

LEGAL AFFAIRS

AVIATION INSIDE

ONLINE Jack Hoysted on the uncomfortable truth about the UN and the Malaysia solution {P34}



www.theaustralian.com.au

State super-tribunal on the cards

EXCLUSIVE

NICOLA BERKOVIC

NSW Attorney-General Greg Smith is considering folding the state's myriad tribunals into one super-tribunal.

NSW Administrative Decisions Tribunal head Kevin O'Connor, and leading lawyers and academics, have backed the possible move, arguing it would improve the administration of justice and reduce costs.



Greg Smith

In a speech at Clayton Utz's Sydney offices, Mr Smith said the ADT, when it was established in 1997, had been intended to rationalise the "proliferation of

tribunals" in NSW and be the dominant merit review body. But it had not achieved that goal.

The ADT reviews the state's administrative decisions, but numerous specialist tribunals also exist. They include larger bodies such as the Mental Health Review Tribunal, and many small professional discipline tribunals, including for nurses, chiropractors and podiatrists.

Mr Smith hinted that he was examining the systems in Victoria and Queensland, telling the gathering during a question-and-answer session that NSW was

"surrounded by CATs". Victoria's VCAT (Civil and Administrative Tribunal), was created in 1998, amalgamating 15 boards and tribunals.

It offers a one-stop shop dealing with disputes ranging from environmental planning and medical licensing to residential tenancies and discrimination.

Queensland's QCAT is a similar super-tribunal and Western Australia has established a multi-jurisdictional State Administrative Tribunal.

The total budget of NSW's 14-odd tribunals is difficult to

ascertain, but expenditure by two of the largest — the Consumer, Trader and Tenancy Tribunal and the Guardianship Tribunal — totalled \$35.4 million in 2009-10, almost equal to VCAT's \$36.8m annual expenditure.

Mr Smith confirmed he was exploring the possibility of creating a super-tribunal in NSW to replace many of the existing bodies.

"It is something we are examining as a possibly more efficient way of conducting administrative review of government decisions," Mr Smith said.

Barrister Mark Robinson, an

expert in administrative law and former part-time judicial member of the ADT, said a super-tribunal would more efficiently administer justice than many of the state's smaller tribunals.

"It would be run better, fairer, more professionally, with less inbred tendencies, less of the quangoism, cronyism and laziness, the club atmosphere," Mr Robinson said.

"It doesn't do anyone good to have a closed group of 20 men and women who run, and appear before, a tribunal. It's not good for objective justice."

Australian Institute of Administrative Law NSW secretary Andrew Chalk said some of the state's tribunals dispensed "Mickey Mouse justice".

"Bringing greater order, regularity and consistency is obviously a desirable thing," Mr Chalk said.

But, Mr Robinson warned, Mr Smith would have to battle entrenched interests to disband many of the state's tribunals.

The late former NSW attorney-general Jeff Shaw "had the same idea and spent 10 years

Continued on Page 34

Super-tribunal on the cards

Continued from Page 33

on it and all he was able to get for his efforts was the ADT," Mr Robinson said. "He spoke to me about how hard it was to get cross-departmental agreement. He said... there was blood on the floor in cabinet."

Australian Catholic University vice-chancellor Greg Craven, who as crown counsel in Victoria during the Kennett era headed the project to create VCAT, said NSW could achieve efficiencies by rolling its tribunals together because IT systems, training, registries and facilities could all be shared.

VCAT was almost universally regarded as a success, he said.

Professor Craven urged NSW to ensure a transparent and independent process for appointing tribunal members.

He believed a person with the status of a Supreme Court judge should be appointed to head the tribunal. In some states, tribunal positions were used as political rewards, he said.

It was an opportunity "to create some sort of system for recommending and approving tribunal members that takes as much of the politics out of it as possible", he said.

"That would be a way that NSW could actually advance on something like VCAT."

The possible move to rationalise the state's tribunals comes after the government released a discussion paper in

March on overhauling judicial review. Options for reform include a new statutory right to question reasons for government decisions, and a statutory right to judicial review, as exists in other jurisdictions, rather than applicants relying on the common law.

The push also comes after the NSW Industrial Relations Commission president, Roger Boland, said in March that he wanted the state government to help his commission take over the jurisdiction of some other tribunals and boards. The NSWIRC lost much of its workload with the federal take-over of IR and Justice Boland saw his plan as delivering efficiencies and securing the IRC's future.

However, Norton Rose partner Michael Tooma said a new super-tribunal in NSW could take work from the IRC, which was unpopular with many in the business community.

"If the new tribunal is conferred with jurisdiction to review occupational health and safety notices, as the Victorian tribunal is, the decision could result in further significant dwindling of the workload of the Industrial Relations Commission," he said.

Clayton Utz partner and workplace relations, employment and safety group head Joe Catanzariti said he had favoured super-tribunals for some time.

VCAT and QCAT had been stunningly successful.