



THE CAYMAN ISLANDS LAW REFORM COMMISSION



FINAL REPORT

APPEALS TRIBUNALS

18 NOVEMBER, 2022

THE CAYMAN ISLANDS LAW REFORM COMMISSION

Chairman	Mr. Hector Robinson, KC
Commissioners	Hon. Justice Alexander Henderson, KC, (retd.)
	Mr. Vaughan Carter, Attorney-at-Law
	Mr. Abraham Thoppil, Attorney-at-Law
	Ms. Reshma Sharma, KC, Solicitor General
	Mr. Simon Davis, Director of Public Prosecutions
Director	Mr. José Griffith, Attorney-at-Law
Senior Legislative Counsel	Ms. Catriona Steele, Attorney-at-Law
Paralegal Officer	Ms. Felicia Connor
Administrative Secretary	Ms. Milicia Bodden

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND.....	1
RESEARCH AND CONSULTATION PROCESS	2
DISCUSSION PAPER - AREAS OF EXAMINATION.....	3
History and purpose of tribunals	3
Tribunals in the Cayman Islands	4
Arguments for and against tribunal consolidation	5
The case for tribunal reform in the Cayman Islands.....	6
Tribunal reform in other jurisdictions.....	7
Options examined for reform in the Cayman Islands	10
Matters for consideration	11
Proposal for reform.....	12
PUBLIC AND STAKEHOLDER RESPONSES TO THE DISCUSSION PAPER.....	13
RECOMMENDATIONS FOR REFORM.....	13
PROPOSED LEGISLATIVE FRAMEWORK.....	14
CONCLUSION.....	15
APPENDIX 1 - ADMINISTRATIVE APPEALS TRIBUNAL BILL, 2022	
APPENDIX 2 - CONSEQUENTIAL AMENDMENTS	
APPENDIX 3 - DISCUSSION PAPER	
APPENDIX 4 - PUBLIC AND STAKEHOLDER RESPONSES TO DISCUSSION PAPER	

ACKNOWLEDGEMENTS

The Law Reform Commission extends thanks to all stakeholders and the general public for the valued contributions leading to the conclusion of this Final Report.

FINAL REPORT

APPEALS TRIBUNALS

INTRODUCTION

In accordance with section 12 of the *Law Reform Commission Act (2019 Revision)*, the Law Reform Commission (the “Commission”) submits for the consideration of the Honourable Attorney General its Final Report entitled “**Appeals Tribunals**”.

This Final Report contains recommendations which seek to respond to issues that relate to the structure, quality, accessibility and efficiency of appeals tribunals in the Cayman Islands and is supported by the proposed *Administrative Appeals Tribunal Bill, 2022*. The Bill is attached as Appendix 1.

BACKGROUND

1. By referral made on 8th September 2019, the Honourable Attorney General asked the Commission to consider 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 appeals.
2. The referral followed a global trend to consolidate the myriad individual tribunals in existence in many jurisdictions and create a centralised tribunal for hearing most, if not all, administrative appeals. In addition, a 2014 report¹ by Ernst & Young Ltd (the “EY Report”), commissioned by the Cayman Islands Government, found the current approach to tribunal administration in the Cayman Islands to be *ad hoc*, resulting in inconsistent approaches to cases. The report suggested that the right to a fair trial and the requirement for lawful administrative action under sections 7 and 19 of the Bill of Rights (contained in the Constitution) may be compromised by these deficiencies.²

¹ Ernst & Young Ltd, “Project Future: Creating a Sustainable Future for the Cayman Islands” (2014), available at <<https://cnslibrary.com/wp-content/uploads/EY-Report-Project-Future-September-2014.pdf>>.

² EY Report, p. 223.

3. In response to the referral, the Commission conducted a comprehensive review of the operation of tribunals in the Cayman Islands with a view to determining whether reform is necessary and, if so, the shape that reform should take.

