

# Annual Jack Richardson Oration<sup>1</sup>

15 September 2015

National Portrait Gallery, Canberra

## **REVIEWING THE REVIEWER: THE ADMINISTRATIVE APPEALS TRIBUNAL, ADMINISTRATIVE REVIEW COUNCIL AND THE ROAD AHEAD**

The Hon Justice Duncan Kerr\*

I want to take you back to the 1970s, the turning point in Australian administrative law, after the Kerr Committee Report<sup>2</sup> had identified the need to develop a comprehensive, coherent and integrated system of administrative review.

In the Foreword to the First Annual Report, 1976-77, of the Administrative Review Council (ARC) Brennan J, observed with his customary understatement that the financial year had seen a great change in the administrative law of the Commonwealth.

On 1 July 1976, the Administrative Appeals Tribunal opened its doors. On 15 December 1976 the then recently-appointed Administrative Review Council first met. The date proclaimed for the Federal Court of Australia to commence exercising its jurisdiction was 1 February, 1977. On 16 June 1977 the *Administrative Decisions (Judicial Review) Act 1977* was assented to...On 17 March 1977, the appointment of the first Commonwealth Ombudsman was announced, and he took office on 1 July, 1977. At the end of a significant year, the structures of administrative review were complete.<sup>3</sup>

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<sup>1</sup> Hosted by the Association of Corporate Counsel Australia, ACT Law Society and Clayton Utz.

<sup>2</sup> Commonwealth Administrative Review Committee, *Parliamentary Paper No 144*, 1971.

<sup>3</sup> Administrative Review Council, *Administrative Review Council Annual Report 1976-77*, 1977, Brennan J, Foreword.

Justice Brennan explained:

...the lines of bureaucratic authority are intersected by the Tribunal or the Ombudsman; the traditional reticence of the administrative decision-maker is replaced by his written expression of reasons; access to the Court is simplified and facilitated. The citizen is thus enabled to challenge, and to challenge effectively, administrative action which affects his interests.<sup>4</sup>

Peter Cane subsequently identified the critical re-orientation of the relationship in the following terms:

...the paradigm mode of decision-making by tribunals is that it involves an official or a group of officials, on the application of a citizen (individual, group or corporation) affected in a certain way by a 'primary' decision, making a ('review') decision to affirm or vary the primary decision or to set it aside and either make a substitute decision or remit it to the primary decision-maker for reconsideration. In other words, non-judicial administrative adjudication is a tripartite process.<sup>5</sup>

The interposing of a third party, in what was previously merely a relationship between the applicant and decision-maker, was a significant shift. As noted by Brennan J:

If that result is achieved in wide areas of governmental action, the administration will be answerable not only to government, but to individual citizens.<sup>6</sup>

What would be wrought through these changes was a legal revolution that, in Brennan J's restrained language, would require '[n]ice adjustments...to be made between the purposive orderliness of the bureaucracy and the expectations of the citizen whose interests are affected.'<sup>7</sup>

This statement recognised that although the critical architecture and foundations of the new administrative law had been established, critical issues about how that framework would be built upon remained to be settled. I mention just three of those issues:

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<sup>4</sup> Ibid.

<sup>5</sup> Peter Cane, *Administrative Tribunals and Adjudication*, Oxford and Portland, 2009, p 236.

<sup>6</sup> Administrative Review Council, above n 3.

<sup>7</sup> Ibid.

- The Administrative Appeals Tribunal (AAT) had been granted power to review decisions only if jurisdiction had been conferred upon it by another Act or Regulation, and the initial list of reviewable decisions was relatively short.
- The *Administrative Decisions (Judicial Review) Act 1977* (Cth) (ADJR Act), while prima facie universal in its application, provided for exemptions of specific classes of decisions from judicial review. The proclamation of that Act's commencement had been delayed awaiting decisions on the breadth or narrowness of those yet to be determined exemptions.
- An Ombudsman had been appointed but how Professor Richardson would go about his task, and how officials would respond to his reports, was still unknown.

