Amalgamating Tribunals: *A recipe for optimal reform*

Rachel Bacon

Thesis submitted in fulfilment of the requirements for the degree of Doctor of Philosophy

April 2004

Faculty of Law, University of Sydney

ABSTRACT

The last decade has seen numerous proposals to reform existing tribunal systems in jurisdictions throughout the common law world. Across the board, there have been proposals to adopt generalist tribunal models in preference to smaller, specialist tribunal systems, and to achieve these changes through the process of amalgamation.

The most significant recent developments to occur in Australia have taken place in Victoria and NSW during the past five years. Legislators in these States have chosen to amalgamate a number of smaller, specialist tribunals into larger, generalist bodies. In 1997 the NSW Parliament passed legislation amalgamating a number of specialist tribunals to create the Administrative Decisions Tribunal (ADT); comparable legislation was passed in Victoria in 1998 to create the Victorian Civil and Administrative Tribunal (VCAT).

There were concurrent attempts to implement similar reforms at federal level. In 1998 the Commonwealth government announced its intention to amalgamate four Commonwealth merits review tribunals to form one 'super Tribunal' — the Administrative Review Tribunal (ART). The Bills containing these proposals were ultimately defeated in the Senate, however the Australian Government remains convinced of the benefits of amalgamation at federal level. Similar reforms have been proposed in Western Australia, Tasmania and the United Kingdom.

This thesis argues that these reforms are taking place in the absence of data about their likely implications, and without a thorough understanding of the objectives that generalist versus specialist tribunal systems can realistically achieve. This ill-considered or 'over-hasty' trend towards amalgamation raises a number of questions which have not previously been addressed in academic or policy-making circles. An obvious question is whether or not an amalgamated tribunal model is more effective than a series of smaller, specialised tribunals in delivering administrative justice, in other words, whether there is any net gain to be had from a government's decision to amalgamate.

The less explored, but equally important, question addressed in this thesis is how the process of amalgamation should be approached in order to realise the maximum potential benefits that an amalgamated tribunal can bring. That is, to ask what are the ingredients of an *optimal* amalgamation. This is not a question about whether government decisions to pursue amalgamation are intrinsically worthwhile or beneficial for stakeholders. Rather, it is about how government decisions to amalgamate should best be implemented.

This thesis proposes a way of differentiating between good and bad amalgamations, that is grounded in theory and informed by experience to date. The proposed approach is to assess the effectiveness of amalgamation processes using relevant measures drawn from an analysis of organisational theory literature:

- *Legislation* — the legislation establishing an amalgamated tribunal needs to ensure the tribunal will have appropriate independence, powers, processes, membership and structure.
- *Political commitment* — those responsible for proposing and planning an amalgamation need to provide appropriate funding and support for the process and for the establishment of an autonomous, self-directed tribunal.

- *Organisational structure* — the structures put in place need to be appropriate, integrated and flexible, and should promote cohesion and interaction.
- *Process and procedure* — the processes and procedures adopted in an amalgamated tribunal need to capitalise upon the opportunities provided by amalgamation, as well as being appropriate, efficient and able to balance the needs of a range of stakeholders.
- *Organisational culture* — an organisational culture which counters natural tendencies towards disjunction will assist members and staff to identify with a newly amalgamated tribunal and to implement initiatives that will improve its performance.
- *Leadership* — effective leadership plays an important role in ensuring a smooth transition from specialist to amalgamated tribunal, and engendering commitment from members and staff.

Broadly speaking, these factors fall into the four categories of law, context, organisation and people. It is argued that attention must be paid to all four of these ingredients in order to achieve optimal tribunal reform. The thesis tests this proposition by examining the three most advanced tribunal amalgamations so far, namely, the Commonwealth ART, the NSW ADT and VCAT in Victoria.

It is argued that the fate of the Commonwealth ART proposal proves the importance of a solid, generally endorsed legislative foundation in creating a viable amalgamated tribunal.