RESEARCH AND CONSULTATION PROCESS

4. The research of the Commission included an examination of –
 - (a) the history, purpose and essential characteristics of administrative appeals tribunals, to provide a reference point against which to measure the efficacy of the current tribunal system and assess the value of potential reforms;
 - (b) the current landscape of tribunals in the Cayman Islands, including the various membership structures, administrative arrangements, procedures and costs of operation;
 - (c) the arguments for and against tribunal consolidation; and
 - (d) reforms undertaken in other jurisdictions.
5. The research findings of the Commission resulted in the formulation, for public consultation, of a Discussion Paper titled “**Appeals Tribunals**”. The Paper is attached as Appendix 3.
6. The Discussion Paper was subsequently published for public comment and also forwarded to the following institutional stakeholders –
 - the Cayman Islands Legal Practitioners Association;
 - Judicial Administration;
 - the Office of the Governor;
 - the Ministry of Border Control and Labour;
 - the Ministry of District Administration and Lands;
 - the Ministry of Tourism and Transport;
 - the Ministry of Investment, Innovation and Social Development;
 - the Ministry of Planning, Agriculture, Housing and Infrastructure;
 - the Ministry of Health and Wellness;
 - the Ministry of Financial Services and Commerce;
 - the Chairperson of the Civil Service Appeals Commission;
 - the former Chairperson of the Public Transport Appeals Tribunal;

- the Chairperson of the Immigration Appeals Tribunal;
 - the Chairperson of the Refugee Protection Appeals Tribunal;
 - the Chairperson of the Health Appeals Tribunal;
 - the Chairperson of the Labour Appeals Tribunal;
 - the Chairperson of the Planning Appeals Tribunal;
 - the Chairperson of the Planning Appeals Tribunal (Cayman Brac & Little Cayman);
 - the Chairperson of the Trade and Business Licensing Appeals Tribunal; and
 - Members of Parliament.
7. Stakeholders and members of the general public were invited to respond to the issues and questions identified in the Discussion Paper. The consultation period for the Discussion Paper commenced on 6th January 2022 and concluded on 15th March 2022. The Commission received responses from the following stakeholders and members of the public –
- the Chairperson of the Planning Appeals Tribunal (Cayman Brac & Little Cayman);
 - the Chairperson of the Health Appeals Tribunal;
 - the Chairperson of the Labour Appeals Tribunal;
 - John Harris, Nelsons Legal;
 - Selina Tibbetts, JacksonLaw; and
 - Christine Maltman.

DISCUSSION PAPER - AREAS OF EXAMINATION

8. In the Discussion Paper, the Commission assessed the case for reform of the tribunal system in the Cayman Islands with reference to the history and purpose of tribunals, the existing tribunal landscape in the Cayman Islands, the arguments advanced for and against tribunal consolidation, and recent reforms in other jurisdictions.

History and purpose of tribunals

9. The Commission noted that tribunals were developed in the twentieth-century to provide faster, cheaper and easier access to the adjudication of small claims under welfare schemes.³ The role of tribunals has since expanded significantly. However, the Commission focused its examination on tribunals that hear appeals against administrative decisions, including decisions by individual public officials and statutory bodies.

³ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 2.

10. The Commission emphasised the importance of administrative appeals tribunals in providing an alternative avenue of review to that provided by the courts. In addition to providing simpler, faster and cheaper access to justice for appellants, tribunals reduce the burden on the courts by diverting lower-level cases away from the court system.⁴ Tribunals also have the potential to offer specialised technical expertise in the regulatory areas they deal with, improving the efficiency and quality of decision-making.⁵
11. The Commission noted that tribunals also have the potential to improve the quality of administrative decision-making in the first instance by providing oversight of administrative decisions and improving accountability among decision-makers.⁶

Tribunals in the Cayman Islands

12. The Commission examined the existing tribunal landscape in the Cayman Islands, noting that there are currently twelve tribunals with the primary function of hearing appeals, and nine tribunals that can broadly be described as first instance tribunals.⁷
13. Focusing on the twelve appeals tribunals, the Commission examined the features of each, noting that:
 - (a) seven of the twelve tribunals require at least one member to be an attorney-at-law;
 - (b) of those seven tribunals, four do not require an attorney-at-law to form part of the quorum for hearing appeals;
 - (c) two tribunals *require* specialist members other than attorneys-at-law, although all *allow* for this;
 - (d) nine tribunals are funded and administered by the same Ministry that is responsible for administering the legislation under which the decisions that are appealed to the tribunal are made, raising questions regarding the ability of such tribunals to operate independently; and
 - (e) very little provision is made in the establishing legislation for the powers and procedures of each tribunal.⁸

⁴ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 4.

