THE CAYMAN ISLANDS LAW REFORM COMMISSION

APPEALS TRIBUNALS

DISCUSSION PAPER
13TH DECEMBER, 2021

THE CAYMAN ISLANDS LAW REFORM COMMISSION

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CAYMAN ISLANDS LAW REFORM COMMISSION

Public Submissions

Stakeholders and members of the general public are invited to comment on the issues identified in this Discussion Paper and, in particular, to submit their views on the recommendations presented for discussion.

The Paper and supporting legislation may be viewed on the following website: **www.lrc.gov.ky** or **www.gov.ky** or a copy may be collected from the Offices of the Law Reform Commission.

Submissions should be forwarded no later than 15th March, 2022 to the Director of the Law Reform Commission, 4th Floor Government Administration Building, Portfolio of Legal Affairs, 133 Elgin Avenue, George Town, Grand Cayman, P.O. Box 136, Grand Cayman KY1-9000 either electronically to **cilawreform@gov.ky**, or in writing, by post or hand-delivered.

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1. INTRODUCTION

1.1 This Discussion Paper is prepared in response to a referral by the Honourable Attorney General, dated 8th September 2019, aimed at determining whether a centralised appeals tribunal should be established in substitution for the current arrangements for separate appeal tribunals for planning, immigration, labour and other administrative matters.

1.2 The development of appeals tribunals to hear and determine appeals against decisions of public authorities recognises the importance of government decision-making on the lives of ordinary people in the Cayman Islands and the need for accountability in decision-making. Although some administrative decisions are made out in the open, most are not. The courts provide an avenue for judicial review if an administrative decision-maker makes an error of law, but an appeals tribunal can examine the entirety of the decision and review it on its merits.

1.3 There has been a global trend in recent decades to consolidate the myriad of individual tribunals in existence in most jurisdictions and create a centralised tribunal for hearing most, if not all, administrative appeals. This Paper will:

(a) examine the arguments in favour of such reforms;
(b) outline some of the potential drawbacks of centralisation if it is not undertaken with care;
(c) examine the current landscape of tribunals in the Cayman Islands and the reforms undertaken in other jurisdictions; and
(d) outline options for reform.

2. HISTORY AND PURPOSE OF TRIBUNALS

Origins and functions of tribunals

2.1 Tribunals primarily developed in the twentieth-century in the United Kingdom to facilitate the adjudication of new regulatory schemes established by social welfare legislation.[1] Tribunals were able to offer faster, cheaper and easier access to adjudication of small claims under welfare schemes than would be possible by relying on the court system. As Wade and Forsyth have noted:

> *"The process of the courts of law is elaborate, slow and costly. Its defects are those of its merits, for the object is to provide the highest standard of justice; generally speaking, the public wants the best possible article, and is prepared to pay for it. But in administering social services the aim is different. The object is not the best article at any price but the best article that is consistent with efficient administration."*[2]

2.2 The role of tribunals has since expanded significantly, and they have become an important part of the justice system. The term "tribunal" does not refer exclusively to a body that hears appeals against administrative decisions – it is used to identify a broad range of bodies that settle disputes, including by hearing appeals. This reflects the historical development of tribunals, which was ad hoc and not underpinned by a single theoretical framework.[3]

2.3 The main categories of tribunals are as follows:

(a) tribunals that decide disputes between citizens – in this instance, the tribunal is essentially an alternative to a court;

(b) tribunals that have original jurisdiction to decide disputes between citizens and the state in the first instance;

(c) tribunals that review or decide appeals from administrative decisions;

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[1] Wade and Forsyth, *Administrative Law* (10th edn, Oxford University Press, 2009), p. 771.
[2] Wade and Forsyth, p. 773.
[3] New Zealand Law Commission, *Tribunals in New Zealand* (NZLC IP6, 2008), p. 32.

(d) tribunals that regulate and discipline members of professions;

(e) tribunals that decide appeals against decisions of other tribunals; and

(f) tribunals that make licensing decisions.

2.4 This Discussion Paper will focus on tribunals that hear administrative appeals. That is, tribunals that provide (in most cases) merits review of decisions made by ministers and government officials under statutes. This is usually the first avenue of review for a person who is aggrieved by such a decision, unless the relevant statute provides for ministerial review or similar.

2.5 The purpose of administrative appeals tribunals is to provide a quick, effective and inexpensive way for people to challenge government decisions before an impartial tribunal. Leaving aside the role of the Ombudsman, there are two principal methods by which an administrative decision may be reviewed – by way of statutory appeal to the Grand Court and by judicial review. These methods are inaccessible to most due to the cost and time involved.[4]

2.6 Providing an avenue for independent review of the merits of administrative decisions is fundamental to improving accountability and transparency within government. The courts retain an important role, but this is limited by the separation of powers, as the courts cannot interfere with the exercise of administrative power unless it has been improperly exercised.[5] Generally, courts will not examine the policy underlying an administrative decision, whereas an administrative appeals tribunal is fundamentally concerned with whether policy conforms with the law and is applied in a reasonable, proportionate and procedurally fair manner,[6] as required by section 19(1) of the Constitution.

[4] Northern Territory Law Reform Committee, *Report on the Review of Administrative Decisions and an Administrative Tribunal* (NTLRC Report No. 29, 2004), p. 21.
[5] NTLRC, p. 26.
[6] Sir Gerard Brennan, "The AAT – Twenty Years Forward" [Speech delivered at the Twentieth Anniversary Conference, Canberra, 1 July 1996].

Purpose and essential characteristics of tribunals

2.7 The primary goal of tribunals is to improve public access to dispute settlement by providing simpler, faster and cheaper access to justice than do ordinary courts.[7] Court processes, which are typically complex, slow and costly, are by their very nature inaccessible. At the very least, it is difficult for the average person to justify the expense and effort of taking action in the courts in all but the most significant of disputes. By the same token, the availability of an alternative avenue for adjudication reduces the burden on the courts to deal with large volumes of low-level cases.

2.8 Tribunals also have the potential to offer specialist technical expertise in a particular regulatory area, further improving their efficiency in dealing with disputes involving complex statutory schemes.[8] This can be achieved by providing for subject-matter experts to be appointed to a tribunal, but it is also the natural result of a specialist tribunal hearing large numbers of similar cases and developing the relevant technical expertise.

2.9 Although tribunals are established to function in a more rapid and informal way than courts, they retain the crucial attribute of operating independently from the executive.[9] In addition, while not bound by the strict procedures of courts, the legislation establishing most tribunals retains the procedural fairness safeguards applicable to court proceedings. These characteristics are essential to promote public confidence in regulatory regimes.

2.10 Tribunals that hear administrative appeals serve an additional purpose to simply resolving the dispute at hand. By providing oversight of administrative decisions, they improve accountability among decision-makers and should improve the quality of administrative decision-making by discouraging abuse of powers and ensuring consistency in the way powers are exercised.[10] Administrative decisions are far more likely to be challenged if an accessible forum such as a tribunal exists than if the only option for appeal is through the

[7] Wade and Forsyth, p. 773.
[8] Wade and Forsyth, p. 774.
[9] Wade and Forsyth, p. 774.
[10] NZLC IP6, p. 42.

courts. The natural consequence of a readily accessible avenue for review should be an improvement in the quality of decision-making in the first instance.

2.11 In 2017, the Council of Australasian Tribunals published a Tribunal Excellence Framework,[11] advocating the following core tribunal values:

(a) equality before the law;
(b) fairness;
(c) impartiality;
(d) independence;
(e) respect for the law;
(f) accessibility;
(g) competence;
(h) integrity;
(i) accountability; and
(j) efficiency.

2.12 In reviewing its system of tribunals, the New Zealand Law Commission summarised the desirable characteristics of a tribunal as follows:

(a) accessibility, both in terms of cost and ease of access;
(b) membership and expertise appropriate to the subject matter;
(c) real and perceived independence;
(d) procedural rules that ensure natural justice, are simple and less formal than those of the courts, and which will often be more inquisitorial than adversarial, depending on the nature of the case;
(e) sufficient and proportionate powers to enable the tribunal to effectively carry out its functions;
(f) appropriate avenues to appeal the tribunal's decisions; and
(g) speedy and efficient determination of cases.[12]

[11] Tribunal Excellence Framework available at <http://coat.asn.au/wp-content/uploads/2018/11/Tribunals_Excellence_Framework_Document_2017_V4.pdf>.
[12] New Zealand Law Commission, *Tribunal Reform* (NZLC SP20, 2008), p. 5.

2.13 These goals and characteristics should be at the centre of any tribunal reform in the Cayman Islands.

3. TRIBUNALS IN THE CAYMAN ISLANDS

Existing tribunals

3.1 There are currently twelve tribunals in the Cayman Islands with the primary function of hearing appeals, and nine tribunals that can broadly be described as first instance tribunals. In addition, there are three tribunals that are not yet operational. The tables in Appendix 1 summarise the functions of these tribunals.