The importance of context, organisation and people is borne out by qualitative research into the amalgamation experiences in NSW and Victoria. The fact that the NSW and Victorian governments decided to pursue policies of amalgamation at the same time provided a unique opportunity to compare the success or otherwise of two concurrent attempts at amalgamation in different jurisdictions.

This thesis finds that the unfavourable political context in NSW prevented the ADT from realising its potential. In contrast, the VCAT experience highlights the benefits of paying careful attention to the wide range of factors that can contribute to a successful amalgamation. Of most relevance are the initial scale of an amalgamation, the political 'will' behind its implementation, the appointment of a core of full-time members, and the creation of an open institutional culture which facilitates the sharing of information.

In short, the thesis concludes that the successful construction and consolidation of a tribunal post-amalgamation requires that the necessary ingredients of optimal tribunal reform — legislation, context, organisation and people — are thoughtfully addressed.

ACKNOWLEDGEMENTS

There are a number of people and organisations without whose support I would not have been able to complete this thesis.

I am indebted to many members and staff of the Administrative Decisions Tribunal and the Victorian Civil and Administrative Tribunal, especially their Presidents, for their time, their openness and their willingness to engage in my research. I am also grateful to Ms Philippa Horner for her valuable comments on an earlier draft of my thesis.

There are four more people whose support has enabled me to survive the challenges of full-time work and part-time study over the past six years. I am particularly grateful to my parents who have dedicated many hours to discussing ideas and editing my thesis throughout the course of its lifetime.

I owe an enormous debt to my wonderful partner Tony, who has fed me, supported me and loved me — without faltering and without question — despite the many pressures that a PhD brings.

I feel privileged to be able to thank Professor Terry Carney for his patient and kind supervision during the course of my candidature. I cannot imagine receiving better advice or more constant support.

Finally, this thesis is dedicated to little Bella, who would have been so proud to know how much she contributed to this project during her short life.

Rachel Bacon

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

Unless otherwise indicated, the following abbreviations or terms are used throughout this thesis:

AAT	Administrative Appeals Tribunal
AAT Act	*Administrative Appeals Tribunal Act 1975* (Cth)
ADR	Alternative dispute resolution
ADT	Administrative Decisions Tribunal of NSW
ALRC	Australian Law Reform Commission
ANAO	Australian National Audit Office
ARC	Administrative Review Council
ART	Administrative Review Tribunal
ART Bill	*Administrative Review Tribunal Bill 2000* (Cth)
CEO	Chief Executive Officer
Cth	Commonwealth
CTP Bill	*Administrative Review Tribunal (Consequential and Transitional Provisions) Bill 2000* (Cth)
CTTT	Consumer, Trader and Tenancy Tribunal of NSW
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
Federal government	The federal government of Australia, otherwise known as the Commonwealth government or Australian government
IRD	Immigration and Refugee Division of the ART
KPI	Key performance indicator
MRT	Migration Review Tribunal
NGO	Non-government organisation
NSW	New South Wales
QAT	Administrative Tribunal of Quebec
RRT	Refugee Review Tribunal
SAT	State Administrative Tribunal of WA

SSAT	Social Security Appeals Tribunal
VCAT	Victorian Civil and Administrative Tribunal
VRB	Veterans' Review Board

INTRODUCTION

Western systems of government have become increasingly complex over the past century as the range of human activity subject to government regulation has expanded exponentially. It could be said that one of the corollaries of increased government regulation is greater reliance upon official means of settling disputes. In a growing number of instances, society's demand for accessible and efficient dispute resolution mechanisms is being met by tribunals. As such, tribunals are playing an increasingly important role in modern systems of government. In common law jurisdictions they are arguably overtaking the role of courts as a primary means of resolving disagreements.