⁵ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 4.

⁶ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 4.

⁷ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 6.

⁸ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 8-10.

Arguments for and against tribunal consolidation

14. The Commission observed that, in assessing the arguments for and against tribunal consolidation, it is important to recognise that there is a spectrum of consolidation options available, ranging from replacing specialist tribunals entirely with a consolidated administrative appeals tribunal, to retaining specialist tribunals and simply consolidating their administrative support structure.⁹

Accessibility

15. The Commission considered the potential barriers to accessibility that result from the myriad specialist tribunals with different procedures and administrative structures. The Commission recognised that such a system lacks a clear point of entry for a person seeking to appeal an administrative decision without the benefit of legal representation.¹⁰
16. Conversely, the Commission noted that specialist tribunals have the potential to improve accessibility in substantive ways by developing practices and procedures that are specifically tailored to the needs of their users. As such, consolidation of procedures and administration should be undertaken in a considered manner to ensure accessibility for the range of clients affected.¹¹

Expertise

17. The Commission recognised that specialist tribunals have the potential to include members with specialist expertise in the functional area of the tribunal, and also to develop familiarity with the narrow range of statutes dealt with. However, the Commission also noted that a consolidated tribunal could be structured to allow for specialist members to be appointed to sit on specific categories of matters, as well as expert assessors to provide technical expertise.¹²

⁹ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 11.

¹⁰ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 12.

¹¹ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 12.

¹² Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 13.

Efficiency

18. The Commission noted that while generalist tribunals can utilise economies of scale to make more efficient use of resources, specialist tribunals may be able to offer streamlined services that are tailored to the matters they deal with.¹³ However, the Commission highlighted the cost savings that can be achieved by avoiding duplication of administrative structures for small tribunals with low caseloads, such as those that exist in the Cayman Islands.¹⁴

Procedures

19. The Commission highlighted the potential pitfalls of standardising tribunal procedures across a wide range of matters in the process of consolidating tribunals. While standardised procedures promote fairness and consistency, they can also become overly burdensome, formal and ‘court-like’. The Commission concluded that any standardisation of procedures should be justifiable and contribute to the overall goal of improving access to justice.¹⁵

Independence

20. The Commission noted that a key argument for centralised tribunal administration is the need to place tribunals at arm’s length from the makers of the administrative decisions the tribunals review. The counter-argument is that generalist tribunals are so removed from primary decision-makers that they lack a sufficient understanding of the policies and processes applied in administrative decision-making. However, this argument does not take into account the potential for specialist members to be appointed to generalist tribunals for particular categories of matters.¹⁶

The case for tribunal reform in the Cayman Islands

21. The Discussion Paper summarised the findings of the EY Report, namely that tribunal administration in the Cayman Islands is *ad hoc*, resulting in inconsistent procedures and the possibility that the right to a fair trial and the requirement for lawful administrative

¹³ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 13.

¹⁴ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 14.

¹⁵ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 14.

¹⁶ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 15.

action under sections 7 and 19 of the Bill of Rights are being compromised. The Commission noted that the EY Report recommended centralising administration of appeals tribunals without recommending the amalgamation of tribunals into a single appeals tribunal.¹⁷

22. The Commission queried whether the reforms proposed by the EY Report would go far enough in addressing the inefficiencies of the existing system, noting the difficulty of operating multiple small tribunals, each dealing with a small number of cases. The Commission noted that an amalgamated administrative appeals tribunal may actually be more effective in a small jurisdiction such as the Cayman Islands than in a large one.¹⁸

Tribunal reform in other jurisdictions

23. The Discussion Paper considered the varying approaches taken to tribunal reform in Australia, the United Kingdom and New Zealand.