3.2 The existing tribunals are as follows:

Appeals tribunals	**Enabling legislation**
Civil Service Appeals Commission	Public Service Management Act (2018 Revision)
Health Appeals Tribunal	Health Practice Act (2021 Revision)
Immigration Appeals Tribunal	Immigration (Transition) Act (2021 Revision)
Labour Appeals Tribunal	Labour Act (2021 Revision)
Mental Health Commission	Mental Health Commission Act, 2013
Planning Appeals Tribunal	Development and Planning Act (2021 Revision)
Planning Appeals Tribunal (Cayman Brac and Little Cayman)	Development and Planning Act (2021 Revision)
Public Transport Appeals Tribunal	Traffic Act (2021 Revision) Traffic (Public Transport Appeals Tribunal) Regulations 2012
Refugee Protection Appeals Tribunal	Customs and Border Control act (2021 Revision)
Special Land Disputes Tribunal	Land Adjudication Act (1997 Revision)
Trade and Business Licensing Appeals Tribunal	Trade and Business Licensing Act (2021 Revision)
Trade Marks Appeals Tribunal	Trade Marks Act, 2016

First instance and other tribunals	Enabling legislation
Accountants Disciplinary Tribunal	Accountants Act (2020 Revision)
Arbitral Tribunal	Arbitration Act, 2012
Compensation Assessment Tribunal (Wastewater)	Wastewater Collection and Treatment Act (2019 Revision)
Compensation Assessment Tribunal (Water)	Water Production and Supply Act (2018 Revision)
Copyright Tribunal	Copyright, Designs and Patents Act 1988 (UK), as applied by the Copyright (Cayman Islands) Order 2015
Development Plan Tribunals	Development and Planning Act (2021 Revision)
Gender Equality Tribunal	Gender Equality Act, 2011
Labour Tribunals	Labour Act (2021 Revision)
Land Adjudication Tribunal	Land Adjudication Act (1997 Revision)

Tribunals not yet operating	Enabling legislation
Employment Tribunals	Employment Act, 2003 (not yet commenced)
Design Rights Tribunal	Design Rights Act, 2019 (not yet commenced)
Legal Services Disciplinary Tribunal	Legal Services Act, 2020 (not yet commenced)

Features of existing appeals tribunals

3.3 As mentioned previously, this Discussion Paper will focus on appeals tribunals. The twelve existing appeals tribunals have all been established under their own Acts that govern their composition, powers and procedures. The table in Appendix 2 summarises the features of each appeals tribunal. It is worthwhile briefly considering some of the key commonalities and differences between these tribunals.

Membership

3.4 Of the twelve appeals tribunals, the following seven require at least one member to be an attorney-at-law:

(a) Health Appeals Tribunal;

(b) Immigration Appeals Tribunal;

(c) Trade Marks Appeals Tribunal;

(d) Refugee Protection Appeals Tribunal;

(e) Planning Appeals Tribunal (Cayman Brac and Little Cayman);

(f) Trade and Business Licensing Appeals Tribunal; and

(g) Mental Health Commission.

In six of those cases, the chairperson of the tribunal is required to be an attorney-at-law. This reflects the quasi-judicial role of appeals tribunals. Notably, of those seven tribunals, four do not require a legally qualified member to be present in order to form a quorum, as detailed in the table below.

Tribunal	**Chairperson must be attorney-at law?**	**Attorney-at-law required to form a quorum?**
Health Appeals Tribunal	Yes	Yes
Immigration Appeals Tribunal	Yes	Yes
Trade Marks Appeals Tribunal	Yes	No
Refugee Protection Appeals Tribunal	Yes	No
Planning Appeals Tribunal (Cayman Brac and Little Cayman)	Yes	Yes
Trade and Business Licensing Appeals Tribunal	Yes	No
Mental Health Commission	No	No

3.5 Only two of the appeals tribunals require specialist members other than attorneys-at-law – the Health Appeals Tribunal and the Mental Health Commission, which both require some members to be registered health practitioners. An argument that is often advanced against centralised appeals tribunals is the need for specialist tribunals with specialist members in the relevant subject area. All appeals tribunals in the Cayman Islands are constituted to *allow* for members from a variety of fields and backgrounds to be appointed, and it may well be that people with specialist knowledge of the relevant subject area are appointed in practice. However, the legislation establishing most tribunals does not *require* this.

Administration

3.6 Most of the appeals tribunals are funded and administered by the Ministry responsible for administering the legislation under which the decisions that are appealed to the tribunal are made. In other words, in most cases, the original decision maker sits in the same Ministry that is responsible for funding and administering the relevant appeals tribunal. The only exceptions to this are the Civil Service Appeals Commission (which falls under the Office of the Governor), the Immigration Appeals Tribunal (which falls under the Cabinet Office) and the Refugee Protection Appeals Tribunal (which falls under the Cabinet Office).

3.7 Legitimate concerns have been raised regarding the ability of appeals tribunals to operate independently, or at least to appear to operate independently, if they fall under the same administrative structure as the original decision maker. In the case of the three tribunals mentioned in paragraph 3.6 that have been removed from the Ministry in which the original decision maker sits, they have arguably been placed closer to the centre of power, without being located in a truly independent administrative structure, such as that provided to the judiciary.

Powers and procedures

3.8 For the most part, the legislation establishing appeals tribunals in the Cayman Islands does not prescribe detailed procedures for hearing appeals and allows the tribunals to set their own procedures. This flexibility is consistent with the role of tribunals in providing access to a simpler, more informal mechanism for resolving disputes than that provided by the

courts. In four cases (the Health Appeals Tribunal, the Public Transport Appeals Tribunal, the Planning Appeals Tribunal and the Planning Appeals Tribunal (Cayman Brac and Little Cayman)), the Chief Justice is given power to make rules in relation to procedure and evidence, which is interesting considering the tribunals do not fall under judicial administration.

3.9 The enabling legislation confers power to summon witnesses and call for documents in only three cases. However, in the four cases mentioned in paragraph 3.8, the Chief Justice has power to make rules in relation to procedure and evidence, which provides an avenue of sorts for dealing with these matters.

3.10 One matter that is addressed in the enabling legislation for the majority of appeals tribunals is the form in which hearings should take place. There is an even split between tribunals that require hearings to be in-person only, those that require hearings to be based on written submissions only and those that provide the option of either in-person or written submissions only hearings. Only one tribunal (the Special Land Disputes Tribunal) requires party representatives to be legally qualified. This is consistent with the goal of providing accessible, informal justice to parties.

Costs of tribunal administration

3.11 It is difficult to determine the true cost of tribunal administration in the Cayman Islands, because a number of tribunals operate within the administrative structure and overall budget of a Ministry. In some cases, a tribunal is administered by a secretariat that is responsible for supporting a number of bodies. The table in Appendix 3 summarises the available financial and caseload information in relation to the existing appeals tribunals.

4. ARGUMENTS FOR AND AGAINST TRIBUNAL CONSOLIDATION

4.1 In assessing the various arguments for and against tribunal consolidation, it is important to recognise that there is a spectrum of consolidation options available. At one end of the spectrum, most (if not all) specialist tribunals are abolished entirely and their functions

transferred to a single, central administrative appeals tribunal, which may be organised into functional divisions.

4.2 At the other end of the spectrum, separate specialist tribunals continue to exist and operate independently of one another, but a centralised administrative structure is created to improve efficiency, lower costs and improve the perception of independence.

4.3 Somewhere between these two points on the spectrum lies a hybrid model in which specialist tribunals are brought together under one administrative and management structure, with a "head of tribunals" providing oversight to improve the quality of procedures and decision-making. As will be seen, many of the arguments against consolidation are actually directed at a particular model of consolidation – steps can be taken in the design of a new tribunal structure to mitigate many of the potential shortcomings of consolidation.

4.4 Although the arguments in favour of consolidation seem persuasive in terms of improved accessibility, independence and efficiency, a number of commentators have argued that such reforms have the potential to backfire and create adverse outcomes for tribunal users. Bacon has argued:

> *"Rather than investigate these issues, a number of untested assumptions are routinely made in justifying amalgamation proposals. These include assumptions that bigger tribunals are more efficient as they can introduce economies of scale, and that specialist tribunals can continue to operate largely as before when they become divisions of a larger tribunal. In short, there is a sense that policy makers are 'jumping on an amalgamation bandwagon' without giving rigorous consideration to the consequences..."*[13]

4.5 With this in mind, it is important to examine each purported justification for consolidation in turn.

[13] Bacon, *Amalgamating Tribunal: A Recipe for Optimal Reform* (Faculty of Law, University of Sydney, 2004), p. 132.

Accessibility

4.6 Tribunal systems containing numerous specialist tribunals with separate administration structures are frequently referred to in literature on the subject as a 'maze' or a 'labyrinth'.[14] The clear implication of these adjectives is that such a system is impenetrable for the ordinary person, and therefore a barrier to justice.