At the same time, there is growing recognition of the role of tribunals in giving content to terms such as 'participative democracy' and the 'rule of law'. In the absence of comprehensive constitutional protection of individual rights, mechanisms that help ensure proper process is followed take on an added significance.[1] For most citizens, tribunals will be the principal means of redressing unfair treatment at the hands of the bureaucracy. As one author put it:

> … tribunals … are in concept uniquely democratic in that they afford a large number of people the right to challenge an official decision and in doing so give them the opportunity to participate personally in the ultimate decision-making processes relating to their cases; moreover doing this not as claimants applying for benefit to an official behind a desk but as citizens engaged in constitutional procedures.[2]

For all these reasons tribunals have become an essential element of the common law legal system, and there is every indication that society's reliance upon them will continue.[3] In

---

1 Robertson, Alan, "Judicial review and the protection of individual rights" in McMillan, John (ed), *Administrative law: does the public benefit?*, proceedings of the 1992 Administrative Law Forum, Australian Institute of Administrative Law, Canberra, 1992, 37-44, at 37 and 42; Bradley, A. W., "Administrative justice and judicial review: taking tribunals seriously" (1992) *Public Law* 185-191, at 191; O'Connor, Justice Deidre, speaking at *Seminar: administrative law in transition — the proposed Administrative Review Tribunal*, Australia, Senate Legal and Constitutional Legislation Committee, 25 October 2000, *Hansard*, at L&C 9; McClelland, Robert, Shadow Commonwealth Attorney-General, *ibid*., at L&C 37.

2 Swain, Phillip, *Challenging the dominant paradigm: the contribution of the welfare member to administrative review tribunals in Australia*, 1998, unpublished, at 11, quoting Bell, Kathleen, "Social security tribunals — a general perspective" (1982) 32(2) *Northern Ireland Law Quarterly* 132-147, at 146.

3 Swain, above n 2, at 13.

light of the importance of tribunals, it is arguable that they constitute a *de facto* fourth arm of government, alongside parliament, the executive and the judiciary.

A lack of academic engagement

Despite this, there is a remarkable lack of understanding of the concept of 'tribunal', the distinctive features that characterise different tribunal models, and the requisite elements of an effective tribunal system. The absence of theoretical engagement with such questions is particularly surprising given the prominence of tribunals in so many areas of practice.[4] As articulated by Robin Creyke:

> There has been a proliferation in the growth and use of non-curial tribunals — developments which have made tribunals the modern equivalent of the courts — but comparatively little attention has been given to their operation and effect. This lack of empirical research has been commented upon adversely in a number of quarters.[5]

The fact that tribunals come in a variety of shapes and sizes and undertake a range of roles may partly explain the lack of analysis of the overarching concept of 'tribunal'. Tribunals operating in the Australian federal sphere alone include bodies as diverse as the Human Rights and Equal Opportunities Commission, the National Native Title Tribunal, the Industrial Relations Commission, professional services review tribunals, the Superannuation Complaints Tribunal, the Remuneration Tribunal, the Australian Broadcasting Authority, the Australian Securities and Investments Commission, the Veterans' Review Board, the Migration Review Tribunal, the Refugee Review Tribunal, the Social Security Appeals Tribunal, and the Administrative Appeals Tribunal.[6]

---

4 Sayers, Michael and Webb, Adrian, "Franks revisited: a model of the ideal tribunal" (1990) 8 *Civil Justice Quarterly* 36-50, at 49 and 50.

5 Creyke, Robin, *The procedure of the federal specialist tribunals*, Centre for Public and International Law, Canberra, 1994, at 1. See also Creyke, Robin and McMillan, John, "Executive perceptions of administrative law — an empirical study" (2002) 9(4) *Australian Journal of Administrative Law* 163-190, at 164; McNaughton, Bronwyn, "Cost of justice: a great deal of inquiring" (1990) 15 *Legal Services Bulletin* 266-267; Skehill, Stephen, "The hidden dimension of administrative law" (1989) 58 *Canberra Bulletin of Public Administration* 137-140; Kerr, Duncan, Commonwealth Minister for Justice, "Address to the Annual General Meeting of the Australian Institute of Administrative Law" (1993) 15 *Australian Institute of Administrative Law Newsletter* 13.

6 See Administrative Review Council, *Better decisions: a review of Commonwealth merits review tribunals*, AGPS, Canberra, 1995, at 5.

