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TRANSCRIPT OF ROUNDTABLE MEETING FOR THE PURPOSES OF THE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE TRIBUNALS IN NEW SOUTH WALES

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At Sydney on Friday 18 November 2011

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The Committee met at 8.30 a.m.

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PRESENT

The Hon. P. T. Primrose
The Hon. S. Moselmane
Mr D. M. Shoebridge

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JUSTICE JOHN CHANEY, President, Western Australia State Administrative Tribunal, and

MS LINDA CREBBIN, General President, Australian Capital Territory Civil and Administrative Tribunal before the Committee:

The Hon. PETER PRIMROSE: I formally declare this meeting of the Committee open. I thank both of our witnesses for coming here today. It is a great privilege and a great pleasure. Thank you for taking the time out of your day. We are really keen to learn from you, as we begin going through the labyrinth experience of reviewing our committees in New South Wales. We have some prepared questions. We will begin by asking both of you about the processes that led to you consolidating the tribunals in your respective jurisdictions. Then we will lead on to some points regarding how they operate as consolidated entities in your jurisdictions. We will be asking questions, but we mainly want to hear from you today.

Mr CHANEY: Our tribunal was established before the one in the Australian Capital Territory. The State Administrative Bill was the product of reports which go back to the 1960s where, for a long time, reports from various inquiries, forums and so on were made available to government, suggesting that there should be a consolidation of the multiplicity of tribunals. Early in the last decade, the Attorney General at the time, Jim McGinty, decided it should be done. He briefed Michael Barker, who was then a Queens Counsel at the West Australian bar, to prepare a report. I have made that report available to the Committee secretariat this morning. It is a very good report. That really gelled the idea of what the tribunal should look like. It went through the possible areas of jurisdiction and made recommendations as to which of the individual tribunals it thought should come in and which should not. That led to the passage of the legislation which consolidated all of the tribunals. I think there were some 40 courts or tribunal jurisdictions which were incorporated into the State Administrative Tribunal. There were approximately 142 enabling Acts which conferred jurisdiction on us.

Mr DAVID SHOEBRIDGE: Did you say 142?

Mr CHANEY: It was 142. At the time it went through Parliament it was the biggest piece of legislation that had ever passed through the West Australian Parliament, because every Act had to be amended.

Mr DAVID SHOEBRIDGE: In the consolidation of those Acts, were there any jurisdictional changes, or was it just a conferral?

Mr CHANEY: It was almost universally a conferral. The Government—I think sensibly—took the view that if they started to alter substantive rights, it was never going to get through Parliament. It was just too hard. It was very much an exercise of saying, "at the moment there is some sort of review or adjudication process conferred on somebody, we are now going to confer that on the tribunal and leave the nature of the applications for another day on a case-by-case basis". So it was a conferral of jurisdiction. We started in 2005. By that time Michael Barker had been appointed to the Supreme Court for some time. He became the inaugural President. I was one of the inaugural Deputy Presidents. Our structure is that we have a judicial leadership group which consists of a President—who must be a member of the Supreme Court—and two Deputy Presidents who must be members of the equivalent of the District Court. Then we have full-time members divided into senior members.

Then there are what the Act regrettably calls ordinary members. Currently we have five senior members and 12 ordinary members—when we started it was four and 10. This year we have been given a new jurisdiction, building disputes, so the Government gave us additional full-time people. In addition we have about 85 sessional members who come in as required and bring to the tribunal expertise in their particular areas of jurisdiction. Of our membership many are lawyers, but certainly not all. We have town planners, social workers, somebody with an accounting background—I think those are probably the areas—and the rest are legally trained. An important point in the way we acquit our work is that we are not divided into formal divisions; everybody is appointed to the tribunal as a member of the tribunal. We do have what we call streams, which is just a way of organising our work. We have the human rights stream which deals with guardianship and administration, which is about 55-60 per cent of our filings.

Mr DAVID SHOEBRIDGE: What is the administration aspect of that?

Mr CHANEY: It is the same. Where a person is incapable of managing their financial affairs, then they apply—it is a question of capacity. Guardianship is decisions about your person, that is, your health treatment and so on. Administration is the financial side, but it also involves, for instance, reviewing enduring powers of guardianship and enduring powers of attorney. Equal opportunity took the place of the old equal opportunity tribunal. Another stream is working with children permits—reviews of the decisions to grant permits. Care plan reviews: where a child is in the care of the department, they have to have an annual care plan. If there is a complaint about it, we review it. Also there is gender reassignment, which is not a large area of work. The High Court has recently vindicated our decision—there has only been one—so it is an interesting area. There is the human rights stream. The commercial civil stream now has building disputes. We used to review the old building disputes tribunal decisions—now we are the primary decision-maker—but we have an internal review process to replace the old review process. We review decisions about strata titles—which is community title disputes—commercial tenancy disputes, shop disputes. Also local government licensing decisions fall within the area of permits for this and that given by a local government.