Australia

24. Australia consists of nine jurisdictions that each have their own system for administrative appeals. The Commonwealth of Australia was a pioneer in tribunal reform, establishing the Administrative Appeals Tribunal in 1975. Since then, each State and Territory has established a civil and administrative tribunal, dealing with a range of civil matters in addition to administrative appeals.¹⁹
25. The Discussion Paper summarises the key features of the central tribunal in each jurisdiction, with particular focus on the systems in place in the three smallest Australian jurisdictions, the Northern Territory, the Australian Capital Territory and Tasmania. The key features are as follows –
 1. While the larger jurisdictions have tribunals organised into Divisions for different categories of matters, the smaller jurisdictions have a flexible regime that allows for Divisions to be established if required, reflecting their smaller caseloads.²⁰

¹⁷ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 16.

¹⁸ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 17.

¹⁹ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 18.

²⁰ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 19.

2. In all but the three smallest jurisdictions, the President of the tribunal is a judge. In the three smallest jurisdictions, the President is a magistrate or a person qualified to be a magistrate.
3. The standard qualification requirement for other members is that they must either be legal practitioners with at least 5 years of post-qualification experience, or they must hold special knowledge or skills relevant to the work of the tribunal. In some jurisdictions, panels of expert assessors are also appointed, who can be consulted for specialist expert advice during hearings.
4. The President in all jurisdictions is empowered to assign members to preside over particular matters or classes of matters. In almost all cases, at least one member hearing a matter must be a legal practitioner.
5. In all jurisdictions, appeals are a full reconsideration of the original decision in which new material may be presented. The tribunal may consider the policy of the department responsible for the original administrative decision, make its own enquiries and is not bound to act only on the evidence presented by the parties.
6. The tribunal is required to act as informally as possible and to sit throughout the geographical area of the jurisdiction.
7. All jurisdictions except Tasmania provide for appeals to a court from decisions of the tribunal, and such appeals are mostly, but not exclusively, limited to a question of law and require leave.²¹

United Kingdom

26. The Discussion Paper outlines the structure and features of the tribunal system in the United Kingdom, which was devised after a lengthy law reform process between 2000 and 2007. The Commission noted the complexity of the system, which reflects the needs of a large jurisdiction with a large range of tribunals to consolidate.²² The structure is as follows –
 1. A Courts and Tribunals Service provides administrative support to both courts and tribunals.

²¹ Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 19-21.

²² Cayman Islands Law Reform Commission, *Appeals Tribunals Discussion Paper*, 13th December 2021, p. 22.

2. A First-tier and Upper Tribunal are organised into Chambers, each of which has a Chamber President. The First-tier Tribunal hears appeals against administrative decisions and some first instance matters. The Upper Tribunal primarily reviews and decides appeals arising from decisions of the First-tier Tribunal.
3. The membership of each tribunal consists of the Senior President of Tribunals, judges of the tribunal (the legal members) and non-legal members. The Senior President of Tribunals is required to be a solicitor or barrister of at least 7 years' standing. A judge of a tribunal is required to either be solicitor or barrister of at least 5 years' standing, or otherwise have 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 tribunals. Both tribunals have access to assessors to provide specialist expertise if required.
4. A Tribunal Procedure Committee makes rules governing practice and procedure, which must be made with a view to ensuring that proceedings are accessible and fair, are handled quickly and efficiently, and that justice is done.
5. 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.²³

New Zealand

27. Although New Zealand has yet to implement major tribunal reform, the Commission examined the law reform process that has been ongoing since 2008, as a range of options for reform have been canvassed and considered by the New Zealand Law Commission. The Discussion Paper summarises those options –
 1. Option 1 is to standardise tribunal powers and procedures without amalgamating tribunals.
 2. Option 2 is to consolidate tribunal administration without amalgamating tribunals.
 3. Option 3 is to establish a role of Head of Tribunals without amalgamating tribunals.