As discussed in Chapter 1, some tribunals have a professional discipline jurisdiction, while others undertake administrative review of government decisions. While Commonwealth tribunals in Australia are constitutionally prevented from exercising judicial power, tribunals operating in other jurisdictions also perform what can be described as 'court-substitute' functions.[7] The implications of these divergent functions for the arguments put forward in this thesis are addressed below.

Despite this variety of roles, it would arguably be possible to list the individual bodies that can be classified as performing the functions of a tribunal. It may even be possible to list the qualities that an effective tribunal system should exhibit, in spite of the limited literature on this subject. However, the problem remains that there has been no comprehensive attempt to translate these various functions and qualities into a coherent theoretical framework that can be applied in constructing and evaluating optimal tribunal models. This means that, rather than being able to guarantee or even predict the success of various reforms, government attempts to establish and improve tribunal systems have been somewhat 'hit and miss'.

Significant tribunal reforms

As Chapters 2 and 3 demonstrate, changes to tribunal systems have not been put on hold pending the development of methodologies and theories that will better ensure their success. On the contrary, major reforms have been taking place in jurisdictions throughout the common law world. The last five years have seen a marked increase in the number of jurisdictions that have endorsed or implemented proposals to amalgamate specialist tribunals to form larger, generalist tribunals with shared structures and administrations.

In Australia, these are the most significant developments to have occurred since the implementation of the 'new administrative law' reforms in the 1970s. In keeping with its

7 Farmer, J. A., *Tribunals and government*, Sweet and Maxwell, London, 1974, at 3 and 183; Harlow, Carol and Rawlings, Richard, *Law and administration*, Butterworths, London, 1997, at 462.

reputation for being at the forefront of administrative law reform,[8] Australia is in the vanguard of the trend to amalgamate tribunals. For instance, in February 1998, the federal Government announced its intention to amalgamate four Commonwealth administrative tribunals to form what may be termed a 'super-Tribunal' called the Administrative Review Tribunal (ART). Those four tribunals were the Refugee Review Tribunal (RRT), the Migration Review Tribunal (MRT),[9] the Social Security Appeals Tribunal (SSAT) and the Administrative Appeals Tribunal (AAT). The Government had intended the ART to commence operations on 1 July 2001,[10] and Bills giving effect to the proposal were introduced into Parliament in June and October 2000.[11] While these Bills were ultimately blocked in the Senate, tribunal amalgamation remains official government policy.

Meanwhile, in NSW the Government established an Administrative Decisions Tribunal (ADT) in 1998.[12] The ADT is the product of the amalgamation of a number of smaller, specialist tribunals and bodies which operated in a range of jurisdictions including community services, legal professional discipline, and equal opportunity. Significantly, a number of NSW tribunals were not included in the amalgamation, and other tribunal reforms have since taken place separately to the establishment and operation of the ADT.

In Victoria the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) created a new 'super-Tribunal' called the Victorian Civil and Administrative Tribunal (VCAT), which

---

8 Creyke, Robin and McMillan, John (eds), *The Kerr vision of Australian administrative law — at the twenty-five year mark*, Centre for International and Public Law, Canberra, 1998, at iii.

9 When the Government first announced its intention to create an ART, the predecessor to the MRT — the Immigration Review Tribunal or IRT — was still in existence. The IRT was replaced by the MRT on 1 June 1999 by the *Migration Legislation Amendment Act 1998* (Cth), the significant change being the amalgamation of Migration Internal Review Officers (MIROs), from the Department of Immigration and Multicultural and Indigenous Affairs, with the IRT. As this did not substantially alter the structure or procedures of the IRT/MRT as set out in Part 6 of the *Migration Act 1958* (Cth), this paper will refer to the MRT as including the IRT, unless otherwise stated.

10 The originally contemplated start date of 1 February 2001 was put back until 1 July 2001 — Williams, Daryl, Commonwealth Attorney-General, *News release: biggest Consequentials Bill to establish new merits tribunal*, 12 October 2000. See also Williams, Daryl, Commonwealth Attorney-General, *News release: establishment of the Administrative Review Tribunal*, 9 May 2000; Cummins, Kath, "Family Court shares pain of cuts", *Australian Financial Review*, 12 May 2000, at 30.