Mr DAVID SHOEBRIDGE: Not rental tenancies?

Mr CHANEY: No. There has been a lot of discussion about that. That is currently done by the Magistrate's Courts in our jurisdiction. There was a move in government to move it to us. In the end they decided not to proceed with that, or at least to shelf the idea—mainly for financial reasons—because we do not have the presence in the regional centres that the Magistrate's Courts have. There was a bit of an issue about that and there were all sorts of complicated funding issues so far as the courts were concerned, so they have left it alone. So we do not have residential tenancy. The third stream is development resources, which has planning review. That is any sort of licensing decisions to do with land usage, like water licences, fisheries licences, those sorts of areas. We also assess compensation, as an alternative to the Supreme Court, in compensation cases for resumption of land, compulsory acquisition of land.

Our fourth area is vocational regulation. We perform the disciplinary function in relation to around 35 professions: lawyers, doctors, physiotherapists—we did have hairdressers, but we have lost them—they have become unregulated. And we also have a review function in relation to licensing decisions: if somebody gets knocked back for licensing they can come to us for review. The Act prescribes two broad types of jurisdiction: its original jurisdiction, which is a dispute being adjudicated on for the first time, and a review jurisdiction, which is anything that involves a review of a primary decision-maker; both are very substantive areas. As I said earlier, we allocate members to those areas based on their expertise and background but we are very keen to try and have them sit across streams wherever possible. I think it is important that we act as a single tribunal and not as a series of silos.

There was a real danger when we started that you would have people brought in from all the different tribunals and they would sit in one little section of the tribunal saying, "We do planning stuff. We are the old Town Planning Appeal Tribunal." and somebody else would say, "We are the old Guardianship and Administration Board" and there would not be a real single tribunal. Michael Barker was very strong on avoiding that and it works well. Particularly in mediation we will get people sitting in other areas. Obviously in planning things you need a bit of specialist knowledge so the adjudication is not get given to just anybody; you have to be somebody equipped to do that. We are slowly introducing people to more areas of work in other streams so that there is more flexibility in the way we operate.

Mr DAVID SHOEBRIDGE: What about the general administrative review; for instance, freedom of information reviews or reviews of other administrative decisions?

Mr CHANEY: We do not have freedom of information—that has been mooted and the current thinking is to move it in—but we do State tax appeals and a whole lot of local government administrative decisions and a whole lot of licensing decisions in various areas of governance. The areas of jurisdiction I have touched on are the ones that produce the most work but there is a great raft of things. I have made a copy of my annual report available the Committee secretariat, which sets out in detail the areas covered in each particular stream.

The Hon. PETER PRIMROSE: Before we move to questions, Ms Crebbin would you please make your opening statement.

Ms CREBBIN: The Australian Capital Territory Civil and Administrative Tribunal [ACAT] proposal commenced with a paper prepared by Renee Leon, the then head of the Department of Justice and Community

Safety in the Australian Capital Territory. She prepared a paper at the request of the Chief Minister who was the proposer of the idea, if you like, in 2006. The paper was available as a public exposure document for comment or submissions for a period of about 12 months. Then quite quickly—I think one of the quickest major things to have happened in the Australian Capital Territory—after probably about another three months of discussion legislation was presented to our Legislative Assembly in common with the other super tribunals—if I can use that language—the primary law: the Australian Capital Territory Civil and Administrative Act, which can be summarised as setting out the governance procedural framework for the work of the tribunal and we had consequential amendments to it—somewhere in the vicinity of 160 of what we call authorising laws or enabling laws in the Western Australia context.

As for Western Australia, and I think the other jurisdictions, the approach taken to this was to have the new tribunal applying the same law as the original tribunals but in a different governance and procedural framework. So the consequential amendments to those 160 or so authorising laws involved extracting anything in those laws that related to a decision-making process belonging to a tribunal or a board or a commissioner whose work we were taking over and then indicating that applications in relation to whatever the particular jurisdictional area was were applications to be made to the new tribunal. You then refer to the primary legislation for your procedural framework for all of those laws. For some laws, however, seen as having particular or unique features, the original authorising law retains some very specific procedural rules or laws that apply to that individual jurisdiction. An example of that is the mental health legislation because it has some unique features and contains most of the procedural framework for our work, rather than our primary legislation.