The ARC was tasked to provide advice on the development of this nascent administrative law – in effect to review the reviewer. In his concluding comment in the Foreword, Brennan J wrote:

The size of its charter is large, and it is hard to overstate the importance of the issues which are encompassed by it. They concern the balance between the interests of the citizen and the government, a balance which is critical in a free society.<sup>8</sup>

It is important to recall just how significant the changes were and how fiercely they were resisted at the time. Sir Anthony Mason recounted that level of resistance, reflecting:

Let there be no mistake about this. There was a very strong bureaucratic opposition to the Kerr Committee recommendations. The mandarins were irrevocably opposed to external review because it diminished their power. Even after the reforms were in place, Sir William Cole, Chairman of the Public Service Board, and Mr John Stone, Secretary of the Treasury, were implacable opponents of the reforms.<sup>9</sup>

By contrast to that bureaucratic opposition, there was political unity between Whitlam and Fraser, who were united in their support of the reform. Under their

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<sup>8</sup> Ibid.

<sup>9</sup> The Hon Sir Anthony Mason AC KBE, 'The Kerr Report of 1971: Its continuing significance' (Speech delivered at the Inaugural Whitmore Lecture, NSW, 19 September 2007) p 2.

leadership, and with support of their respective Attorney's-General, the *Administrative Appeals Tribunal Act 1975* (Cth) was enacted by Whitlam's government and brought into operation by the Fraser government.<sup>10</sup>

Those who designed the new administrative law were keenly aware of the risks of back-sliding. Its champions in the bureaucracy were few. The ARC was established as a counter-balance to ensure change would be coherent, profound and enduring. Part V of the Act establishes the ARC, with s 51 setting out the broad functions and powers of the Council to monitor administrative law, prepare and make recommendations to the Minister, to inquire into practices and procedures, to facilitate training, and among other things, to promote knowledge about the Commonwealth administrative law system.<sup>11</sup>

In an address to the ceremonial sitting of the amalgamated AAT, held following the passage of the *Tribunals Amalgamation Act 2015* (Cth), on 1 July this year the Hon Robert Ellicott QC, a former member of the Kerr Committee and later Attorney-General in the Fraser Government, referred to the ARC in those early days as 'immensely important'.<sup>12</sup> He went on to say that the ARC needs:

...to be seen as the fulcrum of the Administrative Appeals Tribunal and the other things that are happening in administrative law. They're engine room, they're the defenders of the faith, if you like. They're the ones who are driving this pursuit of excellence in review.<sup>13</sup>

As an ex-officio member of the ARC in its crucial early years (1976-85) Jack Richardson made a significant contribution to ensuring that the momentum of the Kerr Committee was not lost, so let's pause to reflect a little on this extraordinary man.

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<sup>10</sup> The Hon Justice Duncan Kerr, 'Dreams and Realities: The evolution of tribunals' (Speech delivered at the Council of Australasian Tribunals National Conference, Melbourne, 4 June 2015).

<sup>11</sup> *Administrative Appeals Tribunal Act 1975* (Cth).

<sup>12</sup> The Hon R Ellicott QC (Address delivered at the Administrative Appeals Ceremonial Sitting, Sydney, 1 July 2015) p 9.

<sup>13</sup> *Ibid.*

One description of him in his 30s caught my imagination; of a 'wiry, energetic and dashing man,'<sup>14</sup> with a great interest in motor sports...<sup>15</sup> who drove an MG and wore a beret in the French manner.<sup>16</sup> That 'passion for fast motor vehicles' continued throughout his life.<sup>17</sup>

When Prime Minister Malcolm Fraser announced the appointment of the first Commonwealth Ombudsman he described Jack Richardson as 'a distinguished academic of high Australian and international standing who will bring to this office the qualities and experience which are necessary to perform this challenging role.'<sup>18</sup> As the inaugural Ombudsman, Professor Richardson carried the burden of establishing office and its influence from scratch. He served in this Office from 1977-85.<sup>19</sup>

Perhaps the best known story from the early 80s, and one that captures both an enthusiasm for increasing awareness and accessibility to his Office of Ombudsman, and a fearlessness of the bureaucrats, was his 'Bamboozled by the Bureaucracy?' milk carton campaign. The milk delivered in Canberra, promoting the Ombudsman 'as ready to help you in a dispute with a Commonwealth department,' was said to have put at least one senior official off their breakfast cereal.<sup>20</sup>

The Hon Michael Kirby, in his memorial lecture 'Jack Richardson, the First and Perfect Commonwealth Ombudsman,' observed that '[i]n a large pantheon of heroes' involved in the development of Australian administrative law 'Jack Richardson was a stand out.'<sup>21</sup>

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<sup>14</sup> Leslie Zines, 'Jack Edwin Richardson, AO Legal Expert 23-9-1920 – 13-6-2011', *Sydney Morning Herald* (NSW), 23 June 2011.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> The Hon Michael Kirby AC CMG, 'Jack Richardson, the First and Perfect Commonwealth Ombudsman' (Speech delivered at the Jack Richardson Memorial Lecture, Canberra, 12 September 2012) p 6.