4.7 It is certainly true that, acting without the benefit of a lawyer, a person wishing to access review of an administrative decision needs a clear avenue to begin the process. In a system where each tribunal is administered separately, there is no overarching management structure to ensure they are all providing such accessibility on a practical level. For example, in the Cayman Islands, very few tribunals provide clear, user-friendly websites designed specifically for use by the general public. In contrast, jurisdictions that have consolidated tribunal administration tend to have a single, intuitively designed 'one stop' website clearly outlining the steps a person is required to take to make an application to each tribunal and providing access to forms and guidance material.

4.8 There is perhaps some empirical evidence that consolidation improves accessibility to be found in the consistently increasing caseload of the Australian Administrative Appeals Tribunal. This does not appear to reflect a proportionate decrease in the quality of administrative decision making, and is more likely reflective of improved awareness of, and accessibility to, the Tribunal as an alternative avenue to the courts.[15]

4.9 Conversely, specialist tribunals are able to develop practices and procedures that improve accessibility in substantive ways that may be more difficult for a generalist tribunal or a specialist tribunal operating under a consolidated administrative structure. They can develop hearing procedures or client service procedures that are specifically tailored to the needs of their clients. For example, specialist immigration tribunals can develop procedures for the use of interpreters and invest resources in making the entire process more accessible to clients from non-English speaking backgrounds.[16]

[14] NTLRC, p. 7.
[15] NTLRC, p. 17.
[16] Bacon, p. 140.

4.10 This is arguably not a sufficient justification to abandon consolidation reforms entirely. A generalist tribunal or a consolidated administrative structure can take measures to ensure accessibility for the entire range of clients. However, this issue does highlight the need for consolidation of procedures and administration to be undertaken in a considered and careful manner.

Expertise

4.11 An argument frequently advanced in favour of specialist tribunals is that members bring specialist expertise in the functional area of the tribunal. [17] In addition, by operating in a single area of regulation, the tribunal is able to develop considerable familiarity with the relevant statutes, as well as the policies and procedures of the department of government whose decisions it reviews. This enables it to deal with matters more expertly and more rapidly than a generalist tribunal or a court.[18]

4.12 Some of the options for reform offer potential solutions to these issues. For example, the creation of Divisions within a generalist tribunal allows greater opportunity to appoint members with knowledge or expertise specific to a Division's functional area. In addition, non-legal members and expert assessors can be used to provide technical expertise in a particular regulatory area. These issues demonstrate the need for the structure of a generalist tribunal to offer sufficient flexibility to counteract the loss of specialisation.

Efficiency

4.13 Generalist tribunals are often perceived to make more efficient use of resources than specialist tribunals, as they can utilise economies of scale.[19] Conversely, as has been discussed, it could be argued that specialist tribunals are better able to offer streamlined and efficient services that are tailored to the matters and clients they deal with.

4.14 Provided a consolidated administrative structure does not become hamstrung by bureaucracy, it should provide cost savings over a system of standalone specialist tribunals,

[17] Bacon, p. 42.
[18] Wade and Forsyth, p. 774.
[19] Bacon, p. 142.

each with their own administration. The duplication of administrative infrastructure can be avoided by creating a central administration.[20] Further, in the case of small tribunals with low caseloads, there may be no dedicated full-time administrative support. This can lead to decreased efficiency and delays, resulting in reduced accessibility.

Procedures

4.15 As discussed, one of the fundamental goals of a tribunal system is to provide access to justice in a forum that is less formal and legalistic than a court. There is an opportunity, when creating an amalgamated appeals tribunal, to standardise tribunal procedures. However, large generalist tribunals such as the Australian Administrative Appeals Tribunal have been criticised for having developed a culture and procedures that are overly bureaucratic, formal and 'court-like'.[21] While there is a risk of standardised procedures being applied inappropriately to different types of matters, they also promote fairness and consistency.[22]

4.16 The reforms proposed by the New Zealand Law Commission (see paragraphs 6.25 to 6.28 below) were criticised for potentially (and unintentionally) leading towards greater legalism and increased formality, resulting in tribunals that are, in effect, cheap courts.[23] While informality is a worthy goal, and one that is almost always articulated in legislation establishing tribunals, it may be difficult to achieve in practice in the context of a large generalist tribunal hearing a wide range of matters.

4.17 Once again, this is a matter to be carefully considered when undertaking any amalgamation – standardisation of procedures should be justifiable and contribute to the overall goal of improving access to justice, rather than just 'standardisation for the sake of standardisation'.

[20] Bacon, p. 141.
[21] Bacon, p. 142.
[22] Bacon, p. 143.
[23] Hopkins, "Order from Chaos? Tribunal Reform in New Zealand", *Journal of the Australasian Law Teachers Association*, pp. 47-54.

Independence

4.18 A key argument in favour of creating a centralised and dedicated tribunal administration structure, even if tribunals themselves are not amalgamated, is the need to place tribunals at arm's length from the makers of the administrative decisions the tribunals review.

4.19 The Leggatt Report,[24] which reviewed the tribunal system in the United Kingdom and ultimately led to the reforms made by the *Tribunals, Courts and Enforcement Act 2007*,[25] identified the location of tribunals in the government administrative structure to be a major factor that influences public perceptions of independence. In the U.K. at the time, many tribunals were serviced by the same department that was responsible for the matters being adjudicated by the tribunal. The 2007 reforms severed that link by providing a dedicated and independent administration for tribunals.

4.20 A counter-argument has been made that generalist administrative tribunals are so removed from primary level decision-makers that they lack a sufficient understanding of the processes and policies that were applied in reaching the decisions under review.[26] However, this line of reasoning assumes that a generalist tribunal, and its membership, cannot be designed in such a way that ensures the availability of subject-matter specialists within a larger structure.

5. THE CASE FOR TRIBUNAL REFORM IN THE CAYMAN ISLANDS

5.1 In 2014, the Cayman Islands Government engaged Ernst & Young Ltd to conduct a rationalisation review of the public service, resulting in a report entitled "Project Future: Creating a Sustainable Future for the Cayman Islands" in September 2014 (the "EY Report").[27] Among other things, the Report explored the centralisation of tribunals in the Cayman Islands.

[24] Leggatt, *Tribunals for Users - One System, One Service*, (U.K. Stationery Office, 2001).
[25] Discussed further at paragraphs 6.15 to 6.24.
[26] Bacon, p. 142.
[27] Report available at <https://cnslibrary.com/wp-content/uploads/EY-Report-Project-Future-September-2014.pdf>.

5.2 The EY Report found that the current tribunal administration in the Cayman Islands was ad hoc and being operated in silos with Ministries taking different approaches in each case and cases being backlogged. The Report suggested the possibility that the right to a fair trial under section 7 of the Bill of Rights enshrined in the Constitution and the requirement for lawful administrative action under section 19 of the Bill of Rights was being compromised by these deficiencies.[28]

5.3 The EY Report outlined the centralised systems of tribunals that have been implemented in Australia, New Zealand, Ireland and the United Kingdom. It highlighted a number of benefits of a centralised system of appeals tribunals, including the following:

- the creation of an integrated, professional, efficient and customer-focused tribunal service;
- enhanced independence of appeals processes;
- improved tribunal processes based on best practice, allowing for faster processing of tribunal applications and hearings; and
- reduced duplication in administrative systems, activity and resources, creating the potential for financial savings.[29]

5.4 The Report recommended centralising appeals tribunals under a single administration, falling under the Judicial Administration. However, the Report did not recommend creating a single tribunal – rather, it proposed grouping the tribunals in chambers, with tribunal members for each chamber rather than each tribunal.[30] The Report also recommended that members still be appointed by the Ministry responsible for the functional area of each tribunal.[31] It is not clear how this would operate, given the proposal to appoint members to a chamber, each of which would contain a number of tribunals constituted under different Acts with different Ministries administering the relevant functional area.

5.5 The Report did not propose the creation of a single administrative appeals tribunal to replace the existing tribunals. However, the Report went significantly further than simply

[28] EY Report, p. 223.
[29] EY Report, p. 224.
[30] EY Report, p. 223.
[31] EY Report, p. 222.

proposing the centralisation of tribunal administration. The proposal for members to be "shared" between tribunals within a chamber grouping would need to be legislated in the form of amendments to existing Acts and a new standalone Act to create the new membership structure, at the very least. It is important to consider whether the proposed reforms would go far enough in addressing some of the inefficiencies of the existing system of decentralised tribunals, or whether more significant reform is worthwhile. As will be outlined below, there are a range of models of tribunal reform to consider.

5.6 In considering the reforms that have occurred in other jurisdictions, the context of the Cayman Islands must of course be considered. What has worked for others may not work here, particularly given the much larger size (and therefore case volume) of other jurisdictions. However, an amalgamated administrative appeals tribunal may in fact be more beneficial and effective in a small jurisdiction than a large one.