We commenced operation in February 2009. The implementation process involved appointing me in November 2008 and giving me a team of four people and telling me to go for it. We commenced in February 2009 and because of that very short implementation framework my primary focus was on shifting the bulk of work from the heritage bodies into our tribunal in a way that was as seamless as possible. I think it is worth spending some time considering that point. What it meant was that I felt we did not have time to establish anything that was strikingly different at the outset. We needed to keep the assembly line of business of the old tribunals running to avoid a backlog as people got used to something new so we adopted the existing forms—we gave them a different heading— and we basically took the same staff and the same members and put them under a different heading. That has a clear advantage in that in that it does enable you to keep the assembly line of work going reasonably smoothly and, indeed, we managed that. The disadvantage is something that John touched on—that is, you have to pedal harder to establish the concept of this being a new body, more than just a bringing together of the previous silos.

Our primary legislation says that the tribunal has divisions. We have never set up divisions for the reason that John indicated. It very quickly became apparent that there was a major battle that I had to fight, not just amongst our members and our staff, but predominantly amongst the tribunal users to get them to stop saying the Guardianship and Management Tribunal of the ACAT. Indeed, as recently as last week one of the senior staff in the courts administration area referred to the Administrative Appeals Tribunal of the ACAT. So it is a battle that we are still fighting a little bit. Using members across areas and shifting staff between units and being absolutely rigorous about correcting people who use the wrong language, including the newspapers, is necessary if you do not have a large implementation time, which gives you the time to set up a clear, different structure in the first instance. I think if you look at the Queensland experience, Queensland went for a long implementation period with this very issue in mind. But in the Australian Capital Territory we are very much a place where you are given a bike and told to get on and start pedalling.

The jurisdictions that we took on were largely driven by the underpinning policy determination to bring together everything and one other. In the Australian Capital Territory, largely because of its connection to the Commonwealth and the nature of the population, as well as the legal profession in the Australian Capital Territory, which has always had a very strong administrative law framework, there was a policy decision by government at a very early stage that it made a commitment to external merits review of any administrative decision and that our tribunal was to be the place where all of those things went. So anything that involves a merits review of an administrative decision or, indeed, any administrative decision that needs to have a merits review will come to the tribunal. That includes any new national laws being set, all of the freedom of information material or anything that you would think of as an administrative thing comes to us because of this underpinning policy proposal.

The jurisdictions we deal with include what were a number of bodies called tribunals and boards but we also took over the work or decision-making processes in a lot of regulatory areas—John has spoken about the regulatory jurisdiction. So decisions that might have been made by statutory office holders called registrars, the

construction occupations registrar is one that springs to mind, the registrar of motor vehicle dealers, the registrar of tobacco licences, all of the review work that those statutory office holders undertook also came to us. I actually do not know how many of those bits of work we mopped up but it probably took—we talk about taking over 16 tribunal or bodies but there were something in the order of another 10 to 12 decision-making functions that also came to the tribunal.

One of the features of the super tribunals is that we all look similar at one level but our jurisdictional areas are quite different. The Australian Capital Territory tribunal deals with small civil disputes. Currently our jurisdiction is pinned to $10,000, which sounds terribly tiny. That has an historical connection and it is my belief that that jurisdiction will be increased to $25,000 within 12 months or so. So typical small claims disputes and unit titles or strata titles disputes, including unit titles or strata title disputes that relate to the winding up of bodies corporate—so quite powerful decisions in relation to that area of work. All of the residential tenancy work. The civil and residential tenancy work takes up about 60 per cent of our jurisdictional workload—the relentless bread and butter stuff that comes through the doors. As I said earlier, we undertake all the merits-based administrative reviews in the Australian Capital Territory, which is why we have so many authorising laws. The fast majority of those are laws that identify reviewable decisions that come to the tribunal.

Regulatory work is our fastest growing area of jurisdiction. I think it is true to say that if you establish a super tribunal it is like building that baseball field that everybody will come to, and that is certainly the case with the regulatory area. By that I mean occupational discipline, occupational regulation and the regulation of any activity that involves licensing or registration. As John described, we have an original jurisdiction—so to make original decisions and to issue fines in liquor licence matters, for example, health, lawyers and a range of occupation—and then a review decision—so to review decisions that have been made cancelling the registration of a building certifier or a building surveyor, for example. I have some of those cases next week. We are the only super tribunal that has the original jurisdiction in mental health matters. That was the subject of major debate in the Australian Capital Territory and I will come back to touch on it if you are interested because I know it has exercised the minds of many governments.

We have the guardianship and financial management area as well. Discrimination tribunal work came to the ACT Civil and Administrative Tribunal and we have one other jurisdictional area which is fairly significant but quite unique to the ACT, which is energy and water. We hear applications for what is described as hardship relief in relation to essential services. When someone has been disconnected or is threatened with disconnection from energy or water supply they can apply to the tribunal for an order staying the disconnection threat or ordering a reconnection while the tribunal considers their application for relief from payment of the debt or permission to pay in instalments. We have a power to discharge debts owed to utilities as well.