11 Specifically, the *Administrative Review Tribunal Bill 2000* was introduced into the House of Representatives by the Attorney-General on 28 June 2000. The *Administrative Review Tribunal (Consequential and Transitional Provisions) Bill 2000* was introduced by the Attorney-General on 12 October 2000.

12 Administrative Decisions Tribunal, *Annual report 1999–2000*, ADT, Sydney, 2000, at 4.

commenced operations on 1 July 1998. VCAT is an amalgamation of the Victorian Administrative Appeals Tribunal and several smaller, separate tribunals which operated in jurisdictions such as anti-discrimination, credit, domestic building, guardianship, property, land valuation, occupation and business regulation, and taxation.[13] Almost all significant tribunals operating in Victoria were included in the amalgamation, unlike in NSW.

In other jurisdictions, amalgamation proposals are being actively pursued. In March 2001 the Western Australian Attorney-General established a taskforce to develop a model of a generalist civil and administrative review tribunal for consideration by government. The Taskforce produced a report in May 2002 — which the Government has since adopted — recommending the creation of a State Administrative Tribunal (SAT) through the amalgamation of a number of existing tribunals and bodies operating in WA. The tribunal envisaged by the Taskforce is similar in design to VCAT.[14]

Similar developments are proposed in Tasmania, and are currently taking place in the United Kingdom. In 2001 the Leggatt Report into the tribunal system in the United Kingdom recommended that "the 70 or so tribunals in England and Wales be brought together into a single and separate system".[15] Specifically, like tribunals would be grouped together in nine divisions, all of which would be serviced by a unified Tribunals Service (or Registry).[16]

The clear pattern to emerge from an overview of recent developments is the extent to which amalgamation has been pursued by governments throughout the common law world.

---

13 Pizer, Jason, "The VCAT - a practical overview", a paper presented at *Administrative Law Session W*, conference by the Law Institute of Victoria, Melbourne, 11 September 1998, at 2.

14 Administrative Review Tribunal Taskforce, *Western Australian Civil and Administrative Review Tribunal Taskforce report on the establishment of the State Administrative Tribunal*, Perth, May 2002, at 63 to 64.

15 Creyke, Robin, "Tribunals and access to justice" (2002) 2(1) *Queensland University of Technology Law and Justice Journal* 64-82, at 69.

16 Leggatt, Sir Andrew, *Tribunals for users: one system, one service*, the Stationery Office, London, 2001.

Objectives of this thesis

Despite the trend towards tribunal amalgamation and calls for further research in this area,[17] there remains a distinct lack of information about the advantages and disadvantages of going down this path. An underlying premise of this thesis is that government decisions about tribunal reform should be a product of rigorous analysis and debate. Ideally, proposals for reform should be informed by ideas that emerge from an interplay between academic, judicial, political and public policy commentary. While political and practical considerations are relevant, it is argued that policies developed on the basis of empirical research will be more relevant and enduring.[18]

The difficulty is that, as well as an absence of empirical data on the consequences of amalgamation, there are no generally accepted theoretical frameworks or models that can be used to evaluate or test different approaches to tribunal amalgamation. As argued by Sayers and Webb:

> Tribunals can make an important contribution to keeping the wheels of justice and administration turning as swiftly and as smoothly as possible. To make that contribution, the tribunal system needs a model, or models, against which it can be assessed and appraised.[19]

The research presented in this thesis suggests the absence of applicable frameworks or models has led to an ill-considered approach to amalgamation.

To help fill this gap, a central objective of this thesis is to develop a methodology for measuring the effectiveness of amalgamations. A further objective is to apply this methodology in evaluating the success or failure of attempts to amalgamate tribunals in several jurisdictions throughout Australia. These tasks raise the difficult question of how to measure effectiveness — a question which, for the purposes of this thesis, has been explored in some depth by those working in the field of oganisational theory. This literature is reviewed in Chapter 4.