²³ Cayman Islands Law Reform Commission, Appeals Tribunals Discussion Paper, 13th December 2021, p. 22-24.

4. Option 4 is to rationalise the number of tribunals by consolidating them, not into a single tribunal, but into a reduced number of larger tribunals.
 5. Option 5 is to group tribunals into functional clusters with common administrative services for each cluster and cross-membership.
 6. Option 6 is to amalgamate all tribunals into a single structure.²⁴
28. The New Zealand Law Commission ultimately recommended a unified tribunal structure with single administration, a Head of Tribunals and a rationalised number of tribunals organised into Divisions.²⁵

Options examined for reform in the Cayman Islands

29. The Discussion Paper outlines three options for tribunal reform in the Cayman Islands –
1. Option 1 is to create a single administrative structure under which individual tribunals share administrative support. This option would result in cost savings and efficiency gains, as well as improving the perception of tribunals acting independently of Ministries. It would also improve access to tribunals by creating a single entry point for applicants. However, it would not create additional avenues for merits review under a wider range of laws, would not consolidate tribunal membership and would not improve the quality of procedures and decision-making by tribunals.²⁶
 2. Option 2 is to centralise the management of tribunals by bringing 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. In addition to the benefits of option 1, option 2 has the potential to improve the quality of tribunal administration, procedures and decision-making through centralised management. However, it would not create additional avenues for merits review under a wider range of laws, nor would it consolidate tribunal membership.²⁷

²⁴ Cayman Islands Law Reform Commission, Appeals Tribunals Discussion Paper, 13th December 2021, p. 25-27.

²⁵ Cayman Islands Law Reform Commission, Appeals Tribunals Discussion Paper, 13th December 2021, p. 27.

²⁶ Cayman Islands Law Reform Commission, Appeals Tribunals Discussion Paper, 13th December 2021, p. 28.

²⁷ Cayman Islands Law Reform Commission, Appeals Tribunals Discussion Paper, 13th December 2021, p. 29.

3. Option 3 is to abolish most of the existing specialist tribunals and transfer their functions to an administrative appeals tribunal. This option has the benefits of option 2, in addition to potentially substantively improving 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. It would also result in consolidated tribunal membership, which provides the opportunity for full-time members to be appointed. However, there is a risk that some of the corporate knowledge of specialist tribunals will be lost, and it will be more difficult to provide specialist client services appropriate to specific categories of cases.²⁸

Matters for consideration

30. The Commission identified a number of questions for consideration concerning option 3 (a consolidated administrative appeals tribunal) –
 1. Should any of the existing tribunals, such as the Mental Health Review Tribunal, be retained as standalone tribunals due to the specialised nature of their work?
 2. Should a consolidated tribunal be organised into Divisions?
 3. Should the qualification requirements for the legal members of the tribunal be higher than 5 years of post-qualification experience?
 4. Should non-legal members be appointed?
 5. Should a panel of expert assessors be available to provide expert advice during hearings?
 6. What should be the minimum and maximum (if any) number of members that constitute the tribunal for the purpose of hearing an appeal?
 7. Is it desirable to enshrine any procedures of the tribunal in primary or secondary legislation?
 8. Should the tribunal have power to summon witnesses, compel production of documents and determine matters such as whether a hearing will be in-person?
 9. Should the tribunal have a dedicated administrative structure or should it fall under the Judicial Administration?

²⁸ Cayman Islands Law Reform Commission, Appeals Tribunals Discussion Paper, 13th December 2021, p. 30.

