

**Letter 8 Reform of Administrative Appeals Tribunal 2004**

In this letter the Council suggests the addition of the words 'in the interests of the administration of justice' to proposed s 23(2)(b) of the Bill relating to the power of the President to direct a tribunal member not to continue to take part in proceedings. The letter also suggests that the power to assign, including the power to vary the assignment, of tribunal members to a Division or Divisions of the Tribunal, would better reside with the President of the Tribunal than with the Governor-General.

4 September 2003

Ms Katherine Jones  
Acting Assistant Secretary  
Attorney-General's Department  
Robert Garran Offices  
BARTON ACT 2600

Dear Ms Jones

**Reform of Administrative Appeals Tribunal**

In my letter to Ms Leigh of 19 August 2003, I outlined several concerns held by the Administrative Review Council in relation to proposed new section 23 of the *Administrative Appeals Tribunal Act 1975*.

In particular, I expressed the Council's concern that a measure of protection be provided for the interests of Tribunal members and for the overt independence of the Tribunal in circumstances where the President issued a direction under proposed new section 23(2)(b) of the Act for a Tribunal member not to continue to take part in proceedings.

As noted in the letter, such direction could amount to a de facto suspension of the Tribunal member.

In subsequent discussions between the Council Secretariat and the Department, it was suggested that the Council's concern about proposed section 23(2)(b) might be met through the addition to the proposed provision of a proviso that the direction by the President be taken 'in the interests of the administration of justice'.

At its meeting on 29 August 2003, the Council determined that its concern with proposed section 23(2)(b) would in fact be met by such an addition.

However, at the meeting, another issue arose which the Council considers might appropriately be addressed in the proposed Administrative Appeals

Tribunal and Other Measures Amendment Bill 2003 given the overall objective, as stated in the drafting instructions for the Bill, of providing the Tribunal with greater flexibility to manage its diverse caseload.

As you would be aware, pursuant to section 19 of the Act, in appointing a non-presidential member to the Tribunal, the Governor-General is required in the instrument of appointment to assign the member to a particular Division or Divisions of the Tribunal and may, with the consent and not otherwise of the member, vary the assignment. Non-presidential members can only exercise or participate in the exercise of the powers of the Tribunal in the Division or Divisions to which they are so assigned.

In the Council's view, the flexibility of the Tribunal and its ability to respond to changing demands would be considerably enhanced if the power to assign, including the power to vary the assignment, of members to a Division or Divisions of the Tribunal were to reside with the President of the Tribunal rather than with the Governor-General.

The Council notes in support of this suggestion that the power to allocate members to particular areas of the Victorian Civil and Administrative Tribunal resides with the President of that Tribunal.

Should you wish to discuss any of the above, you should not hesitate in the first instance, to contact the Council's Executive Director, Margaret Harrison-Smith, on tel. no. 6250 5800.

The Council looks forward to the opportunity to consider the draft Administrative Appeals Tribunal and Other Measures Amendment Bill 2003 when available.

Yours sincerely

A handwritten signature in black ink that reads "Wayne Martin". The signature is written in a cursive style and is underlined with a single horizontal line.

Wayne Martin QC  
President