We also act as the energy ombudsman for the ACT. It is not a very comfortable jurisdiction for us to have but it comes to us because it was connected with the hardship jurisdiction in the previous tribunal and it was too small an area to leave hanging by itself. Our Utilities Act provides that people can make an application to complain to our tribunal, which we investigate in a way that an ombudsman would. If we are unable to resolve something we hold a hearing to determine whether there has been a breach of the relevant consumer code or some provision of the legislation. For a range of reasons work in that jurisdiction has dropped slightly but it was sitting at about 25 to 28 per cent of our workload. It was slightly less in the last financial year so it is actually a substantially body of work.

Mr DAVID SHOEBRIDGE: Like a coroner's court for utilities.

Ms CREBBIN: That might be a way of describing it. I do not know that AGL would like to think of it in that way, but something like that. To give you an idea of our size, last financial year we had just under 6,000 new applications. Compared with New South Wales and Western Australia we are talking about a very small place. We also have review powers in relation to mental health orders and guardianship orders, so we review those regularly in an oversight way. There were a couple of thousand of those. I did the figures once on this and our workload is the equivalent of the Victorian tribunal on a per capita basis, so while the numbers seem small and our jurisdictional reach is different it still represents about the same number of interactions, if you like, with the community. That is one of the things I would like to highlight about the concept of a super tribunal.

For the ACT, and this might also be the case for other States, the tribunal is now the arm of the legal system, the administration, which has the most contact with members of the community. The Magistrates Court and Supreme Court focus on criminal matters and on larger disputes, predominantly larger commercial disputes. The tribunal's reach across guardianship, mental health, small claims and residential tenancies means that we

intersect with a far greater proportion of the ACT community than the other players in the broader court system. That is something I need to remind myself of regularly because it says something about the way in which we need to operate. The vast majority of people who have matters in the tribunal are not legally represented but I have observed an increase in participation of the legal profession in matters before the tribunal. On the whole I think that is probably a good thing, but sometimes you wish the lawyers would go away!

We have two full-time presidential members. I am the General President. My statutory functions involve responsibility for the prompt and orderly discharge of tribunal business and ensuring decisions are made according to law. I have an overarching responsibility for the allocation of work and the supervision and training of members. We also have an internal appeal process so that for most but not all of our areas of work people can appeal from the decision of the original tribunal to an appeal tribunal. We are all the one thing and we have an appeals president, Mr Bill Stefaniak, who is responsible for the discharge of appeal matters. We are running between 35 and 45 appeals a year at the moment. Mr Stefaniak's work involves my allocating work to him in the original jurisdiction, which is the bulk of his work, and then if appeals come along that arise from his decisions I have a delegation to act as the appeals president in those matters. Otherwise he manages them and often hears them with other tribunal members.

We have a part-time presidential member who works 2.5 days a week. There are some types of cases that only a presidential member can deal with—mental health matters are an example of that, and appeals. At the moment we have 90 part-time sessional members. That sounds like a very large number, but many of those people are health professionals who were appointed just in case there is a disciplinary matter involving their particular area of expertise. All of our members are appointed by the Attorney General. Getting new members is a bit of a process and that is why you start off with a very large pool in the first instance. Many of those 90 members have never been used. We have a core group of around 35 part-time sessional members that we use regularly and they are a mix of lawyers and people with some expertise in a particular subject area that is relevant to our jurisdiction, and we also have what we term community members who have no particular subject matter expertise but who sit on mental health and guardianship matters.

I sit on disciplinary matters particularly those involving the medical profession or the legal profession so that there is some community input into the hearing process. Mr Chaney mentioned mediation. Prior to the establishment of the ACT Civil and Administrative Tribunal it was only the ACT Administrative Appeals Tribunal that used the mediation process regularly and then in planning and development cases. We have expanded that substantially and we have just about finished a process of having 10 of our members trained—you have to be registered to be a mediator in the Act—under the national accreditation program and for registration in the ACT. Last year we had a big focus on using mediation. I am a great believer in the value of mediation although it requires parties to understand what is expected of them and to be prepared, and I think we have quite a bit of work to do in that area because our resolution rate is not as high as it should be from mediation.

Mr CHANEY: We use mediation routinely but there are a lot of types of disputes where you just need to get people together talking and they are relatively simple. In some areas of our jurisdiction as an initial step we will have a directions hearing which we set down for an hour, and we sit down around a table with the parties and say, "What is this about?" and try to sort it out. We use the term "facilitated dispute resolution" because it is not properly called a mediation; it is a sort of hybrid process. On the more complicated matters our staffing assumption is that they will go to mediation unless there is a very good reason not to. All our members are trained and we would settle 80 per cent of the matters that come in with one form or another of facilitated dispute resolution process.

