the formation of the Administrative Appeal Tribunal and to the passing of the Administrative Decisions (Judicial Review) Act 1977. There was a recognised need for adequate review at the judicial level, as well as at an administrative review level. In the Judicial Review Act, the legislature has prescribed grounds for interference, and the nature of the relief which may be granted. If a judge were to go too far, his decision could be corrected on appeal. I am not aware of any general tendency for the courts to interfere. Contrary to the belief of some, judges do take into account the effects of what they do, and not least of all in this area. They do of necessity have regard to some policy considerations. They do try to realise what the consequences of one decision might be for future cases. Sometimes of course what they do is very embarrassing for everyone. I suppose it was rather embarrassing for the old Commonwealth Court of Conciliation and Arbitration to be told by the Privy Council it had been illegal for about thirty or forty years and had to split itself in two.

The debate that has gone on about deportation has brought to the fore problems concerning the place of government policy. As I recall, Mr Justice Brennan was not satisfied with one statement of policy. He asked for a fuller one, or at least more details and elucidation. I do not see why the Administrative Appeals Tribunal should not follow such a course, if it sees fit.

I should like to comment on one remaining point made by Professor Pearce. Section 10 of the Judicial Review Act permits the Court, in its discretion, to decline jurisdiction and leave a matter to be dealt with elsewhere. A case which came before me raised a straight-forward question of law. Counsel for a Commissioner indicated a preference for the matter going to the Administrative Appeals Tribunal. I did not decline jurisdiction but dealt with the matter immediately. Three points about that. The court will undoubtedly have to work out principles as to when it is going to exercise jurisdiction under the Judicial Review Act and, another avenue being available when that latter course should be followed first. The second point is that if you have a clear question of law which has to be decided, recourse to the Court under the Act is a quick way of getting it decided. My final observation on this case is that while we have been looking at problems raised for the administration I think it should be appreciated that it will often benefit from review, and will in particular benefit from the Judicial Review Act by being able to get an early decision from the Court.

Mr J. O. BALLARD*

Mr Alan Hall has said that when he was appointed to the Administrative Appeals Tribunal he was entering virgin territory. But as the Chairman said nineteen days ago when it took over workers' compensation, that ain't no virgin. Workers compensation law has been with us since just about

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Federation. But surprisingly there is very little law on the current Act (the Compensation (Commonwealth Government Employees) Act 1971) despite it having been in force since 1971. The Act investing the AAT with jurisdiction in compensation matters also did another thing—it swept away existing rights of judicial review. Since 1971 as an alternative to my former Tribunal the legislation provided that a person who was dissatisfied with the decision of the Commissioner for Employees' Compensation could either seek reconsideration by the Compensation Tribunal or judicial review by a prescribed Court. For the five years I have been on the Compensation Tribunal I have watched the functioning of this system with something close to dismay. It had of course the obvious advantage to the legal profession of producing much litigation in New South Wales. It had the disadvantage that we all gave different decisions.

The Workers Compensation Commission of New South Wales and the Industrial Court of South Australia are of course the bodies which are charged under their respective State Acts with administering those Acts and they were inclined to attempt to read into the words of the Commonwealth legislation the law practices that they were accustomed to follow under the State Acts. In Victoria, the County Court often asked the successful party to draft the decision. In no cases were reasons for decisions required, although they were often given. Appeal to the Federal Court was no answer because many differences were differences of fact which could not be resolved on appeal. For example, what is the effect of stress on coronary artery disease? If you ask that question of two medical practitioners, I am sure you will not get the same answer. I refer to that, as I say, because this right of access to the State courts was swept away and this is one of the advantages of the changes made on 1st July.

Of course it is also history that my Compensation Tribunal was also written off, and here I have to admit to a heresy. When I was a small boy in Bristol there was a much older boy who lived around the corner named Oliver Franks and I knew him well. When on the Compensation Tribunal I was inclined to think that the notion of leaving tribunals outside the judicial structure to encourage development of their separate expertise had much to recommend it. Indeed, my sitting with the National Insurance Commissioners in Britain and Judge Blair in the Compensation Appeals Tribunal in New Zealand rather reinforced this view. However, over the years I was in the Compensation Tribunal problems of consistency with the courts did become worrying. Another thing that became very clear was one of the reasons that the Commissioner for Employees' Compensation went his own sweet way—in complete disregard of the decisions of the courts and the Tribunal—was because of our differences; he felt that his only safe course was to ignore us all except on the facts of a specific decision.

Another advantage of the change is that it is better that where the department that is administering a tribunal of this kind is also claiming (and I use that word carefully) to be one of the parties, that it is better that the tribunal should not also be administered by that department. So I formally renounce my previous heresy.

I appreciate that I have not really dealt with judicial review in relation to the Federal Court as in Professor Pearce's paper. It is only latterly that

any significant number of cases from the compensation jurisdiction have been taken on appeal, first to the Industrial Court, and now to the Federal Court. In the past, I think we would have been helped in the jungle between the Tribunal and the prescribed courts to have had more judicial review in the Federal Court. But there's a catch-up going on now. A further reason why there were so few matters which went up to the Federal Court until 1979 was that until then there was no power to refer a matter to the Federal Court by the Tribunal or a court. Since the law was changed three matters have been so referred; one by the County Court of Victoria —the matter of Heath—which we are waiting for judgment. Another one, called John Baptist Portelli, was referred by me after two judgments of the Federal Court had raised jurisdictional problems in relation to the Compensation Tribunal. I should place on record that the matter was heard quickly, judgment was published quickly and gave the Tribunal and practitioners exactly the guidance we needed. (*Re Compensation (Commonwealth Government Employees) Act 1971; Ex parte Portelli* (1981) 35 A.L.R. 207.) This history hardly suggests a need to restrain judicial predators from straying into the field of the administrative tribunal.

Lest it be thought that I seek to curry favour by stressing those Federal Court judgments that are helpful, I would cite another. There was a lady claimed to have psychiatric problems. One psychiatrist said she had not; two said she had. I found she did not. On appeal the three medical witnesses were reassembled in the Federal Court by the appeal judge and were further questioned by him leading to findings being made on appeal and a decision in accordance with the evidence of the two psychiatrists not accepted by the Tribunal. True it is that the psychiatrist whose evidence was accepted by the Tribunal retracted somewhat in the appeal court, under some pressure I should add, but the principle of such a procedure does, I think, undermine the position of the Tribunal as a body which is given the job of determining matters of fact.

Nevertheless, what worries me most seriously is the fact that the decision-maker, the Commissioner for Employees' Compensation, does not regard himself as being bound by the decisions of the Tribunal. There have been two cases where in the actual matter that has been remitted he has refused to follow the Tribunal's direction. We overcame that, but nevertheless the position that we discussed yesterday, that is to say that the tribunals do not make binding decisions on matters of law, still remains. It may well be that it will be necessary to rely on the judicial review by the Federal Court to make decisions binding for without them those decisions may not be followed by the decision-makers.