5.7 It is extremely onerous to establish and effectively operate (that is, operate in way that provides high quality outcomes) multiple small tribunals dealing with small numbers of cases. Nonetheless, people who are subject to administrative decisions should have access to quick, affordable merits review. Creating a dedicated administrative appeals tribunal would allow this to be offered under a much wider range of statutes than it is currently.

5.8 In reviewing its tribunal system, the Law Reform Committee for the Northern Territory of Australia (another relatively small jurisdiction) addressed the argument that low demand for existing tribunal services demonstrates that there is no need for reform. The Committee contended that this argument is illusory and in fact highlights the need for an amalgamated appeals tribunal, precisely because a "statutory labyrinth" discourages people from accessing the tribunal system:

> *"It is not a meritorious stance to congratulate oneself on keeping potential appellants at bay by making it difficult for them to appeal."*[32]

[32] NTLRC, p. 21.

6. TRIBUNAL REFORM IN OTHER JURISDICTIONS

6.1 In the last 30 years or so, a number of jurisdictions have initiated significant reform of their tribunal systems. However, there have been a number of different approaches, from creating a single centralised appeals tribunal to simply restructuring and consolidating tribunal administration, and various models in between.

Australia

6.2 Australia consists of nine separate jurisdictions (eight States and Territories, plus the federal jurisdiction of the Commonwealth of Australia), which are extremely diverse in terms of population and the geographical distribution of that population. Each of these jurisdictions has its own system for administrative appeals. As a collection of diverse jurisdictions, it provides a useful case study for tribunal reform.

6.3 The Commonwealth established its Administrative Appeals Tribunal (the "AAT") in 1975. Until recently, the separate specialist Migration Review Tribunal, Refugee Review Tribunal and Social Security Appeals Tribunal existed alongside the AAT. However, these tribunals were amalgamated with the AAT in 2015. The Commonwealth model has influenced tribunal reform in a number of other jurisdictions outside Australia.

6.4 Tribunal reform in the States and Territories has occurred over the intervening decades, with the most recent consolidation of tribunals in Tasmania beginning its first stage in 2020. All the States and Territories have followed a civil and administrative tribunal model, establishing a single centralised tribunal for dealing with a range of civil matters in addition to administrative appeals.

6.5 While there are differences in the structure and administration of each jurisdiction's tribunal, they share some essential characteristics. It is particularly relevant to examine the characteristics of the tribunals in the three smallest jurisdictions – the Northern Territory (population: 240,000), the Australian Capital Territory (population: 430,000) and Tasmania (population: 540,000). While these jurisdictions are significantly larger than the Cayman Islands, they have some distinguishing features in the Australian tribunal landscape. In considering how they have approached the constraints and lower caseload of

smaller jurisdictions, it is also important to remember that these tribunals are hearing both appeals and civil disputes, so have a larger caseload than the appeals tribunal model being considered for the Cayman Islands.

Administrative structure

6.6 Each tribunal is a separate entity with its own registry and staff, who are public servants. Some jurisdictions expressly provide for resources to be shared with other bodies. Only one jurisdiction requires its Registrars to be legal practitioners, and all jurisdictions provide for one or more Registrars to be appointed. The President of the Tribunal is responsible for its management, with the assistance of the Registrar(s).

6.7 In most of the larger jurisdictions, the enabling Act organises the tribunal into Divisions and specifies the matters falling within each Division. In the Australian Capital Territory and the Northern Territory, the enabling Act allows for the President to organise the tribunal into Divisions, but does not require it. This reflects the flexibility required in jurisdictions with smaller caseloads.

6.8 The Tasmanian Act does create two Divisions, a General Division and a Protective Division, which is responsible for the tribunal's jurisdiction exercised under legislation relating to mental health, disability services, guardianship and powers of attorney. This seems to be a sensible approach to ensuring specialist members are appointed to that Division.

Membership

6.9 All jurisdictions have a basic structure of a President, at least one Deputy President and other members. Most jurisdictions have tiers of senior and ordinary members, and some jurisdictions also stipulate that all magistrates are *ex officio* members.

6.10 In all jurisdictions except for the Northern Territory, the Australian Capital Territory and Tasmania, the President is a judge. In two jurisdictions, even a Deputy President must either be a judge or a person who is eligible to be appointed as a judge. However, in the

three smallest jurisdictions, the President is a magistrate or a person who is eligible to be appointed as a magistrate.

6.11 The standard qualification requirement for other members is that they must either be legal practitioners with at least 5 years post-qualification experience, or hold special knowledge or skills relevant to the work of the tribunal. This means that all jurisdictions have some non-legal members. Of the jurisdictions in which the enabling Act organises the tribunal into Divisions, some also require members appointed to each Division to have specific knowledge or expertise.

6.12 In some jurisdictions, panels of expert assessors are also appointed. These assessors can be consulted by the members of the tribunal for specialist expert advice as required during a hearing. This means that the tribunal is not compelled to have within its membership, specialists drawn from every field that might be relevant to the matters that come before it.

Constitution of tribunal

6.13 In all jurisdictions, the President is empowered to assign the members who will constitute the tribunal for a particular matter or class of matters. In most jurisdictions, one to three members may be assigned, and there is almost always a requirement that at least one member be a legal practitioner.

Powers and procedures

6.14 There are considerable variations in how prescriptive the enabling legislation is in relation to the powers and procedures of each tribunal. However, there are some common characteristics:

(a) appeals are a full reconsideration of the original decision, in which new material may be presented and there are no strict rules of evidence;
(b) the tribunal is required to act as informally as possible;
(c) the tribunal is required to sit throughout the geographical area of the jurisdiction, to ensure accessibility for those living outside major population centres and capital cities;

(d) the tribunal may make its own enquiries without being bound to act only on the evidence presented;

(e) alternative dispute resolution and mediation are encouraged;

(f) procedures are expeditious and inexpensive and no costs are awarded unless there has been unreasonable conduct unnecessarily prolonging time and expense;

(g) although not bound to do so, the tribunal may take into account the policy of the department responsible for the original decision, and will usually do so, so far as is consistent with merits review; and

(h) written reasons for decisions must be given.

Rights of further appeal

6.15 All Australian jurisdictions except Tasmania make legislative provision for appeals from decisions of their appeals tribunals. The Tasmanian Act is silent on the matter, but a person would be able to able to apply for judicial review under the common law. The appeal rights in the various jurisdictions are summarised in the table below.

Jurisdiction	**Legislative provision**	**Right to appeal**	
Commonwealth of Australia	Administrative Appeals Act 1975, s 44	Appeal to the Federal Court on a question of law	Leave not required
Australian Capital Territory	ACT Civil and Administrative Tribunal Act 2008. s 86	Appeal to the Supreme Court on a question of law	Leave required
New South Wales	Civil and Administrative Tribunal Act 2013, s 83	Appeal to the Supreme Court on a question of law	Leave required
Northern Territory	Northern Territory Civil and Administrative Tribunal Act, s 141	Appeal to the Supreme Court on a question of law	Leave required
Queensland	Queensland Civil and Administrative Tribunal Act 2009, s 149	Appeal to the Court of Appeal on a question of law or fact	Leave required only in the case of an appeal on a question of fact or a question of mixed law and fact

South Australia	South Australian Civil and Administrative Tribunal Act 2013, s 71	Appeal to the Court of Appeal (if Tribunal included a Presidential member) or Supreme Court (otherwise) by way of rehearing and Court may allow further evidence	Leave required unless Act that conferred jurisdiction on the Tribunal to hear the matter specifies otherwise
Victoria	Victorian Civil and Administrative Tribunal Act 1998, s 148	Appeal to the Court of Appeal (if Tribunal included the President or Vice President) or Supreme Court Trial Division (otherwise) on a question of law	Leave required
Western Australia	State Administrative Tribunal Act 2004, s 105	Appeal to the Court of Appeal (if Tribunal included a judicial member) or Supreme Court Trial Division (otherwise) on a question of law	Leave required

United Kingdom

6.16 In 2000, the Lord Chancellor appointed Sir Andrew Leggatt to conduct a review of the tribunal system in the United Kingdom. The Leggatt Report resulted in the creation of a centralised tribunal structure with the enactment of the *Tribunals, Courts and Enforcement Act 2007*. The model adopted was not without complexity, reflecting the needs of a large jurisdiction with a diverse range of tribunals to consolidate. The resulting tribunals also deal with an extremely broad variety of matters, far beyond administrative appeals.

Administrative structure

6.17 The Courts and Tribunals Service is an agency of the Ministry of Justice and is responsible for providing administrative support to the tribunals. As implied by its name, the Service supports both the courts and the tribunals. It operates as a partnership between the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals. Staff are appointed independently of other departments. The Senior President of Tribunals is responsible for the management of the tribunals.

