The State Administrative Tribunal of Western Australia:

Facilitating citizen redress

BY *BERTUS DE VILLIERS*

The state of Western Australia established the State Administrative Tribunal (SAT) in January 2005.

The new tribunal is intended to improve administrative fairness and to simplify review of administrative decisions of the state and of local authorities in the state. Its creation is a practical example of how states in a federation can experiment with institutional development and reform with the aim to better serve the interests and protect the rights of their citizens.

The tribunal has become the most recent laboratory in Australia aimed at exploring ways to simplify review of administrative decisions, introduce informal processes in hearings, encourage aggrieved persons to represent themselves, and expand the accessibility of the judiciary. This follows wide agreement in Western Australia that administrative review had become very complex and confusing since it was vested in numerous bodies, time consuming, costly and suffering from a lack of transparency.

Much has been written about the pros and cons of states in federations being able to develop institutions that suit the needs of their citizens. Although this report does not explore the respective points of view, it is generally accepted that federalism allows flexibility for states in a federation to become a living testing ground for new ideas from which other states may draw lessons.

Characteristics

SAT is empowered by the State Administrative Tribunal Act 2004 of Western Australia to review administrative decisions by the state and local authorities. One key objective is to provide for the review of administrative decisions in a manner that is fair and according to the substantial merits of the case. In doing so, the tribunal attempts to act as speedily and with as little formality as is practicable. For example, more than 90 per cent of applications are listed for a first hearing within two to three weeks from making the application. The first hearing is used to clarify issues and program the application for a formal hearing or for mediation. In terms of its review function, it may affirm a decision, vary a decision or set aside a decision and substitute its own. The tribunal may also refer a decision back to the decision makers and invite them to reconsider.

The tribunal is interested not only in the fairness of the processes that led to a decision, but also in the substantial merit of an administrative decision. The test of

– Photo: Brian McMorrow

Western Australia Supreme Court in Perth: appeals from the SAT can wind up here.

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"substantial merit" sets it apart from many other administrative review bodies where the focus is only on procedural and not substantial fairness.

With its more than 140 Acts of Parliament, as well as delegated legislation, the State Administrative Tribunal is the most comprehensive administrative review body of its kind in Australia. In its administrative review functions, it takes over jurisdiction that previously fell within the purview of the Supreme Court, District Court, Local Court and the Court of Petty Sessions. In addition, the review functions that were previously held by ministers and various other public officials have been transferred to the tribunal.

Practical value

In practical terms, within the short period of its existence the tribunal has contributed to improved administrative review for the people of Western Australia.

It brings administrative review of decisions under a single body and thereby reduces the complexity and cost of maintaining a wide range of ad hoc bodies for review and other purposes. Previously, administrative review was very complex, spread across a large number of bodies and confusing. Now the State Administrative Tribunal offers a one-stop shop with full-time members and a pool of knowledge and expertise.

The tribunal is not a court of law and therefore it is not bound by the rules of evidence or technical legal procedures. According to one expert, tribunals of this nature operate in "some hazy air alongside the system of justice administered by the traditional courts." However, the tribunal is bound by the rules of natural justice and seeks resolution of complaints according to equity, good conscience and the substantial merits of a case. While it is user-friendly, it reflects the status and appearance of a court of law. In general, parties would feel as if they were in a court of law while, at the same time, being more at ease and relaxed since the processes are informal.

The tribunal provides consistency of decisions and therefore offers greater legal certainty and transparency to the public. It has a high educational value. In many instances in the past, review decisions were not published and therefore inaccessible to the public. Its decisions are published and accessible from its web site and from media reports from time to time. The tribunal has a direct and ongoing impact on improving administrative procedures of government departments and local governments for the benefit of the public.

It ensures that, with minor exceptions, administrative decisions of local and state authorities are reviewable by an impartial and independent body. Public officials are accordingly accountable to the Tribunal rather than to an in-house departmental review forum or review by the responsible minister. The separation between executive and judicial branches of government is therefore clearer.

Administrative Tribunals in Australia

The Australian federal government in Canberra has long had an Administrative Appeals Tribunal, upon which many State Administrative Tribunals were modelled. The State of New South Wales established its own Administrative Decisions Tribunal in 1997 and the State of Victoria created its Civil and Administrative Tribunals in 1998.

Its procedures and processes are intended to be simple and user-friendly. Complainants can be self-represented and the presiding member has a duty to explain to parties, as far as is reasonably practical, the nature of proceedings and any aspect of the procedure. It is estimated that up to 70 per cent of applicants are self-represented. The tribunal is not bound by legal technicalities. This means the general language during proceedings is usually easier to understand for members of the public.

The cost of lodging an application with the State Administrative Tribunal is substantially less than in a court. The point of departure in relation to other costs is that parties are responsible to bear their own cost if they chose to make use of legal representation or call expert evidence. One of the major causes for persons seeking review of decisions, namely the high cost of litigation, is therefore done away with. Only in very rare instances are costs awarded to a party.

One of the main objectives of the tribunal is to settle disputes through mediation. SAT members are trained in mediation techniques and skills. Mediation enables a complainant to engage public officials face to face in circumstances conducive to agreement rather than confrontation and conflict. Discussions held during mediation sessions are private and without prejudice. This further encourages solution-based processes rather than conflict-driven outcomes. The State Administrative Tribunal currently has a success rate of approximately 70 per cent in mediations.

The composition of the tribunal is characterised by the multidisciplinary background of its members. Although most of the 15 members are lawyers by training, the president is required to be a judge of the Supreme Court, while the two deputy presidents are required to be judges of the District Court. Other members come from non-legal backgrounds such as planning, psychology, psychiatry, finance, environment and welfare. This contributes to the tribunal's pursuing a non-legalistic approach to administrative review. Certain matters can only be considered by legally trained staff.

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Case studies

The four following case studies show the impact of the State Administrative Tribunal on administrative decision making:

It upheld a decision by the Commissioner of Police that a person can be refused a licence to work as a crowd controller on grounds of outstanding charges of indecent assault. In its decision the Tribunal found that, although it cannot make a finding regarding the criminal charges, the interests of society demand that such serious charges be taken into account to determine if the person is of "good character" to be licensed to deal with vulnerable persons. This decision was upheld on appeal to the Supreme Court in 2005. This decision has set the standard for dealing with similar applications where serious outstanding charges are involved in the licensing of persons who deal with members of the public.

It upheld a decision by the Department of Fisheries to restrict the issuing of fishing licences due to the scarcity of a certain fish resource. The Tribunal took into account the policy considerations that influenced the decision of the department and its obligation to protect scarce resources. The Tribunal accepted that the policy to restrict quotas has serious financial implications for operators and that some persons may miss the quota with a slight margin, but found that the department acted within its mandate.

It ordered a local government (the Town of Vincent) to pay costs incurred due to its unreasonable conduct in failing to undertake research of its own records prior to issuing a notice. The Tribunal emphasized that a local authority must show due diligence in dealing with the public and ensure that it takes into account its own records before it issues a notice.

It ordered a policy of a local authority to be struck down since it was inconsistent with the town planning scheme. The policy, which required approval of certain types of dwellings, was inconsistent with the town planning scheme that did not require such approval. The applicant could, therefore, erect the dwelling without planning approval.

The establishment of the State Administrative Tribunal shows that experimentation with structures of governance is ongoing, even in one of the older federal democracies of the world. The power of civil servants over the lives of ordinary citizens is immense. The tribunal offers citizens an opportunity to challenge administrative decisions that affect them — without costing an arm and a leg.