10. To what extent should there be an avenue to appeal a decision of the tribunal?²⁹

Proposal for reform

31. The Commission proposed establishing a consolidated administrative appeals tribunal as outlined in option 3. The proposal outlined in the Discussion Paper deals with the matters for consideration listed above as follows –

1. The tribunal should have jurisdiction to hear all appeals that currently go to the existing appeals tribunals, with the exception of the Mental Health Review Tribunal, which should be retained.
2. The legislation establishing the tribunal should not require it to be organised into Divisions, but should empower the President of the tribunal to do so if required.
3. The President and Deputy President of the tribunal should hold the qualifications required for appointment as a Judge of the Grand Court. The remaining legal members should have at least 7 years of post-qualification experience.
4. The tribunal should also have non-legal members as required, who hold skills and experience relevant to the work of the tribunal.
5. The tribunal should have the option of drawing on a panel of expert assessors.
6. The President of the tribunal should be responsible for assigning members to matters, and determining the number of members required for a matter. If only one member is assigned, that member should be a legal member.
7. The tribunal should have power to set its own procedures, but should be required to publish rules.
8. The tribunal should have the power to consider new evidence, make inquiries of its own, summon witnesses and compel the production of documents. While the tribunal should generally have the power to determine whether a hearing is in-person, secondary legislation could prescribe matters that must be heard in-person, and an appellant should always have the opportunity to apply for an in-person hearing.
9. The tribunal should be supported by a dedicated secretariat.³⁰

²⁹ Cayman Islands Law Reform Commission, Appeals Tribunals Discussion Paper, 13th December 2021, p. 31-33.

³⁰ Cayman Islands Law Reform Commission, Appeals Tribunals Discussion Paper, 13th December 2021, p. 33-37.

PUBLIC AND STAKEHOLDER RESPONSES TO THE DISCUSSION PAPER

32. The responses to the Discussion Paper received from members of the public and stakeholders indicated broad support for the proposal to establish a centralised appeals tribunal for the Cayman Islands. While there are differing views in relation to certain aspects of the tribunal model, the concept of consolidating individual tribunals into a single body was widely endorsed by the majority of respondents.
33. One respondent recommended centralising tribunal administration only, as a first step to further reform. The respondent highlighted the existing inefficiencies and inconsistencies in tribunal administration and submitted that improvements are long-overdue.
34. One respondent expressly supported the proposal for the President of the tribunal to hold the qualifications required for appointment as a Judge of the Grand Court. Another respondent expressed the view that 7 years of post-qualification experience is insufficient for the other legal members of the tribunal.
35. The concept of organising the tribunal into Divisions was supported by two respondents. These submissions also proposed that a minimum of three members constitute the tribunal for an appeal.
36. One respondent submitted that appeals should be conducted as appeals on the record with fresh evidence permitted only under exceptional circumstances. The respondent expressed the view that allowing fresh evidence may encourage frivolous or vexatious appeals, and recommended that costs be awarded against a party if the tribunal considers an appeal or defence was frivolous or vexatious.
37. The responses to the Discussion Paper can be found in Appendix 4.

RECOMMENDATIONS FOR REFORM

38. The Commission considered all comments and options emerging from the consultation process and the legislative approaches adopted in other jurisdictions.
39. The proposed qualification requirements for the legal members of the tribunal have been designed to recognise the place of the tribunal in the justice system as a whole. An

administrative appeals tribunal is not a court and its members are not judges. However, the tribunal will hear important and complex matters, and should have appropriately qualified members. The proposed qualification requirement for the President and Deputy President of the tribunal is equivalent to that of a Judge of the Grand Court. It is appropriate that a lower qualification requirement be prescribed for the other legal members of the tribunal. The proposed requirement of 7 years of post-qualification experience is intended to strike the appropriate balance.

40. The Commission maintains the view that the legislation establishing the tribunal should allow for the tribunal to be organised into Divisions in the future, rather than prescribing Divisions in the legislation itself. This allows flexibility for the future growth of the tribunal without creating unnecessary administrative complexity at its inception. The initial workload of the tribunal is unlikely to be sufficient to justify Divisions.
41. The Commission considers it appropriate that the tribunal have the discretion to consider both the evidence before the original decision maker and, if appropriate in the circumstances of the case, additional evidence. The Commission notes the concerns raised regarding frivolous or vexatious appeals, and supports the inclusion of mitigating provisions in the legislation. Specifically, the draft Bill includes provisions allowing the tribunal to dismiss such applications and to order costs against a party or their representative for engaging in tactics that delay or obstruct proceedings.
42. Accordingly, the Commission endorses the proposal for reform outlined in the Discussion Paper and embodied in the *Administrative Appeals Tribunal Bill, 2022*.