6.18 The Act establishes the First-tier Tribunal and the Upper Tribunal, each of which is organised into Chambers, each with a Chamber President presiding over it. The First-tier Tribunal hears appeals against decisions made by Government departments or agencies, as well as certain first instance matters. The Upper Tribunal primarily reviews and decides appeals arising from the First–tier Tribunal. In addition to the First-tier and Upper Tribunals, the Employment Tribunal sits outside the structure but falls under the management of the Senior President of Tribunals.

6.19 The First-tier Tribunal is divided into the following Chambers:

(a) the General Regulatory Chamber;
(b) the Health, Education and Social Care Chamber;
(c) the Immigration and Asylum Chamber;
(d) the Property Chamber;
(e) the Social Entitlement Chamber;
(f) the Tax Chamber; and
(g) the War Pensions and Armed Forces Compensation Chamber.

6.20 The Upper Tribunal is divided into the following Chambers:

(a) the Administrative Appeals Chamber;
(b) the Immigration and Asylum Chamber of the Upper Tribunal;
(c) the Lands Chamber; and
(d) the Tax and Chancery Chamber.

Membership

6.21 The membership of each tribunal consists of the Senior President of Tribunals, judges of the tribunal and other members. It is notable that the legal members of the tribunals are given the title of judge.

6.22 The Senior President of Tribunals is required to be a solicitor or barrister of at least 7 years' standing.

6.23 A person is qualified to be appointed as a judge of either the First-tier Tribunal or the Upper Tribunal if the person is a solicitor or barrister of at least 5 years' standing, or, in the opinion of the Senior President, has experience in law that makes the person as suitable for appointment as a solicitor or barrister of at least 5 years' standing. In addition, a wide range of judicial officers are *ex officio* judges of the First-tier Tribunal and the Upper Tribunal.

6.24 A person is qualified to be appointed as a non-legal member of either the First-tier Tribunal or the Upper Tribunal if the person holds a qualification prescribed by the Lord Chancellor with the concurrence of the Senior President. Currently, there are non-legal members appointed to the Social Entitlement, Property, and Health, Education and Social Care Chambers of the First-tier Tribunal. There are no non-legal members of the Upper Tribunal, but both tribunals have access to assessors to provide specialist expertise if required.

Powers and procedures

6.25 The Act establishes a Tribunal Procedure Committee to make Tribunal Procedure Rules governing practice and procedure in the First-tier and Upper Tribunals. The Act stipulates that those rules must be made with a view to ensuring that proceedings are accessible and fair, are handled quickly and efficiently, and that justice is done. This last requirement is a perhaps a reflection of the perception that tribunal proceedings sacrifice an element of "quality" of justice served, in comparison with courts, in the interests of expediency and accessibility. In addition, the Senior President is empowered to issue practice directions with the approval of the Lord Chancellor.

Rights of further appeal

6.26 The Act establishes a relatively complex structure for review of, and appeals against, tribunal decisions. The Upper Tribunal is empowered to hear appeals against First-tier Tribunal decisions and also to review certain decisions made by the Upper Tribunal itself. Appeals from decisions of the Upper Tribunal (except for certain excluded decisions) may be made to the Court of Appeal on questions of law with leave.

New Zealand

6.27 Unlike Australia and the United Kingdom, New Zealand has yet to implement any major reform or consolidation of its tribunal system, though not for want of trying. The Law Commission published a comprehensive Issues Paper in January 2008,[33] followed by a Study Paper in October 2008.[34] The Commission made a number of recommendations for reform, including recommending a model for a consolidated tribunal structure and administration. The recommendation was supported by the Government at the time, but has so far not been acted on. However, given the careful analysis that the Commission undertook, it is worthwhile considering their recommendations.

6.28 New Zealand has over 100 tribunals. The Commission found that, at the time, a number of tribunals were administered and resourced by the agencies that were directly affected by their decisions. Given the large number of tribunals in a relatively small jurisdiction, inevitably some tribunals had few cases, with members who were not well trained or supported. The Commission considered the number and diversity of tribunals to be unjustified, and concluded that the ad hoc way in which they had developed had led to a 'maze' of different tribunals that was confusing for the average citizen to access, with significant variations in process for no principled reason. The Commission also found a lack of coordinated oversight to ensure tribunals were functioning in an effective way.[35]

6.29 The Commission considered a number of options for reform, which are summarised below:

Option 1: Standardised tribunal powers and procedures

- Procedures, powers, appeal rights and membership provisions would be standardised. This would arguably improve perceptions of fairness and contribute to consistency in decision-making.
- However, the Commission recognised that flexibility is needed to reflect the necessary and important differences that exist between some tribunals, and recommended a

[33] NZLC IP6.
[34] NZLC SP20.
[35] NZLC SP20, p. 6.

cautious approach be taken to standardising provisions, rather than pursuing a 'one size fits all' model.

Option 2: A single administration for tribunals

- Tribunals would be administered together by the Ministry of Justice. This option focused on improving the administrative support available to tribunals and the public that use them. This might address some of the problems caused by fragmentation and result in more efficient management of cases and resources. This option also supports the independence of tribunals by ensuring that there is a clear separation between those providing administrative support for tribunals and those with an interest in the matters before tribunals.
- However, the Commission recommended excluding the Mental Health Review Tribunal from this arrangement, due to its distinct powers and procedures. The Commission found that its current arrangements ensure it functions in a way that is accessible and efficient for its clientele, and that this might be jeopardised by merging its administrative arrangements with those of other tribunals with different requirements.

Option 3: Head of tribunals

- A new role of 'head of tribunals' would be created. A lack of leadership and cohesion was identified by the Commission as one of the main systemic problems with existing tribunal arrangements. An overarching head of tribunals would provide professional leadership and have a similar role to that of a principal or chief judge within the court system.

Option 4: Rationalisation of tribunals

- Any tribunals that are considered surplus to requirements would be abolished and their functions amalgamated with other existing tribunals.

Option 5: Clusters of tribunals

- Tribunals would be grouped together in functional clusters with common administrative services for each cluster. This would reduce the overall number of tribunals by joining or amalgamating groups of like tribunals into broader tribunal structures.
- Additionally, it would offer a more nuanced approach than a single administrative structure, as tribunals with similar functions have similar requirements in terms of powers and procedures, which in turn means they are likely to have similar administrative requirements.
- Cross-membership of clustered tribunals would also be facilitated.

Option 6: A single unified structure

- Like clustering, unification would involve grouping like tribunals and bringing them together into a structure. The key difference is that in the unified option there is only one overarching administrative structure.
- The Commission noted that this is a feature of all overseas models and allows for differences in membership and procedure between tribunals, while providing administrative and organisational efficiency.

Recommended model

- Ultimately, the Commission recommended a model that combined aspects of most of these options. They recommended the unified tribunal structure outlined under Option 6, with tribunals arranged into divisions, combined with the single administration outlined in Option 2, together with the head of tribunals concept outlined in Option 3. Redundant tribunals would be rationalised as set out in Option 4. The structure would be underpinned by a legislative framework that provides the necessary standardisation outlined in Option 1.[36]

[36] NZLC SP20, pp. 6-12.

6.30 Although the New Zealand reform process has stalled, it should be noted that the Ministry of Justice now administers 27 of the country's largest tribunals. This may seem to be a minor step towards more fundamental reform, but it addresses some of the major criticisms of a fragmented tribunal system by improving accessibility, independence and efficiency.

7. OPTIONS FOR TRIBUNAL REFORM IN THE CAYMAN ISLANDS

In this Part, three options on the spectrum of consolidation will be briefly outlined. Option 3 will then be examined further to provide additional options for how a centralised administrative appeals tribunal would be structured and constituted.

7.1 Option 1: Centralised administration

The least radical option for tribunal reform is to create a single administrative structure under which individual tribunals share administrative support.

Benefits

- Cost savings, as administrative infrastructure would no longer be duplicated for each tribunal.
- Increased efficiency, as tribunals would be supported by dedicated administrative staff who could develop streamlined administrative processes for case management.
- Improved perception of independence, as tribunals would no longer be 'housed', for administrative purposes, within the Ministry responsible for the decisions under appeal.
- Potential to improve accessibility by creating a central, client-friendly tribunal website.

Disadvantages

- No substantive improvement in access to justice in terms of creating more avenues for merits review under a wider range of laws.
- No consolidation of tribunal membership.
- No opportunity to improve the quality of tribunal administration, procedures and decision-making by centralising management of tribunals.

Legislative implications

No legislation would be required, as this reform could be effected through administrative arrangements.

7.2 Option 2: Centralised management

This option would bring the existing tribunals together under a single management structure, with a head of tribunals providing oversight and ensuring best practice in tribunal administration, procedures and decision-making.

Benefits

- Potential to improve the quality of tribunal administration, procedures and decision-making through centralised management.
- Cost savings, as administrative infrastructure would no longer be duplicated for each tribunal.
- Increased efficiency, as tribunals would be supported by dedicated administrative staff who could develop streamlined administrative processes for case management.
- Improved perception of independence, as tribunals would no longer be "housed", for administrative purposes, within the Ministry responsible for the decisions under appeal.
- Potential to improve accessibility by creating a central, client-friendly tribunal website.