The Hon. PETER PRIMROSE: Thank you both for that excellent presentation. It has given us a very good overview.

Mr DAVID SHOEBRIDGE: I am interested in the question of tenure. I assume the presidential members have judicial tenure.

Mr CHANEY: That is right. I have a five-year appointment as president, previously as deputy-president, but when that expires I am a member of court and that is a tenured position.

Mr DAVID SHOEBRIDGE: Is it the same with the District Court?

Mr CHANEY: It is the same with the District Court. The members are on a five-year term and then it is renewed. We have just been through that and all positions were open. We advertised and we interviewed hundreds and in the end appointed everyone who was previously a member.

Mr DAVID SHOEBRIDGE: What about the other ordinary and senior members?

Mr CHANEY: That is the process they go through. They have five years and then their positions are open. They are at liberty to reapply repeatedly. Sessional members are appointed for a three-year term. Initially it was two years and that came round before we knew where we were so it was increased.

Mr DAVID SHOEBRIDGE: What about the Australian Capital Territory?

Ms CREBBIN: This is an issue that created a lot of controversy in the ACT because we are the only super tribunal that does not have a judge heading it up. That was a very deliberate decision by the Government for a range of reasons. The presidential members are appointed for a seven-year period and we can only be removed as a result of, in effect, a Judicial Commission inquiry, so we are incorporated into the ACT's judicial commission legislation. It requires a report from the Judicial Commission or, as an alternative—

Mr DAVID SHOEBRIDGE: And then a resolution of the House?

Ms CREBBIN: Yes, exactly, a resolution of the Legislative Assembly for our removal. Our sessional members are appointed for three-year terms and they can only be removed during the course of those terms. It is also a statutory process, which is slightly less formal but requires findings of incompetence or some form of inappropriate or improper behaviour.

The Hon. SHAOQUETT MOSELMANE: I am interested in the impact of the transformation process. Was there a loss of positions or employment as a result of consolidating the tribunals and what impact did that have on the service delivery of those tribunals?

Ms CREBBIN: For the ACT there was none. Transition has the potential to be quite difficult when you are trying to bring together a number of tribunals with heads. I suppose we were in some ways fortunate in the ACT because many of our heritage bodies were headed by the Chief Magistrate or another magistrate wearing a different hat as a tribunal president. For the other bodies that had heads, the most senior of those was due to retire and retired as our tribunal came into effect. There was no loss of staff; we simply transferred all the staff from the existing tribunals to our new structure. There was no commitment by the Government to the tribunal necessarily saving costs, which I think was a wise thing. Because the bodies we took over, the members of those bodies were largely also part-time members, again they just experienced a transition.

There was some difficulty establishing remuneration because everyone was remunerated differently. Some were covered by a remuneration tribunal determination and others were not and some were not remunerated at all. There was a significant process that had to be undertaken to establish a new remuneration tribunal determination. One of the consequences of that—perhaps not unexpectedly—is that, in order to maintain parity, the highest rate of remuneration for the various tribunal bodies was set as the starting point for the new tribunal. So that there were some tribunal members who found their remuneration going up by about 250 per cent and no-one who went backwards in that process. That meant that there was no particular sense of grievance by either staff or members when the new tribunal was established.

Mr CHANEY: In our case, there were no public service positions lost, they were either absorbed into the tribunal at a cost to the tribunal or alternatively were somehow absorbed into the department that they came from. So, as far as I am aware, there was no loss of employment in that sense. There was certainly a loss of positions on tribunals universally, they were part-time positions, often held by lawyers.

The Hon. SHAOQUETT MOSELMANE: For lawyers.

Mr CHANEY: Yes, most tribunals were headed by a lawyer who did it part-time as part of their practice. I am a lawyer and I am not knocking lawyers, but they are busy and that is one of the reasons for inefficiencies. So whilst people lost positions and indeed, quite intentionally, the Government accepted the recommendations of the proposed President at the time, Michael Barker, who chose people who did not come from other tribunals—a New South Wales barrister was one and somebody from the Northern Territory—a

range of people. That was part of his strategy of saying: This is a different organisation, this is not just all the tribunals sitting in one premises. There was some angst about that, as you can imagine.

I think underlying a lot of the concerns at the Parliamentary debate stage, were representations being made by people whose jobs were going to disappear, saying that it would be a terrible thing. To answer the other part of your question, in my view it did not result in any inefficiencies. Certainly, it was a challenge for us at the beginning to work out how we were going to acquit the huge range of different types of work and bring to bear the necessary expertise in specialist areas, but we did have a lot of sessional members. We started, I think, with 130 or something, so we had them to call on and most of those had come from other tribunals and part-time positions, so they came in as sessional members but not as full-time members. There were some positions lost but, in my view, it was for the better.