PROPOSED LEGISLATIVE FRAMEWORK

43. The proposed legislative framework to give effect to the reforms recommended by the Commission consists of a number of cognate Bills:
 1. The *Administrative Appeals Tribunal Bill, 2022*, which establishes the Tribunal and provides for its structure, membership, powers and procedures.

2. Ten cognate Bills to amend the laws that establish and confer jurisdiction on existing appeals tribunals to abolish these tribunals and instead confer jurisdiction to hear appeals on the Administrative Appeals Tribunal. These Bills would also include transitional provisions to provide for appeals that are before the existing tribunals at the time of the transition to the new Administrative Appeals Tribunal. The proposed amendments are summarised in the table in Appendix 2.

CONCLUSION

44. The Commission recommends for consideration the *Administrative Appeals Tribunal Bill, 2022* and the proposed consequential amendments.

APPENDIX 1

ADMINISTRATIVE APPEALS TRIBUNAL BILL, 2022

CAYMAN ISLANDS



ADMINISTRATIVE APPEALS TRIBUNAL BILL, 2022

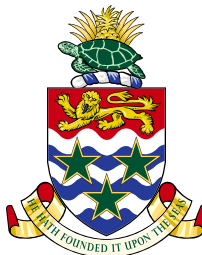
Consultation Draft

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Portfolio of Legal Affairs (PLA)



CAYMAN ISLANDS



ADMINISTRATIVE APPEALS TRIBUNAL BILL, 2022

Arrangement of Clauses

Clause	Page
1. Short title and commencement	7
2. Interpretation	7
3. Relationship with other Acts.....	8

PART 2 - ADMINISTRATIVE APPEALS TRIBUNAL

Division 1 - Establishment of Tribunal	8
4. Tribunal established.....	8
5. Jurisdiction	8
6. Tribunal to operate throughout Islands.....	8
7. Objectives of Tribunal	8
8. Independence of Tribunal	8
Division 2 - Membership and structure of Tribunal	8
9. Membership.....	8
10. President may establish divisions	8
11. Qualifications of members	9
12. Functions of President and Deputy President	9
13. Duration of appointment.....	9
14. Vacation of office	9
15. Removal from office.....	9
16. Validity of acts	10
17. Delegation	10
18. Remuneration.....	10
Division 3 – Registrar and staff	10

19. Registrar.....	10
20. Secretariat and staff.....	10
Division 4 - Assessors	10
21. Appointment of assessors.....	10
22. Functions of assessors	10

PART 3 – APPEALS

Division 1 – Obligations of decision makers	11
23. Information about appealable decision.....	11
24. Statement of reasons for decision.....	11
Division 2 – Starting an appeal	11
25. Grounds for appeal.....	11
26. Starting an appeal	11
27. Who constitutes the Tribunal for an appeal	11
28. Who presides at a proceeding	12
29. Effect of appeal on decision.....	12
Division 3 – Manner and outcome of appeal	12
30. Appeal by way of rehearing	12
31. Determination of appeal.....	12
32. Effect of determination.....	12
33. Appeal to Grand Court.....	13
Division 4 – Procedures of Tribunal	13
34. Tribunal may determine own procedures	13
35. Principles for conducting proceedings.....	13
36. Tribunal to ensure parties are informed	13
37. When hearing may be dispensed with	13
38. Power to adjourn proceedings	13
39. Sittings	13
40. Proceedings to be heard in public.....	13
41. Interpreters	13
42. Electronic hearings and proceedings on documents	14
43. Tribunal may make orders for private hearing, non-publication	14
44. Preserving subject matter of proceedings	14
45. Interlocutory orders.....	14
46. Security as to costs.....	14
47. Conditional and ancillary orders.....	14
48. Disclosure of interests for assessors.....	14
49. Disclosure of interests for members.....	14
50. Directions for conduct of proceeding.....	14
51. Frivolous, vexatious or improper proceedings.....	15
52. Decisions and reasons for decisions.....	15
53. Publication.....	15
54. Proof of decisions and orders of Tribunal.....	15
55. Power to issue summons.....	15
56. Witnesses.....	15
57. Parties	15
58. Person may be joined as party.....	15
59. Person may intervene in proceeding.....	16



