be final. The Council does not seem to us to be an appropriate body and we considered that this appeal should be to a magistrate rather than to the Council or a solicitor. In our opinion a magistrate's independent status, range of experience, availability and local knowledge qualify him as the most suitable choice for the task.

113. This view was put to the Ministry but at the time of presenting this report we have not been informed of its reaction.

Poisons Committee

114. The Poisons Act 1960 grants to registrars, to the Poisons Committee and to magistrates wide powers of licensing and enforcement. Section 42 of that Act gives any person affected by a registrar's decision or requirement the right to lodge an appeal with the Board of Health which will then in turn appoint a committee to hear the appeal.

115. So far there has not been any appeal hearing. Consequently we have no clear indication as to the procedure that would be followed.

116. In view of the absence of appeals and the possibility that the legislation might be revised further, consideration of the form and procedure of any appellate structure constituted under the poisons legislation has been deferred.

Rates Postponement

117. In 1973 a legal practitioner suggested to the committee that in the course of our examination of appeals from administrative tribunals we might give consideration to recommending an appeal to the Administrative Division from decisions of local bodies in respect of certain rating matters. He was especially concerned with decisions made pursuant to s.90(4) and s.100(2) of the Rating Act 1967 which relate to eligibility for the postponement of rates. The question of the quantum of relief does not involve the local authority, such matters being determined by the Valuer-General.

118. We discussed with the Secretary for Local Government the practice and procedure followed in making these decisions and the question of whether there should be the suggested right of appeal.

119. The Secretary for Local Government stressed that the local authority was making a decision entirely on factual grounds in deciding such matters as whether or not the applicant's property is a residential property in an industrial or commercial area and thus entitled to a postponement of rates. The view was also expressed that the exercise of the right of objection is itself sufficient to draw to the attention of the local authority any facts it may have overlooked and consequently nothing would be gained by having a different authority to handle appeals.

120. We attach some weight, however, to the fact that in considering eligibility for postponement the local authority may be required to determine whether or not the rateable property in question falls within the definition of farm land in s.2 of the Act and this could involve questions of law, or of fact or of mixed fact and law. For example, is a property that is used for the sterilisation and processing of soil for sale to gardeners used for "agricultural or horticultural purposes"; is the property used "principally" for agricultural or horticultural purposes where such use is confined to a small area but produces a greater return than the remainder of the land?

121. The Secretary subsequently suggested we might consider the possibility of the Valuer-General being given the function of determining whether the land is eligible for rate post-ponement in addition to his existing function of determining the quantum of the postponement value. We considered such a step retrograde in reducing the involvement of the local authority.

122. The view we expressed to the department was that it would be preferable to leave the primary determination of eligibility for the postponement of rates with the local authority and, rather than provide an appeal to a new tribunal, confer a right of appeal to a magistrate. Magistrates are already involved in land valuation proceedings.

123. In a further reply the Secretary continued to favour the Valuer-General as the appeal authority but we adhere to our earlier view. We therefore recommend that the appeal authority be a magistrate.

Snow Loss Reserve Committee

124. Established under the Land and Income Tax Act 1954, sections 130-136, the committee administered funds to assist farmers who lost stock or income as a result of snow. As the committee is now defunct, the scheme having been absorbed into the farm income equalisation scheme, we took no further action.

Tariff and Development Board

125. Although this Board is regarded as an administrative tribunal we recognised throughout our review of its powers and procedures that it does not decide but merely makes recommendations to the Minister of Trade and Industry.

126. The Committee studied material supplied by the Board and some members had personal knowledge of its operations. The Board follows a relatively informal procedure but this is not to the disadvantage of those who appear before it and who often are not represented legally. The Committee was satisfied that such procedure promotes rather than detracts from the merit of the hearing.

127. We understand that it may take up to twelve months for the Board to produce its final report on a particular subject but in view of the fullness of the hearing, the complexity of the issues, the work load the Board has been carrying and, importantly, the existence of the Emergency Protection Authority, we have no criticism of what could appear to be at first view undue delay.

128. We do not consider there is any need for the establishment of a formal appellate structure because of the full hearing and because there is the indirect method of obtaining review of the recommendation by way of representations to the Minister. Decisions made on the Board's recommendations can also be questioned in Parliament. A further consideration is that many decisions arising from the Board's recommendations involve Government economic policy.

129. We examined a booklet produced by the Tariff and Development Board entitled "Notes for Information and Guidance of Interested Parties" which in our opinion admirably fulfills the purpose of informing those appearing before it of the Board's practices and procedures. We commend this booklet to other tribunals as a well-set-out, readable and appropriately drafted document and believe that if other tribunals were to produce similar guides in respect of their jurisdiction they too would benefit from thus informing those who appear before the tribunal.

130. We do not recommend any change.

Tobacco Quota Committee

131. After considering a copy of the Tobacco Growing Industry Bill as introduced early last year the Committee was concerned that at no stage in the procedure for quota allocation was it proposed to give an aggrieved grower a right to a hearing.

132. We considered that the need to establish quotas before the season commenced and the practical difficulties of conducting a hearing for all interested parties at this stage could be sufficient justification for the allocations initially being made by an administrative procedure. However, we could see no justification for denying an aggrieved grower a hearing when appealing against his allocation.

133. We pursued this point informally through the Department of Justice and we are now informed that the point of this objection will be met in any proposed legislation.

FUTURE PROGRAMME

134. Much remains to be done and the matters for study over the next twelve months will be settled having regard to the following topics which are on our programme -

(i) Bylaw-making powers and procedures of local authorities;

(ii) The constitution, procedure of and appeals from administrative tribunals in general, including the question whether there should be a code of procedure;

(iii) The publication of decisions of administrative tribunals;

(iv) The power to award costs against complainants and appellants;

(v) The grounds on which an application for judicial review may be made;

(vi) The awarding of damages for acts or omissions of administrative authorities;

(vii) A study of the discretionary powers conferred by statute on public authorities.

APPENDIX

LEGISLATION CONFERRING JURISDICTION ON THE ADMINISTRATIVE DIVISION

Soil Conservation & Rivers Control Act 1941, s.103
Land Valuation Proceedings Amendment Act 1968, s.2
War Pensions Amendment Act 1968, s.4
Sale of Liquor Amendment Act 1968, s.3
Cinematograph Films Amendment Act 1969, s.4
Animal Remedies Amendment Act 1969, s.8
Land Amendment Act 1970, s.12
Medical Practitioners Amendment Act 1970, s.2
Pharmacy Act 1970, s.40
Trade Practices Amendment Act 1971, s.14
Mining Act 1971, s.239
Town & Country Planning Amendment Act 1971, s.11
Distillation Act 1971, ss 11 and 20
Nurses Act 1971, ss 46 and 47
Clean Air Act 1972, s.35
Broadcasting Act 1973, s.85
Coal Mines Amendment Act 1972, ss 42 and 49
Accident Compensation Act 1972, s.168
Social Security Amendment Act 1973, s.4
Plant Varieties Act 1973, s.30

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(Roman numerals refer to the Report;
small numerals to paragraphs;
bracketed references denote subparagraphs)

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