The Hon. SHAOQUETT MOSELMANE: Apart from those, what were the immediate adverse impacts you experienced that we can avoid in this process?

Mr CHANEY: I think, in terms of the service to the public, I am not aware of any adverse impacts. The complaints we got at the beginning were: You are going too fast. State tax appeals were a classic example. The Office of State Revenue said, "We cannot deal with this." Before, everything went to the Supreme Court and died years later after everybody got exhausted or went broke. So the first few months, I guess we were finding our feet but I really think, in terms of service delivery, I am just not aware of any really adverse outcomes.

The Hon. PETER PRIMROSE: And in the ACT?

Ms CREBBIN: I think that the position is the same for us. As I said, I focused very much on ensuring that things did not get bogged down and a couple of the areas that we took over came to us with a backlog of cases. There was one particular court, the Small Claims Court, that had not sat for about seven months before we started, and there were some 700 or 800 cases, which was a lot because our overall annual filing is about 1,800 to 2,000. We planned to deal with those by bringing in experienced part-time members and having them sit full-time for six weeks. Perhaps inevitably, for setting up a new body, there was confusion amongst court staff as to what should go to the tribunal and what stayed with the court, because we took away some of the work of the Magistrate's court and inevitably, when you start up new processes, you have to often repeat messages regularly to ensure that people know about them. But otherwise, no inefficiencies. And like John, we experienced a concern that we were moving matters too quickly and that really required people just to think differently about how they worked with the tribunal and to be a little bit more proactive in their work.

The Hon. PETER PRIMROSE: In either of your jurisdictions, are there any significant tribunals that remain outside of your tribunals?

Mr CHANEY: If I could start with that. Liquor Licensing did not come into our tribunal and that is a relatively significant area. I notice Industrial Relations is a matter on your terms of reference that you are specifically addressing. That has not come in, we still have an Industrial Relations Commission, although there has been a recent report to Government in relation to its work, because it does not have much to do these days and there was a suggestion that it might come in but it has not been adopted. We do not have the small claims work which QCAT and ACAT has and we do not have residential tenancies, so they have stayed out. Mental health is a significant one, because that has been the subject of a recent decision. That did not come in but it was co-located and the President was a full-time senior member of the tribunal who sat and he spent his time half and half.

It was Government policy, right up until about two or three months ago, that it would be absorbed into the State Administrative Tribunal in time. That policy has now changed. The Government has decided it should stay outside the tribunal and be a specialist thing. I have made it clear that my view is that therefore it should cease to be co-located with us. We have a review function of its decisions. So that is a significant one that is not in. The other one that has stayed out, for reasons I have never understood, is the Racing Penalties Appeals Tribunal, which is all about trainers who drug their horses or dogs or whatever it is, or who otherwise misbehave. Why we did not get them? I think was political.

Mr DAVID SHOEBRIDGE: Effective representation.

Ms CALLINAN (Secretariat): One of our preliminary tasks has been to identify all the relevant tribunals that we could be considering and that has been difficult itself, so maybe there is potential for it being left out because it was not identified. I think that is something that we are grappling with.

Ms CREBBIN: When you start to think in terms of tribunals as being a particular form of decision-making body, you stop looking for the tag of "tribunal" and look more broadly.

Mr CHANEY: We took jobs from commissioners, referees, registrars, courts—all levels of court we took some jurisdiction from—the Supreme Court, the District Court and the Magistrates court .

The Hon. PETER PRIMROSE: Does the ACT have experience?

Ms CREBBIN: Yes, the Remuneration Tribunal remained independent. There was talk about bringing our Sentence Administration Board into the tribunal, because it, in essence, makes administrative decisions, but that remained outside.

The Hon. PETER PRIMROSE: The Parole Board.

Ms CREBBIN: The Parole Board—and I would not be surprised if that decision was reviewed in four or five years—the equivalent of John's Racing Commission and all of the sporting commissions. I noticed that the Victorians deal with football penalty disputes. We do not do any of that sporting work.

Mr CHANEY: Nor do we.

Ms CREBBIN: It is a quasi-judicial review process. But otherwise, all matters have come to our tribunal.

Ms CALLINAN (Secretariat): Ms Crebbin, you mentioned earlier that your appeals rate has been about 30 to 45 appeals a year. Do you have information about how that compares with the appeals of the various tribunals prior to amalgamation? Can we draw any conclusions about appeal rates with the new super tribunals?

