

# AUSTRALIAN JOURNAL OF ADMINISTRATIVE LAW

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## TRIBUNALS' POWER TO CONTROL THEIR OWN PROCEDURES AND THE REQUIREMENTS OF PROCEDURAL FAIRNESS

**John Blackwood and Terese Henning**

The purpose of this article is to consider two aspects of disclosure of evidence that may arise in the proceedings of quasi-judicial tribunals that have legislative imprimatur to determine their own procedures. The first aspect of disclosure relates to pre-hearing evidence disclosure requirements that may be imposed by tribunals upon parties or those participating in tribunal proceedings. There is evidence that the practice directions have assumed to some extent, the aspect of rules of practice. Pre-hearing disclosure is a useful case management device, however, the article highlights some of its limitations. The second aspect of disclosure relates to the question of disclosure by the tribunals themselves. While it might be true to say that the duty to disclose documents and other material information is one of the more certain aspects of natural justice, it is, nevertheless, exceedingly difficult to articulate a concise set of principles relevant to all hearings before quasi-judicial tribunals. The nature of the jurisdiction being exercised is pivotal in determining how the principles in relation to the production of documents are exercised. ....5

## FILLETING THE KIPPER – WHITHER THE SSAT?

**Phillip A Swain**

At the end of 2002 the Social Security Appeals Tribunal underwent considerable membership change, with half of the previous members not reappointed in what was a major overhaul of tribunal membership. This development followed some years of uncertainty about the shape and functioning of the tribunal, following the 1995 “Better Decisions” report and the ill-fated Commonwealth Administrative Review Tribunal proposal. This article examines which members were reappointed, and which were not, in this process and considers what might be the implications of such wholesale change for the future of the Social Security Appeals Tribunal and those who appear before it. ....34

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## RETHINKING THE CONSTITUTIONALITY OF DELEGATED LEGISLATION

### **Denise Meyerson**

This article takes a fresh look at the issue of the delegation of legislative powers to the executive branch of government. The traditional view is that there are no constitutional limits deriving from the separation of powers to the conferral of unfettered legislative power on executive officials. The author argues that this approach needs re-evaluation in light of the contemporary focus on the purposes served by the separation of powers doctrine. Attention to the connection of the doctrine with the rule of law, as well as with fundamental democratic values, suggests that we should reject the traditional view that Parliament can delegate legislative power without indicating the standards which are to govern the making of the delegated legislation. ....45

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