Disadvantages

- No substantive improvement in access to justice in terms of creating more avenues for merits review under a wider range of laws.
- No consolidation of tribunal membership.

Legislative implications

The office of head of tribunals would need to be created by statute, and the Acts establishing each tribunal would need to be amended to empower the President of Tribunals to supervise the tribunals.

7.3 Option 3: Creation of a consolidated tribunal

This option would see the abolition of most of the existing specialist tribunals and the transfer of their functions to an administrative appeals tribunal. Certain specialist tribunals could be retained if it would be inappropriate to transfer their functions to a generalist tribunal.

Benefits

- Potential to substantively improve access to justice by providing a forum for access to merits review under a wide range of laws, without requiring the establishment of a dedicated tribunal in each case.
- Opportunity to consolidate tribunal membership, including by having full-time members.
- Potential to improve the quality of tribunal administration, procedures and decision-making through centralised management.
- Increased efficiency, as tribunals would be supported by dedicated administrative staff who could develop streamlined administrative processes for case management.
- Improved perception of independence, as tribunals would no longer be 'housed', for administrative purposes, within the Ministry responsible for the decisions under appeal.
- Potential to improve accessibility by creating a central, client-friendly tribunal website.

Disadvantages

- Potential for some of the corporate knowledge of specialist tribunals to be lost.
- More difficult to provide specialist client services appropriate to a specific category of cases.
- Potential for increased bureaucracy and formality with standardised procedures.

Legislative implications

The new tribunal would need to be created by statute, and the Acts establishing each tribunal would need to be amended to repeal the relevant provisions.

Option 3: Matters for consideration

Jurisdiction

The existing appeals tribunals deal with a diverse range of matters. Consideration should be given to whether any of the existing tribunals, such as the Mental Health Review Commission, have functions that are so specialised that they should be retained as specialist, standalone tribunals. Any such tribunals could still be supported by the centralised administration structure created for the new administrative appeals tribunal.

Structure

Consideration should be given to whether there is any need for the tribunal to be organised into divisions. It may be that there is insufficient current caseload to justify this. In addition, the membership structure can be tailored to ensure that there is sufficient scope for assigning appropriately specialised members to particular matters.

Membership

Currently, most legal members of the existing tribunals are required to have at least 5 years' post-qualification experience. This is consistent with the requirement in many other jurisdictions. However, to improve the quality of decision-making and given the breadth of matters to be dealt with by the proposed tribunal, consideration should be given to imposing a higher requirement for the head of the tribunal, at the very least.

In determining the appropriate membership structure, it is important to consider the diverse range of matters that will be considered by the tribunal, and the potential for this range of matters to expand further as additional rights to merits review are created. The legislation need not be prescriptive about the number of members or the basis of their engagement (full-time or part-time). This would provide the flexibility to appoint members with specialist knowledge on a part-time basis who could be called upon to sit on a particular category of matters. Providing the option to appoint non-legal members would reflect the membership structure of existing tribunals and would be consistent with ensuring the

tribunal is not merely a quasi-court and is instead equipped with the subject-matter knowledge appropriate for merits review.

Consideration should also be given to the use of expert assessors in place of specialist members. The membership of the tribunal could become quite large if specialist members are appointed for every subject area. A panel of assessors that could be called upon to assist the tribunal as required is an alternative approach.

The head of the tribunal will need to be empowered to assign members to each matter or class of matters before the tribunal. Consideration should be given to the minimum and maximum (if any) number of members that constitute the tribunal for the purpose of hearing an appeal, and whether there should be a requirement for a minimum number of legal members.

Powers and procedures

For the most part, the existing tribunals are empowered to decide their own procedures. However, the legislation establishing some tribunals, such as the Immigration Appeals Tribunal, is very prescriptive in this regard and mandates procedures that are quite 'court-like'. Consideration should be given to whether it is desirable to enshrine any procedures in the primary or secondary legislation or whether the determination of procedures should be left to the tribunal to the greatest extent possible. While procedural consistency is important, it is also important to ensure the tribunal does not become overly legalistic and formal through the standardisation of procedures.

The legislation creating the tribunal will need to specify its powers. Consideration should be given to the extent of those powers including whether the tribunal should have the power to summon witnesses and compel the production of documents.

Some existing tribunals are empowered to determine whether a hearing will be in-person or based on written submissions only. Also, there are some differences in the type of representation of parties that is allowable. Consideration should be given to whether it is desirable for the legislation establishing the tribunal to include standardised rules for these matters, or whether they should be left to the determination of the tribunal.

Administrative arrangements

Consideration should be given to the administrative location of the tribunal to ensure real and perceived independence. One option is to combine judicial and tribunal administration. Another is to establish a dedicated secretariat outside the judicial administration structure.

Right of further appeal

Most jurisdictions examined in this paper provide for a right of appeal to a superior court on a question of law. Only two jurisdictions (Queensland and South Australia) do not limit appeals to questions of law. All but one jurisdiction (the Commonwealth of Australia) require leave to appeal. Consideration should be given to whether, in the interests of flexibility, it would be prudent to allow for the relevant Act that confers jurisdiction on the Tribunal to vary the right of appeal provided by the Act establishing the Tribunal, as is the case in South Australia.

8. PROPOSAL FOR REFORM

8.1 The Commission supports creating a consolidated administrative appeals tribunal, as outlined in Option 3 above. This option requires legislation establishing the tribunal and providing for its jurisdiction, structure, membership, powers and procedures. Legislation would also be required to amend existing laws to abolish the tribunals to be consolidated, and to provide for decisions under those laws to be appealed to the new administrative appeals tribunal. The detail of the proposed reform is outlined below.

Name of tribunal

8.2 The Commission recommends naming the new tribunal the Cayman Islands Administrative Appeals Tribunal (the "CIAAT").

Jurisdiction

8.3 The Commission recommends that the CIAAT have jurisdiction to hear all appeals that currently go to the existing appeals tribunals, with the exception of the Mental Health

Review Commission. The Mental Health Review Commission has functions in addition to hearing appeals and has a highly specialised membership.

8.4 This proposal would mean that the following tribunals would be abolished, with their functions being transferred to the CIAAT:

(a) Civil Service Appeals Commission;

(b) Health Appeals Tribunal;

(c) Immigration Appeals Tribunal;

(d) Labour Appeals Tribunal;

(e) Planning Appeals Tribunal;

(f) Planning Appeals Tribunal (Cayman Brac and Little Cayman);

(g) Public Transport Appeals Tribunal;

(h) Refugee Protection Appeals Tribunal;

(i) Special Land Disputes Tribunal;

(j) Trade and Business Licensing Appeals Tribunal; and

(k) Trade Marks Appeals Tribunal.

8.5 The CIAAT would have the jurisdiction conferred on it by any law. Therefore, in the future, existing laws could be amended to provide for appeals against decisions under those laws to be made to the CIAAT. For example, the Utility Regulation and Competition Office (OfReg) has substantial administrative decision making power. Currently, the only available avenue of appeal from an administrative determination of OfReg is to the Grand Court by way of judicial review.[37] Consideration could be given to providing for some or all of the administrative determinations of OfReg to be appealed to the CIAAT. Also, as new laws are enacted under which administrative decisions are made, additional jurisdiction could be conferred on the CIAAT.

[37] *Utility Regulation and Competition Act (2021 Revision)*, s 92.

Structure

8.6 The legislation establishing the CIAAT should not require the Tribunal to be organised into Divisions, but should empower the President of the Tribunal to do so. This approach provides the flexibility for the Tribunal to be appropriately structured as its workload and the breadth of the matters it hears expands.

Membership

8.7 The Commission proposes creating a membership structure that is sufficiently flexible to accommodate the growth of the tribunal. To that end, the legislation establishing the CIAAT should specify a minimum number of members, but not specify a maximum. Also, the legislation should not be prescriptive about how many members must be full-time members, to allow for the appropriate expertise to be sourced to sit on the Tribunal. However, the legislation should specify that the President of the Tribunal must be a full-time member. This will ensure that the tribunal is managed in a professional manner by a member who does not hold outside employment. Additional members may be either full-time or part-time, with a panel of part-time members who can be called upon to sit on matters that fall within their area of expertise.

8.8 The Commission proposes the following membership structure:

(a) a President and a Deputy President, each of whom must hold the qualifications and experience required for appointment as a Judge under the *Grand Court Act (2015 Revision)*;[38]

(b) at least 2 other legal members, who are attorneys-at-law of at least 7 years' standing; and

(c) such other ordinary members as are required, who hold experience or qualifications relevant to the work of the Tribunal.