<sup>18</sup> Commonwealth Ombudsman, *Annual Report 2010-2011*, 2011, p x.

<sup>19</sup> Commonwealth Ombudsman, 'Ombudsman's office, 1977-1985 (Prof Jack Richardson)', <http://www.ombudsman.gov.au/pages/about-us/our-history/1977-1985.php>.

<sup>20</sup> *Ibid.*

<sup>21</sup> The Hon Michael Kirby AC CMG, above n 17, p 4.

He was a man of firsts. The inaugural Commonwealth Ombudsman, a founder of the Law School at ANU,<sup>22</sup> and in 1990 the first Ombudsman again, this time in Samoa where he held the post for 2 years.<sup>23</sup>

Each year through this Oration, co-hosted by the Law Society of the ACT and the Australian Corporate Lawyers Association, we pay tribute to Professor Jack Richardson and we are reminded by the words of the Hon Michael Kirby that ‘...to play a part in enhancing the rights of the people to enjoy greater administrative justice, that is the noblest legacy that Jack Richardson left for us’.<sup>24</sup>

I now wish to focus on the important work of the ARC, to which Jack contributed along with notable fellow drivers of change, such as Brennan J, Michael Kirby (later Justice and AC CMG), Laurie Daniels OBE, Frederick Deer, Roger Gyles QC (later Justice and AO), Clarrie Harders OBE, Geoff Kolts, and Des Linehan. The collective knowledge and tenacity of the members of the ARC delivered some critical advices.

One of its earliest tasks, and the subject of Report No 1 (1978),<sup>25</sup> was to provide advice on what decisions should properly be exempted from judicial review under the ADJR Act.<sup>26</sup> An advisor to the ARC, Wayne Martin, who later became Chief Justice of the Supreme Court of Western Australia recalled in his 2013 Whitmore Lecture:

Meetings were held with senior officers, usually secretaries or deputy secretaries, of most major Commonwealth departments. There was a recurrent theme to the representations which we received. They were to the effect that while the virtue of the legislative reform and its potential to significantly enhance the quality and fairness of administrative decision making by other agencies of government was acknowledged and indeed applauded,

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<sup>22</sup> Leslie Zines, above n 14.

<sup>23</sup> Commonwealth of Australia, ‘Australasia and Pacific Ombudsman Region Information Manual 2009’, ahttp://pacificombudsman.org/publications-resources/APOR-Manual\_20091009.pdf.

<sup>24</sup> The Hon Michael Kirby AC CMG, above n 17, p 16.

<sup>25</sup> Administrative Review Council, *Administrative Decisions (Judicial Review) Act 1977 - Exclusions under section 19*, Report No 1 (1978).

<sup>26</sup> *Ibid.*

there were nevertheless particular features of the decisions made by their department which necessitated exemption from the new regime.<sup>27</sup>

The ARC's resolute scepticism of such special pleadings meant remarkably few exemptions were incorporated into the ADJR Act.

A number of early ARC reports tackled the breadth of decisions that should be subject to merits review. According to the ARC 1999 publication 'What decisions should be subject to merit review?':

[a]s a matter of principle, the Council believes that an administrative decision that will, or is likely to, affect the interests of a person should be subject to merits review. That view is limited only by the small category of decisions that are, by their nature, unsuitable for merits review.<sup>28</sup>

Those, considered unsuitable for merits review, being 'legislation-like decisions' and 'decisions that automatically follow from the happening of a set of circumstances'.<sup>29</sup> Since its commencement more than 4 decades ago, the merits review jurisdiction of the AAT has expanded considerably and it now reviews decisions made under more than 400 Commonwealth Acts and Regulations.<sup>30</sup>

Report No 17 *Review of Taxation Decisions by Boards of Review*<sup>31</sup> was the first step in the long process of realising the Kerr Committee's objective of bringing Commonwealth merits review together in a single body rather than creating or maintaining specialist tribunals. The Report recommended transfer of the functions of the then Taxation Boards of Review to the AAT. That recommendation was implemented by *Taxation Boards of Review (Transfer of Jurisdiction) Act 1986* (Cth).

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<sup>27</sup> The Hon Wayne Martin AC, 'Forewarned and Four-Armed – Administrative Law Values and the Fourth Arm of Government' (Speech delivered at the Whitmore Lecture, Sydney, 1 August 2013) p 5.