Ms CREBBIN: I have not done that task. When we were established it was anticipated that about 10 per cent of matters would go to appeal. I do not know whether there was any particular science involved in establishing that figure but the figure is considerably less and it is more like one per cent. There was a small number of appeals from our heritage bodies because, for most tribunals, the only appeal mechanism was to the Supreme Court, including from the small claims court. There are very few appeals in those areas. Perhaps the largest area of appeal work was the former Administrative Appeals Tribunal—planning matters going off to the Supreme Court. Indeed, we do not have an internal appeal process for our planning matters, an appeal from a decision in planning matters is to the Supreme Court, by leave.

Mr DAVID SHOEBRIDGE: The internal process, is it a de novo appeal? What is the nature of the appeal?

Ms CREBBIN: It is a flexible provision. It says that the appeal tribunal may determine that it will deal with an application for appeal, either as a new application or as a review of all or part of the original decision. So we can actually, in a case, rerun it from the start. Whilst that seems to be a little unusual, we have found that it is a process that we tend to use in particular types of cases, particularly in residential tenancy matters where we are dealing with a tenant who has, for one reason or another, not participated effectively in an initial hearing for an eviction. It could be because they have a mental illness or some sort of mental dysfunction or disability and they have attempted to represent themselves the first time around. So for a small number of matters we run them as though the original matter never happened and we start again.

Mr DAVID SHOEBRIDGE: What is the Western Australian situation?

Mr CHANEY: We do not have a general internal review. There are some areas which specifically permit it. Guardianship is one where a decision is made by a single member. The appeal can go to a three member panel, including a judge. Planning matters made by a non-lawyer member, which involve a question of law, can be reviewed.

Mr DAVID SHOEBRIDGE: Only on a question of law?

Mr CHANEY: Yes, only on a question of law. It can go to a judge internally. And now the building disputes area is a review, based on the same review that existed before we absorbed the tribunal, which is a review with leave but not confined to questions of law.

Mr DAVID SHOEBRIDGE: Do each of you have a review to the Supreme Court on a question of law and is that as of right or by leave?

Mr CHANEY: Generally speaking, it is by leave and on a question of law. In vocational matters, if it involves depriving somebody of their livelihood, then it is as of right and not confined to questions of law. There are some other odd exceptions but generally speaking it is with leave on the question of law.

Mr DAVID SHOEBRIDGE: It is an appeal by way of review?

Mr CHANEY: An appeal from us to the court.

Mr DAVID SHOEBRIDGE: It can be on a mixed question of fact and law?

Mr CHANEY: Yes, but it is an appeal in the traditional sense, not a de novo hearing.

Mr DAVID SHOEBRIDGE: Yes, a requirement to establish error?

Mr CHANEY: Yes.

Ms CREBBIN: Likewise, any appeals from our matters to the Supreme Court are by leave on the question of law with the exception, in our case, of mental health matters. There is a direct right of appeal in mental health cases to the Supreme Court. One aspect of our internal appeals division which I think we are starting to use and is worth noting is that we have an ability to establish what we call a ruling of the tribunal so that if we have got a number of members of original tribunals who are making inconsistent decisions, or they are dealing with a case that involves a significant question of law, they can request that a ruling tribunal be established. We will establish a ruling tribunal with a number of Presidential members and senior members.

Mr DAVID SHOEBRIDGE: Like a guideline judgement?

Ms CREBBIN: That is right, to make a ruling judgement or a finding on a particular question of law that has some overall significance.

The Hon. SHAOQUETT MOSELMANE: Overall was it a cheaper, quicker, more effective process to consolidate than before?

Ms CREBBIN: It is not cheaper. I do not know that it is particularly more expensive, however. I believe that it is faster and I believe there are some areas in which it is much simpler because the super tribunal is much easier for individuals to identify, see and use. One of the boards we took over had one part-time staff member and people would complain. They could never use it because they could not find where the office was located. It is simpler in that context. But when you establish anything with a clear structure and framework inevitably there will be some matters. Some people will complain that we are now larger and a bit more formal than their previous experiences were.

Mr CHANEY: Nobody knew or could calculate the cost of the previous system because they were just unidentifiable and a separate cost. One does not know but I do not think the cost—and we can now see it on a budget line—is likely to have been cheaper to actually establish and run the tribunal. But on the other hand I have absolutely no doubt that in a large number of the areas it is a lot cheaper for consumers, the members of the public. It is certainly a lot more efficient. There is no doubt in my mind that the product which you get from a full-time dedicated tribunal that is accessible, whose processes are transparent, who has consistency in decision-making, published written decisions that are accessible to the public, the value to the public is money well spent.