---

17 A number of speakers at *Administrative law: the essentials*, conference by the Australian Institute of Administrative Law, Canberra, July 2001, called for further research in this area.

18 Harris, Michael, "There's a new tribunal now: review of the merits and the general administrative appeal tribunal model" in Harris, Michael and Waye, Vicki (eds), *Australian studies in law: administrative law*, Federation Press, Sydney, 1991, 188-220, at 191; Partington, Martin, "Lessons from tribunals" (1990) May, *Legal Action* 9.

As will be demonstrated by examining the commonalities that recur throughout attempts by organisational theorists to develop measures of effectiveness, several factors suggest themselves as the key elements of a successful amalgamation. These are:

- legislation;
- political commitment;
- organisational structure;
- process and procedure;
- organisational culture; and
- leadership.

These elements fall into the four categories of law, context, organisation and people. As argued in Chapter 4, these are the four *ingredients* of optimal tribunal reform. This hypothesis serves as the foundation for analysing the Commonwealth, NSW and Victorian amalgamation experiences that took place in Australia at a similar time.

The importance of law

The Australian Government's[20] proposal to establish an ART at Commonwealth level was announced in 1998. While this proposal was ultimately defeated, a detailed analysis of the ART legislation and associated commentary is undertaken in Chapters 2 and 6 with a view to pinpointing those aspects of a founding statute which assist or undermine the creation of an amalgamated tribunal. The comparison in Chapter 6 between the ART package of Bills and the statutes establishing the NSW ADT and VCAT establishes the importance of a solid legislative foundation in achieving an optimal amalgamation.

The remainder of the thesis presents and analyses the results of qualitative research undertaken into the amalgamation experiences in NSW and Victoria. The methodology used was to gather data from members and staff of the ADT and VCAT. While the

19 Sayers and Webb, above n 4, at 50.

20 Note that Australia has a federal government structure. The federal or Commonwealth government of Australia has power to make laws with respect to the subjects listed in s 51 of the *Commonwealth of Australia Constitution Act 1900* (the Constitution). In addition, the governments of Australia's six States have a general power to make laws to the extent that these are not inconsistent with Commonwealth laws. Australia's two Territories have also been given powers to make laws in their respective jurisdictions — see s 122 of the Constitution.

collection of data from stakeholders such as tribunal users and government was beyond the scope of this thesis, the information gathered provides valuable insight into the experience of an amalgamation process from an 'insider' perspective.[21]

The importance of context, organisation and people

The picture to emerge from this research is of two amalgamation processes that had distinctly different outcomes, despite substantial similarities in the legislation creating each Tribunal. The compelling conclusion is that differences in the way each amalgamation process was approached resulted in divergent perceptions of the success of the Tribunals created. Whereas the ADT was perceived to be little more than a sum of its parts, VCAT was seen to emerge as a cohesive, integrated organisation with a strong institutional culture. This is important, as it is by examining and comparing the differences between the amalgamation experiences in each State that reasons can be found to explain them, and thereby gain insight into the factors that must be present if an amalgamation process is to succeed.

The analysis in Chapters 6 to 11 confirms the hypothesis advanced in Chapter 4 — in essence, that the essential ingredients of a successful amalgamation are sound law, a supportive context, the establishment of a cohesive organisation, and people with an ability to actively manage the transition from specialist to generalist tribunal. In particular, this research highlights the importance of political commitment to establishing a viable amalgamated tribunal, and of paying attention to a range of matters from physical layout of office space to the proportion of part-time to full-time membership. Another theme to emerge strongly from the fieldwork is the value of positively engineering the organisational culture which develops within a newly-amalgamated tribunal. The evidence suggests that active involvement by management in disseminating new initiatives and facilitating the sharing of ideas hastens the consolidation of a cohesive organisation with a shared vision and culture.

---

21 Peay, Jill, *Tribunals on trial*, Clarendon Press, Oxford, 1989, at 25; Perkins, Elizabeth, *Decision-making in mental health review tribunals*, Policy Studies Institute, London, 2002, at 14.