<sup>28</sup> Administrative Review Council, 'What decisions should be subject to merit review?', 1999, <http://www.arc.ag.gov.au/Publications/Reports/Pages/Downloads/Whatdecisionsshouldbesubjecttomeritreview1999.aspx>.

<sup>29</sup> Ibid.

<sup>30</sup> Administrative Appeals Tribunal, 'Functions and powers', <http://www.aat.gov.au/about-the-aat/what-we-do>.

<sup>31</sup> 1983.

Similarly, a recommendation of Report No 20 *Review of Pension Decisions under Repatriation Legislation*,<sup>32</sup> that the AAT be conferred with jurisdiction to review decisions made by repatriation tribunals, was implemented by *Repatriation Legislation Amendment Act 1984* (Cth).

In 1984, Report No 21, *The Structure and Form of Social Security Appeals*<sup>33</sup> recommended that the Social Security Appeals Tribunal (SSAT), which previously had only the right to recommend, be given determinative powers and their decisions reviewable in the AAT. This change was implemented by the *Social Security Review of Decisions Act 1988* (Cth).

And not surprisingly, Report No 22 *Relationship between the Ombudsman and the Administrative Appeals Tribunal*<sup>34</sup> recommended that the AAT advise applicants of their additional rights to request the assistance of the Commonwealth Ombudsman.

Those ARC Reports contributed tellingly to the direction that administrative law travelled in Australia. All were published at a time when Jack Richardson was a participating ex-officio member of the Council. By the time he retired he could be well satisfied that his work as a member of the ARC had complemented his achievements as Ombudsman in ensuring that the new administrative law had been cemented into place.

After Jack's death he was acknowledged by Gary Gray, Special Minister of State for the Public Service, who said:

Professor Richardson made a tremendous contribution to our community, both as Ombudsman and as a distinguished law academic...He will be greatly missed.

He developed the Office's reputation for intellectual rigour and a robust approach to public administration.

The Commonwealth Ombudsman is now a key national integrity agency, and while its functions and role have expanded, its core activities and value to the

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<sup>32</sup> 1983.

<sup>33</sup> 1984.

<sup>34</sup> 1985.



community have changed little, thanks in great part to the contribution made by Professor Richardson in its formative years.<sup>35</sup>

The valuable work of the ARC members has continued, and turning now to, a necessarily small selection:

- Report No 46, *Automated Assistance in Administrative Decision Making*,<sup>36</sup> is still the only significant work globally on the growing use of computers to automate governmental decisions. Many entitlement decisions are now automated, the use of computers to assist, or substitute, human decision-making is growing. The ARC Report examined what kinds of decisions are suitable for automation and how errors can be avoided or, if made, addressed. The recommendations were implemented by the Australian Government Information Management Offices<sup>37</sup> *Automated Decision-Making: Better Practice Guide*.<sup>38</sup> I was struck by a report in *The Australian* last week, 'Computer declared murderer 'low risk'',<sup>39</sup> which noted criticisms of the no longer used computer assessment tool that had been used in Victoria as a screening system to assess prisoners' general risk of reoffending. Given the exponential growth in subjects of automated decision making it may be time to revisit this challenging issue.
- The ARC released *A Guide to Standards of Conduct for Tribunal Members* (2009).<sup>40</sup> It was intended 'to promote interest in, and discussion and awareness of, standards of conduct for tribunal members' across the themes of 'respect for the law, fairness, independence, respect for persons, diligence and efficiency, integrity,

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<sup>35</sup> Commonwealth Ombudsman, 'Minister pays tribute to Australia's first Ombudsman, Professor Jack Richardson', 27 June 2011, <http://www.ombudsman.gov.au/media-releases/show/182>.

<sup>36</sup> 2004.

<sup>37</sup> Later incorporated into the Department of Finance.

<sup>38</sup> Department of Finance, *Automated Assistance in Administrative Decision-Making: Better Practice Guide*, 2007, <http://finance.gov.au/archive/archive-of-publications/aaadm/content.html>

<sup>39</sup> Rachel Baxendale, 'Computer declared murderer 'low risk'', *The Australian*, 9 September 2015, p 5.

<sup>40</sup> Administrative Review Council, *A Guide to Standards of Conduct for Tribunal Members*, 2009, <http://www.arc.ag.gov.au/Publications/Reports/Pages/Downloads/AGuidetoStandardsofConductforTribunalMembersRevised2009.aspx>.

and accountability and transparency'.<sup>41</sup> The Guide was later adopted by Council of Australasian Tribunals (COAT) and now forms the benchmark for conduct of tribunal members in State and Commonwealth tribunals.