That is my view. I think it is a mistake—this may be seen as self interest—to try to do it on the cheap. It does require I think more full-time people. I think Linda has battled manfully—but that is probably not politically correct—against some difficult resource issues. We were much luckier and I think it is money well spent. We were subject to a parliamentary inquiry that was required under our Act. I do not know whether you

know that. I have got the recommendations that came out of a 500-page report done by a standing committee of the Western Australian Parliament into our operation. It contains a lot of very useful discussion about the whole way it has worked. I am proud to say that at the end we got a glowing report.

Ms CREBBIN: I endorse what John has said about the extraordinary value of a transparent, accessible, consistent and rigorous decision-making framework. That has been the really stand-out achievement of our tribunal in the past few years. It is a very valuable component of the justice system.

The Hon. SHAOQUETT MOSELMANE: New South Wales is a multicultural community. What impact has the consolidation on the dissemination of information to those communities as a result of the processes?

Mr CHANEY: That is a very good question. I think we can do a lot more than we have in that regard. We have interpreter services that we use regularly. I think that generally speaking accessibility to the tribunal is so infinitely better than it was with its predecessors. That makes it easier for everybody including people for whom English may be a second language, or they may not have English at all. But the way we deal with people with language difficulties is by making sure that interpreting services are available both at the inquiry stage and then certainly at a hearing stage. We are mindful of that. I would like to say we have a whole lot of our pamphlets published in other languages but we do not. I think that is something we need to look at.

Ms CREBBIN: I do not think I have anything useful to say about that.

Mr DAVID SHOEBRIDGE: I am interested in the rules of running the tribunal. Do you have a standard set of rules which includes your hearing processes? When the Administrative Decisions Tribunal was set up it took a decade for it to establish its rules. In fact, it operated without rules for a decade. What is your experience?

Mr CHANEY: We try to avoid having too many rules. One of the problems with rules is that lawyers like to come and argue about what the rules are at great length. What we established were practice notes. We do not have a universal process. I think one of the keys to our success has been flexibility. We have a very different process for dealing with guardianship matters from the process we have for dealing with planning matters. They are tailored to the type of dispute. As soon as you start trying to devise a process which is generally applicable it does not work; it bogs things down. We run things very much with a directions hearing. Everything from the guardianship side which is a bit different—I will deal with this quickly. We have a directions hearing. We bring in parties within two weeks of the lodgement of the application. We sit them down and ask "What is this about?" How do we best go about resolving it?

Mr DAVID SHOEBRIDGE: Is the directions hearing before a reply?

Mr CHANEY: Yes. In fact, even at that stage our application form is very simple. It does not tell you much. I often hardly look at it. We are geared up for lay people so they cannot clearly plead a case very adequately. We get them in there, that is the first thing, talk to them, work through it and then you work out the extent to which you need to formally identify the elements of the claim. Whether you can just go to mediation without that? It is all about flexibility. We have some rules about the essential basic things that rules need to cover but we deal with each case literally on a case-by-case basis to make sure that whatever we are doing relates to the particular issue in that particular case.

Ms CREBBIN: We have a set of rules, more or less, that we are in the process of reviewing that we call procedural directions. The vast majority of those rules relate to civil disputes which Western Australia does not deal with. The moment you start bringing in civil, small claims type disputes is the moment that you need to start thinking in terms of responses or replies, default judgement. So that area has with it a need to have some clear rules. Apart from that, like John, I think that too many rules are a big mistake. I am fighting a constant battle against making another rule. We use a phrase which encapsulates the flexibility John spoke about which is responsible proceduralism.

One of our part-time members is an academic. They just love giving labels to things like this and she has written about this concept of responsive proceduralism. In essence it means that you respond to the needs of the individual application that comes before you. Of course, over a period of time we develop a particular way to deal with particular types of cases. At the moment we have not found it necessary to translate that practice into anything formal.

The Hon. PETER PRIMROSE: This information has been very useful to the members of the committee and to the secretariat. If you think of any other matters over the coming months that you believe may benefit this committee, will you please them on to us as it would be very useful? I ask that if this committee has any particular questions—not voluminous amounts—would you answer them?

Mr CHANEY: Not at all. I would be very pleased to. I think you are doing a very important job. We have a terrific relations with VCAT, QCAT and ACAT and we are doing a lot of co-operative things. I would be very pleased to see a similar body in this State. Feel free to ask anything.

Ms CREBBIN: I think John reflects something that all the super tribunals would agree with. We are all champions for the super tribunal process which is what you would expect given the positions that we are in, of course. It also reflects what has been the experience within our jurisdictions that it has been a welcomed development certainly in our jurisdiction. I think that is the case also for others. I do not contribute much to the collective with the super tribunals because we are so tiny but we certainly have great benefits from the collegiate work that the super tribunals are able to do.

(The witnesses withdrew)

(The Committee proceeded to deliberate)