Underlying assumptions

It is argued that the research undertaken for this thesis provides useful lessons in how to ensure that an amalgamation process results in optimal tribunal reform. This research, and the conclusions that are drawn, have been informed by a number of assumptions.

Firstly, it is assumed that the role of tribunals is to provide an accessible, efficient forum for the resolution of grievances. In making this assumption it is acknowledged that different tribunals perform different functions. Administrative review tribunals perform a decision-making role akin to that of the bureaucracy in determining whether an applicant is entitled to receive a particular statutory benefit. In contrast, 'court-substitute' and professional discipline tribunals perform a role similar to that of courts in resolving disputes between citizens, or in determining whether the rules of a particular profession have been breached.

In relation to administrative tribunals, their primary role is assumed to be the correction of individual government decisions (in other words, achieving individualised administrative justice).[22] This is seen as slightly more important than their role in improving executive accountability and the standards of primary decision-makers more generally (the 'normative effect').[23] The primary objective of court-substitute and professional discipline tribunals is seen as providing a quicker, more cost-effective alternative to courts. In keeping with these assumptions, this thesis proposes that tribunal reform will result in improvements if it increases a tribunal's accessibility and efficiency, and its ability to deliver just or correct outcomes that are arrived at via appropriate, integrated processes.

Secondly, it is assumed that, while differences in function no doubt necessitate differences in procedure and approach, such differences do not make comparisons between different types of tribunals untenable. This is because tribunals performing

---

22 Harris, above n 18, at 199 and 210; Partington, Martin, "Taking administrative justice seriously: reflections on the Australian Administrative Appeals Tribunal" in McMillan, John (ed), *The AAT — twenty years forward*, Australian Institute of Administrative Law, Canberra, 1998, 134-153, at 137.

23 Creyke and McMillan, above n 5, at 167; Partington, above n 22, at 136; Bayne, Peter, *Tribunals in the system of government: papers on Parliament, no. 10*, Senate Publishing Unit, Canberra, 1990, at 4.

different functions nonetheless share common objectives, such as accessibility, efficiency, consistency and the delivery of just or correct outcomes in the context of individual cases. In addition, differences in function are less significant in the context of this thesis, where the focus is upon the effectiveness of amalgamation processes rather than the effectiveness of tribunal decision-making *per se*.

In this regard, it is important to note that, while the material presented in this thesis provides some insight into the advantages and disadvantages of amalgamated tribunals, this is not the primary objective. Rather than seeking to evaluate different tribunal models or engage in debate about the merits of amalgamation *per se*, this thesis focuses on how best to implement government decisions to pursue amalgamation once they have been made. Moreover, it is assumed that an amalgamation process continues after the formal commencement date, and that tribunal management has a role to play in the latter stages of the transition from specialist to amalgamated tribunal.

Inevitably, the outcomes of an amalgamation process are taken into account when evaluating the success of the process itself. In doing so, value judgements are made about what constitutes an effective amalgamated tribunal. As stated by one commentator: "Consideration of such matters cannot be value free".[24] In the context of this thesis, judgements about amalgamated tribunals are informed by the analysis of the objectives of tribunals set out above.

Finally, it is assumed that tribunal reform in the form of amalgamation can result either in improvements, or a loss of quality in tribunal decision-making. One of the most significant potential benefits of amalgamation is the opportunity it provides to develop new initiatives and make improvements to existing tribunal systems. Whether this opportunity is seized and improvements do, in fact, result, will depend on the presence or absence of the ingredients outlined above, and the extent to which these are understood by policy-makers. As such, this thesis has a practical, policy-oriented dimension which is

---

24 O'Neil, Pamela, "Evaluating the success of an administrative review process: commentary" in Argument, Stephen (ed), *Administrative law and public administration: happily married or living apart under the same roof?*, proceedings of the 1993 Administrative Law Forum, Australian Institute of Administrative Law, Canberra, 1993, 191-196, at 192.

informed by the qualitative data gathered and the theoretical framework within which these data are analysed.