[38] Under s 6(2) of the *Grand Court Act (2015 Revision)*, a person is qualified to be appointed as a judge if the person is "qualified to practise as a barrister or solicitor in England or in an equivalent capacity in a Commonwealth country approved by the Governor as having comparable standards for call or admission to practise and who has so practised for not less than ten years".

8.9 The members of the Tribunal should be appointed by an independent panel of suitably qualified persons. The Commission seeks input regarding the appropriate composition of that panel. It is important that the appointing panel is free from political influence and has a sufficient understanding of the work of the Tribunal to make high quality appointments.

8.10 In addition, the CIAAT should have the option of drawing on a panel of expert assessors to assist it during hearings as required. This would ensure specialist expertise is available to the tribunal on an ad hoc basis without requiring additional membership.

8.11 The President of the Tribunal should be responsible for assigning members to each matter or class of matters before the tribunal, with a minimum of one member to constitute the tribunal for the purposes of a hearing. If only one member is assigned to a matter, that member must be a legal member of the Tribunal.

8.12 The legislation should provide for the remuneration structure for members to be prescribed by order made under the principal Act. The remuneration structure should provide for the salary levels of full-time members, in addition to a daily rate for part-time members, in addition to allowances. Given the qualification requirements for members, guidance should be taken from the remuneration structure prescribed by the *Judges' and Magistrates' Emoluments and Allowances Order (2021 Revision).*

8.13 To promote the independence of Tribunal members, the legislation should limit the circumstances in which a member can be removed from office to inability to discharge the functions of the office or serious misbehaviour. These are the grounds for removing a judge of the Grand Court under section 96 of the Constitution. In addition, a procedure for removal should be prescribed to promote fairness and transparency.

Powers and procedures

8.14 For the most part, the CIAAT should be able to decide its own procedures, but it should be required to publish basic rules to ensure consistency. The rules need not be exhaustive, allowing the Tribunal sufficient flexibility to manage matters as the circumstances require. The Tribunal should have the power to consider new evidence, make inquiries of its own, summon witnesses and compel the production of documents.

8.15 The CIAAT should have the power to determine whether a hearing will be in-person or based on written submissions only. The legislation could allow for secondary legislation to prescribe classes of matters that must be heard in a particular way, and an appellant should always have the opportunity to apply for an in-person hearing. Parties should have the opportunity of having non-legal representation for hearings.

8.16 The legislation should set out clear principles for the conduct of hearings, including that the Tribunal:

(a) must comply with the rules of natural justice;

(b) may inform itself in any way it considers appropriate and is not bound by the rules of evidence; and

(c) must act with as little formality and technicality, and with as much speed as a proper consideration of the matter permits.

Administrative arrangements

8.17 The CIAAT should be supported by a dedicated secretariat with a full-time Secretary or Registrar to assist the President in the administration of the Tribunal, and such other staff as are required for the Tribunal to efficiently carry out its functions.

9. CONCLUSION

9.1 The international trend towards consolidating tribunals reflects a widely held view that the practice of establishing tribunals on an ad hoc basis has led to a system that is overly complex and inaccessible, resulting in sub-optimal outcomes for users. The Cayman Islands has the opportunity to improve access to justice and increase accountability in administrative decision-making by creating a properly resourced and professionally operated administrative appeals tribunal. The appropriate model should aim to provide a consistent, high-quality appeals process while ensuring the system is not burdened by the formality and complexity of court procedures.

9.2 The options for reform outlined in this Discussion Paper provide the basis for consultation to determine the best option for tribunal reform in the Cayman Islands. The Commission

invites submissions on the issues identified in this Paper and the recommendations made in Part 8.

APPENDIX 1

CAYMAN ISLANDS TRIBUNALS

Appeals Tribunals

Tribunal	Enabling legislation	Jurisdiction
Civil Service Appeals Commission	Public Service Management Act (2018 Revision)	Hearing appeals against certain decisions of chief officers and the Head of the Civil Service
Health Appeals Tribunal	Health Practice Act (2021 Revision)	Hearing appeals against decisions of the Health Practice Commission and Councils for each health profession
Immigration Appeals Tribunal	Immigration (Transition) Act (2021 Revision)	Hearing appeals against decisions of WORC and the immigration Boards
Labour Appeals Tribunal	Labour Act (2021 Revision)	Hearing appeals against certain decisions of the Labour Tribunals
Mental Health Commission	Mental Health Commission Act, 2013	Hearing appeals under the Mental Health Act, 2013 and reviewing the care of patients under emergency detention orders
Planning Appeals Tribunal	Development and Planning Act (2021 Revision)	Hearing appeals against decisions of the Central Planning Authority
Planning Appeals Tribunal (Cayman Brac and Little Cayman)	Development and Planning Act (2021 Revision)	Hearing appeals against decisions of the Development Control Board
Public Transport Appeals Tribunal	Traffic Act (2021 Revision) Traffic (Public Transport Appeals Tribunal) Regulations 2012	Hearing appeals from decisions of Public Transport Board regarding permits to drive public passenger vehicles
Refugee Protection Appeals Tribunal	Customs and Border Control act (2021 Revision)	Hearing appeals against decisions of the Director to refuse asylum

Tribunal	Enabling legislation	Jurisdiction
Special Land Disputes Tribunal	Land Adjudication Act (1997 Revision)	Hearing undetermined appeals to the Grand Court against decisions of the Adjudicator that have been referred to the Special Tribunal for resolution
[Trade and Business Licensing] Appeals Tribunal	Trade and Business Licensing Act (2021 Revision)	Hearing appeals against decisions of the Trade and Business Licensing Board
[Trade Marks] Appeals Tribunal	Trade Marks Act, 2016	Hearing appeals against decisions of the Registrar of Trade Marks

First instance and other Tribunals

Tribunal	Enabling legislation	Function
[Accountants] Disciplinary Tribunal	Accountants Act (2020 Revision)	Hearing disciplinary matters relating to accountants
Arbitral Tribunal	Arbitration Act, 2012	Arbitration of disputes
Compensation Assessment Tribunal (Wastewater)	Wastewater Collection and Treatment Act (2019 Revision)	Assessing and awarding compensation regarding the production and supply of water
Compensation Assessment Tribunal (Water)	Water Production and Supply Act (2018 Revision)	Assessing and awarding compensation regarding the collection, conveyance and treatment of wastewater
Copyright Tribunal	Copyright, Designs and Patents Act 1988 (UK), as applied by the Copyright (Cayman Islands) Order 2015	Hearing disputes relating to copyright and determining licence terms
Development Plan Tribunals	Development and Planning Act (2021 Revision)	Inquiring into objections to development plan proposals
Gender Equality Tribunal	Gender Equality Act, 2011	Hearing complaints regarding gender discrimination

Tribunal	Enabling legislation	Function
Labour Tribunals	Labour Act (2021 Revision)	Deciding disputes between employers and employees
Land Adjudication Tribunal	Land Adjudication Act (1997 Revision)	Determination of land boundaries

Tribunals not yet in operation

Tribunal	Enabling legislation	Function
Design Rights Tribunal	Design Rights Act, 2019 (not yet commenced)	Hearing disputes relating to design rights and determining licence terms
Employment Tribunals	Employment Act, 2003 (not yet commenced)	Deciding disputes between employers and employees – to replace existing Labour Tribunals
Legal Services Disciplinary Tribunal	Legal Services Act, 2020 (not yet commenced)	Hearing disciplinary matters relating to attorneys-at-law

APPENDIX 2
CAYMAN ISLANDS APPEALS TRIBUNALS: SUMMARY OF FEATURES

Tribunal	Membership	Administration	Jurisdiction	Powers and procedures
Civil Service Appeals Commission *Public Service Management Act (2018 Revision)*	• Chairperson plus between 4 and 6 other members (cannot be civil servants, MPs or political party office holders) • Appointed by the Governor	• Office of the Governor • Secretary appointed by the Commission	Appeals from: • decisions of a chief officer relating to personnel arrangements, including appointments, discipline and dismissal • decisions of the Head of the Civil Service relating to the appointment, remuneration, dismissal and performance of chief officers	• Powers of Grand Court in relation to summoning of witnesses and production of documents • Parties may be represented by an attorney, a representative of an employee organisation or any other person • Power to set own meeting procedures
Health Appeals Tribunal *Health Practice Act (2021 Revision)*	• 3 registered health practitioners • 2 attorneys-at-law • 2 others (cannot be registered health practitioners) • Chairperson and deputy chairperson – attorneys-at-law of at least 7 years standing • Appointed by Cabinet	• Ministry of Health and Wellness • Secretary appointed by Cabinet	Appeals from decisions of Health Practice Commission and Councils for each professional group relating to: • certificates to operate health facilities • registration of health professionals • practicing licences • disciplinary action	• Quorum – 3 members including the chair or deputy chair plus 1 health practitioner member • Power to set own procedures (but Chief Justice also has power to make rules relating to procedure and evidence) • Party representatives need not be legally qualified