- And with contemporary relevance, Report No 39 *Better Decisions: Review of Commonwealth Merits Review Tribunals*<sup>42</sup> recommended the further pursuit of the Kerr Committee's objective of bringing together Commonwealth merits review into a single body by proposing a detailed model for amalgamation of certain Commonwealth tribunals.

It is worth a short detour to explain the fate of this proposal.

The Administrative Review Tribunal Bill 2000 (ART Bill) proposed the amalgamation of Commonwealth tribunals, including the AAT, Social Security Appeals Tribunal (SSAT) and the Migration and Refugee Review Tribunals (MRT-RRT) into a single body, the Administrative Review Tribunal (ART).

A number of concerns were expressed about the ART - the independence of membership was perceived to be lessened because the head of the ART would be not required to be a judge; appointments and practice directions could be made by portfolio ministers; divisions within the tribunal would have portfolio funding; and performance agreements were to be introduced for members.<sup>43</sup> Other objections were based on the ART Bill's preference for single member panels; there being no right to representation without leave; a preference for new material emerging in the course of a hearing to be referred back to the original decision maker instead of being dealt with by the tribunal; and the requirement for leave for second tier review in some jurisdictions where it had not previously been available or where it had been automatic.<sup>44</sup>

Critics of the ART argued that while the ARC proposal to amalgamate the tribunals had been adopted, the overall design of the ART shared almost nothing else in common with the vision of the *Better Decisions* Report. For

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<sup>41</sup> Ibid 'Summary of the Guide'.

<sup>42</sup> 1995.

<sup>43</sup> Bills Digest No 40 2000-01 Administrative Review Tribunal Bill 2000, Department of the Parliamentary Library, Information and Research Services, pp 17-24.

<sup>44</sup> Ibid.

those critics it served as a reminder that powerful opponents of arm's length merits review remained influential. The ART Bill ultimately lapsed for want of support in the Senate, and for over a decade the underlying common objectives of tribunal amalgamation was put into the too hard basket.

However in the 2014 Budget the Abbott Government announced that it intended to amalgamate the AAT with the Social Security Appeals Tribunal (SSAT) and the Migration Review and Refugee Review Tribunals (MRT-RRT). On this occasion, with bipartisan support, legislation formulating the amalgamation the *Tribunals Amalgamation Act 2015* (Cth)<sup>45</sup> was passed.

That Act significantly differed from the ART proposal:

- The independence of membership is protected by maintaining that the requirement for the AAT's President to be a Judge of the Federal Court; appointment of members is made by the Governor-General, on the Attorney-General's recommendation;<sup>46</sup> and members can only be removed on address of both Houses.<sup>47</sup>
- Practice Directions are made by the President.<sup>48</sup>
- There is flexibility around representation. Parties may appear in person or be represented by another person without leave,<sup>49</sup> except in the Social Services and Child Support Division and the Migration and Refugee Division. In the Social Services and Child Support Division, an agency party may appear through a representative and any other party may be represented with the tribunal's permission.<sup>50</sup>
- New material can be considered by the tribunal; there is no requirement to refer back to the original decision maker.<sup>51</sup>

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<sup>45</sup> Commenced on 1 July 2015.

<sup>46</sup> *Administrative Appeals Tribunal Act 1975* (Cth), s 6.

<sup>47</sup> *Ibid* s 13.

<sup>48</sup> The power remains for the Minister for Immigration to make directions under the *Migration Act 1958* s 499.

<sup>49</sup> *Administrative Appeals Tribunal Act 1975* (Cth), s 32(1).

<sup>50</sup> *Ibid* ss 33(1)(b) and (2).

<sup>51</sup> However there are some restrictions on the use of new material in the Immigration Assessment Authority, see the *Migration Act 1958* (Cth) s 473DD.

- Two tier reviews remain available to the same extent as was previously the case between the Social Security Appeals Tribunal (SSAT) and the AAT.

The amalgamation finally consummated by the passage of this Act thereby avoided the perceived flaws of the previous ART proposal. If not the direct adoption of the ARC *Better Decisions* Report, the *Tribunals Amalgamation Act 2015* (Cth) was strongly influenced by it. As for my part, it has always been self-evident that the appointment of members of the AAT by the First Law Officer of the Commonwealth, at arm's length from agencies whose decisions may be the subject of reconsideration, best fits with the independence required for the Kerr Committee's vision of merits review. I congratulate the Attorney-General, Senator the Hon George Brandis QC for consummating that significant achievement.

However, the process of bringing three significant existing institutions together with minimum disruption while delivering on that objective has necessarily left some legacy issues for later attention. A few illustrations of this:

- Three quite different funding models apply to different parts of the work undertaken within the AAT.
- Inconsistencies in procedures apply between different Divisions. Many minor and unnecessary inconsistencies persist merely as heritage consequences of minimising disruption to pre-existent systems. I trust those can be picked up and removed either before or when the amalgamation is reviewed as Parliament has provided for. Others may be thought to require more detailed attention. An example may be the procedural code that formerly applied in the MRT-RRT that has transitioned to apply in the MRD.

In ARC Report No 50, *Federal Judicial Review in Australia* (2012) the Council advised that it had 'conducted a comprehensive review of the judicial review landscape in Australia'. The MRT-RRT submitted that the procedural codes enabled by the *Migration Act 1958* (Cth) s 424A had been the subject of significant litigation without enhancing the quality of decision making by the Tribunal. In looking at submissions of the MRT-RRT and the separate statutory review schemes, the Council

'considered submissions on the continued utility of retaining a procedural code for the MRT-RRT'.<sup>52</sup> It noted that 'endeavours to achieve compliance with the code have not necessarily enhanced the fairness of the review process, at considerable cost to efficiency and increased litigation.'<sup>53</sup>

- The number of members who transferred across in transitional arrangements from the SSAT and the MRT-RRT was significantly fewer than had been planned for and will be required for the effective functioning of the new divisions of the AAT. I look forward to necessary appointments being made soon or delays in resolving reviews in the Tribunal will inevitably increase.

So although passage of the amalgamation rightly should be celebrated as an important move forward towards finally realising the Kerr Committee's objectives, this is far from the end of the reform task.

In 1997 a Senate Committee, chaired by the Hon Eric Abetz, delivered the *Report on the Role and Function of the Administrative Review Council*. It concluded that:

...there is a continuing need for the Commonwealth Government to receive advice and recommendations on administrative review and decision-making, and to promote a comprehensive, affordable and cost-effective administrative law system.<sup>54</sup>

Its first recommendation was that the ARC:

...should remain as a separate and permanent body, provided that it is making a significant contribution towards an affordable and cost-effective system of administrative decision-making and review.<sup>55</sup>

However, on 11 May 2015 the Minister for Finance announced the ARC will be abolished and its functions transferred to the Attorney-General's Department. This raises the question – if the ARC is abolished who will remain the engine

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<sup>52</sup> Administrative Review Council, *Federal Judicial Review in Australia*, Report No 50 (September 2012), 'Chapter 6: Separate Statutory Review Schemes', p 120.

<sup>53</sup> Ibid.

<sup>54</sup> Senate Legal and Constitutional Legislation Committee, *Report on the Role and Function of the Administrative Review Council* (1997), 'Conclusions and Recommendations', Recommendation No 1.

<sup>55</sup> Ibid.

room, the defenders of the faith to drive pursuit of excellence in review as the ARC has in the past?

The administrative law journey should not be forgotten. For more than 4 decades advice as to how best achieve administrative law reform has been from the ARC. We too often take for granted our autochthonous administrative law which grants the citizen rights which should be celebrated as Malcom Fraser did when he nominated 'reform of administrative law' and the AAT as among his great achievements.<sup>56</sup>

The ARC has ensured that the reforms initiated by the Kerr Committee had ongoing champions. It has provided advice to government that included input from an independent body of members with extensive academic and business experience and those directly affected by government decisions, as well as input from within the bureaucracy.

Sir William Cole and Mr John Stone are no longer amongst us but there is room for scepticism that their successors can be relied upon to be enthusiastic supporters of a system which, from time to time, may hold decisions they have made to rigorous external account. Parliament may decide that the ARC has outlived its original utility but if Part V of the *Administrative Appeals Tribunal Act 1975* (Cth) is repealed those committed to the contemporary development of administrative law and practice will need to continue to advocate for the Kerr Committee's vision. More than ever, those who honour Professor Jack Richardson will need to keep an eye on the road ahead in order to preserve his legacy, and to protect and advance the administrative values of fairness, honesty, and transparency.

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<sup>56</sup> ABC, Kerry O'Brien, 'Malcolm Fraser joins the 7.30 Report', *7.30 Report*, 22 February 2010, <http://www.abc.net.au/7.30/content/2010/s2827147.htm>