APPENDIX 2
CAYMAN ISLANDS APPEALS TRIBUNALS: SUMMARY OF FEATURES

Tribunal	Membership	Administration	Jurisdiction	Powers and procedures
Immigration Appeals Tribunal *Immigration (Transition) Act (2021 Revision)*	• Chairperson (attorney-at-law of at least 7 years standing) • Up to 5 deputy chairpersons (attorneys-at-law of at least 5 years standing) • A panel of members (unspecified number and qualifications) • Appointed by Cabinet	• Cabinet Office • Unlimited secretaries appointed by Cabinet	Appeals from: • certain decisions of Director of WORC • decisions of Boards (except from appeals decided by Boards)	• Quorum – chair or deputy chair plus 2 other members • Hearing conducted on written submissions alone unless Tribunal decides to call a party or other person • If satisfied that at least 1 ground is made out, rehearing of original application *de novo* with fresh evidence permitted • Rehearing on written submissions only • Matter cannot be remitted to original decision-maker • Brief written reasons only provided on request • Cabinet may give tribunal policy directions • Tribunal has power to compel answers and documents
Public Transport Appeals Tribunal *Traffic (Public Transport Appeals Tribunal) Regulations 2012*	• Chairperson, deputy chairperson plus 4 others • Appointed by the Governor	• Ministry of Tourism and Transport • Secretary appointed by the Governor	Appeals from decisions of Public Transport Board regarding permits to drive public passenger vehicles	• Quorum – 4 members including chairperson • Hearing may be in person or on written submissions only • Party representatives need not be legally qualified • Matter cannot be remitted to Board • Chief Justice may make rules

APPENDIX 2
CAYMAN ISLANDS APPEALS TRIBUNALS: SUMMARY OF FEATURES

Tribunal	Membership	Administration	Jurisdiction	Powers and procedures
Trade Marks Appeals Tribunal *Trade Marks Law, 2016*	• Chairperson and deputy chairperson (attorneys-at-law with 5 years standing or who have held judicial office or who have considerable experience in trade marks matters) • Up to 3 others • Appointed by Cabinet	Ministry of Investment, Innovation and Social Development	Appeals from decisions of Registrar of Trade Marks	• Quorum – 3 members (so no need for legally qualified member) • Procedures set by chairperson • Hearing in person unless parties choose otherwise
Refugee Protection Appeals Tribunal *Customs and Border Control Act (2021 Revision)*	• Chairperson (attorney-at-law of 7 years standing) • Deputy Chairperson (attorney-at-law of 5 years standing) • 3 others • Appointed by Cabinet	• Cabinet Office • Secretary appointed by Cabinet	Appeals from decisions of Director to refuse asylum application	• Quorum – 3 members (so no need for legally qualified member) • Parties may appear in person or be represented
Labour Appeals Tribunal *Labour Act (2021 Revision)*	• Chairperson plus 8 others (2 of whom may be deputy chairpersons) • Appointed by Cabinet	Ministry of Border Control and Labour	Appeals from certain decisions of Labour Tribunals	• Quorum – 3 members • Procedures may be prescribed by Cabinet (or, if not, determined by the Chairperson) • Hearings in person

APPENDIX 2
CAYMAN ISLANDS APPEALS TRIBUNALS: SUMMARY OF FEATURES

Tribunal	Membership	Administration	Jurisdiction	Powers and procedures
Mental Health Commission *Mental Health Commission Act, 2013*	• 2 attorneys-at-law • 2 registered health practitioners (other than doctors) with training or experience in mental health • 1 registered medical doctor with a specialisation in psychiatry • 1 registered medical doctor with training or experience in mental health • 3 others (cannot be or have been registered health practitioners) • Chairperson and 2 deputy chairpersons, at least 2 of which must have been appointed from the first 3 categories of member • Appointed by the Governor	• Ministry of Health and Wellness • Part-time secretary appointed by Chief Officer	• Hearing appeals under the Mental Health Act, 2013 and reviewing the care of patients under emergency detention orders • Also has a broad range of other functions relating to mental health matters	• Commission may act through committees, which may include its members and officers, and delegate powers and functions to a committee or to any of its members • May regulate its own procedures

APPENDIX 2
CAYMAN ISLANDS APPEALS TRIBUNALS: SUMMARY OF FEATURES

Tribunal	Membership	Administration	Jurisdiction	Powers and procedures
Planning Appeals Tribunal *Development and Planning Act (2021 Revision) – s46 & 48*	• Chairperson • Up to 7 deputy chairpersons • 7 others • Appointed by Cabinet	Ministry of Planning, Agriculture, Housing and Infrastructure	Appeals against decisions of Central Planning Authority regarding planning permission	• Quorum – 3 members • Appeal determined on record of hearing of original decision • Chief Justice may make rules
Planning Appeals Tribunal (Cayman Brac and Little Cayman) *Development and Planning Act (2021 Revision) – s47 & 49*	• Chairperson (magistrate) • 5 others (residents of CB or LC) • Appointed by Cabinet	Ministry of District Administration and Lands	Appeals against decisions of Development Control Board regarding planning permission	• Quorum – chairperson plus 2 members • Appeal determined on record of hearing of original decision • Chief Justice may make rules

APPENDIX 2
CAYMAN ISLANDS APPEALS TRIBUNALS: SUMMARY OF FEATURES

Tribunal	Membership	Administration	Jurisdiction	Powers and procedures
Trade and Business Licensing Appeals Tribunal *Trade and Business Licensing Act (2021 Revision)*	• Chairperson (attorney-at-law) • Deputy chairperson • 3 others • Appointed by Cabinet	Secretary appointed by Cabinet	Appeals against decisions of Trade and Business Licensing Board	• Quorum – 3 members including the chairperson or deputy chairperson (so no requirement for legally qualified member) • Appeal will only be heard in person on application • Party representatives need not be legally qualified
Special Land Disputes Tribunal *Land Adjudication Act (1997 Revision)*	• President plus 2 others • Appointed by the Governor		Hearing undetermined appeals to the Grand Court against decisions of the Adjudicator that have been referred to the Special Tribunal for resolution	• Hearing in person (with legal representatives) • Power to hear evidence on oath • Powers of Court to summon witnesses, call for or permit the production of exhibits and punish for contempt • Subject to the other provisions of the Act, bound by the laws and rules of evidence affecting the Court • Can hear fresh evidence in limited circumstances

APPENDIX 3
CAYMAN ISLANDS APPEALS TRIBUNALS: BUDGET AND CASE STATISTICS

Tribunal	Budget	Applications received annually	Active cases
Civil Service Appeals Commission	No separate operating budget* *Operates under the overall budget for 7 Commissions	18 (2019) 8 (2020) 5 (2021)	2
Health Appeals Tribunal	No separate operating budget* *Operates under Ministry budget	3 (2020)	0
Immigration Appeals Tribunal	Secretariat: $430,774 (2021)* Sitting fees: $143,400 (2021)* *This is the budget for both the Immigration Appeals Tribunal and the Refugee Protection Appeals Tribunal	79 (2020)	179* *Of these: • 16 await the submission of the Appeal Statement from WORC • 55 await the submission of detailed grounds of appeal • 17 await the submission of updated change of circumstance • 65 await scheduling for a Tribunal meeting • 26 have been deferred by the Tribunal pending additional information
Labour Appeals Tribunal	$47,004 (2021)*	13 (2018)	10*

APPENDIX 3
CAYMAN ISLANDS APPEALS TRIBUNALS: BUDGET AND CASE STATISTICS

Tribunal	Budget	Applications received annually	Active cases
	*This is the budget for both the Labour Appeals Tribunal and the Labour Tribunal	14 (2019) 16 (2021)* *These cases were pending when administration of the Tribunal was transferred from the Ministry of Border Control and Labour to the Department of Labour and Pensions on 1 February 2021 – it is unclear how many were initiated in 2020	*The remaining 6 await the re-appointment of Tribunal members
Planning Appeals Tribunal	No separate operating budget* $3020 outlaid for sitting fees (2021) *Operates under Ministry budget	14 (2020 & 2021 combined)	5
Planning Appeals Tribunal (Cayman Brac and Little Cayman)	No separate operating budget* *Operates under Ministry budget	7 (2020 &2021 combined)* *6 of which were withdrawn	1
Public Transport Appeals Tribunal	No separate operating budget* *Operates under Ministry budget	0	0
Refugee Protection Appeals Tribunal	See combined budget for Immigration Appeals		

APPENDIX 3
CAYMAN ISLANDS APPEALS TRIBUNALS: BUDGET AND CASE STATISTICS

Tribunal	Budget	Applications received annually	Active cases
	Tribunal and Refugee Protection Appeals Tribunal above		
Special Land Disputes Tribunal	-	-	-
Trade and Business Licensing Appeals Tribunal	No separate operating budget* *Operates under Ministry budget	6 (2021)	0
Trade Marks Appeals Tribunal	-	-	-

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