60.	Representation	16
61.	Parties bear own costs.....	16
62.	Tribunal may make costs orders	16
63.	Costs order against a representative	16
64.	Costs for assessor	16
65.	Rules	16
66.	Practice directions	17

PART 4 - MISCELLANEOUS MATTERS

67.	Protection from liability and indemnity	17
68.	Protection from liability for disclosure	17
69.	Confidentiality of information	17
70.	Annual report	17
71.	Seal	17
72.	Regulations	18

CAYMAN ISLANDS



ADMINISTRATIVE APPEALS TRIBUNAL BILL, 2022

A BILL FOR AN ACT TO ESTABLISH THE ADMINISTRATIVE APPEALS TRIBUNAL; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

1. (1) This Act may be cited as the *Administrative Appeals Tribunal Act, 2022*.
- (2) This Act comes into force on such date as may be appointed by Order made by the Cabinet and different provisions of this Act may be brought into force on different days and for different purposes.

Interpretation

2. In this Act —

“**affected person**”, in relation to an appealable decision, means a person who has a right under a relevant Act to appeal the decision to the Tribunal;

“**appealable decision**” means a decision that may be appealed to the Tribunal under a relevant Act;

“**assessor**” means an assessor appointed under section 21;

“**attorney-at-law**” means an attorney-at-law admitted under section 3(1) of the *Legal Practitioners Act (2022 Revision)*;

“**chief officer**” means the chief officer of the judicial administration appointed under the *Public Service Management Act (2018 Revision)*;

“**Constitution**” means the Constitution of the Cayman Islands set out in Schedule 2 to the *Cayman Islands Constitution Order 2009*;

“**decision maker**” means the person or body that makes an appealable decision;

“**Deputy President**” means the Deputy President of the Tribunal mentioned in section 9(1)(b);

“**JLSC**” means the Judicial and Legal Services Commission established by section 105 of the Constitution;

“**legal member**” means a member of the Tribunal mentioned in section 9(1)(c);

“**member**” means a member of the Tribunal mentioned in section 9;

“**ordinary member**” means a member of the Tribunal mentioned in section 9(1)(d);

“**party**” means a party to a proceeding before the Tribunal under section 57(1);

“**President**” means the President of the Tribunal mentioned in section 9(1)(a);

“**Registrar**” means the Registrar of the Tribunal mentioned in section 19;

“**relevant Act**” means an Act that confers jurisdiction on the Tribunal to hear an appeal against an appealable decision;

“**rules**” means the rules of the Tribunal made under section 65; and

“**Tribunal**” means the Administrative Appeals Tribunal established by section 4.

Relationship with other Acts

3. (1) If there is an inconsistency between this Act and a relevant Act, the relevant Act prevails to the extent of the inconsistency.
- (2) A relevant Act may modify the operation of this Act in relation to an exercise of jurisdiction conferred by that Act.

PART 2 - ADMINISTRATIVE APPEALS TRIBUNAL

Division 1 - Establishment of Tribunal

Tribunal established

4. The Administrative Appeals Tribunal is established.

Jurisdiction

5. The Tribunal has the jurisdiction conferred on it by this or any other Act.

Tribunal to operate throughout Islands

6. The Tribunal shall facilitate access to its services throughout the Islands, and may sit at any place in the islands.

Objectives of Tribunal

7. The objectives of the Tribunal are to —
 - (a) promote the best principles of public administration;
 - (b) be accessible to the public, including people with special needs;
 - (c) ensure that appeals are processed and resolved as quickly, and with as little cost to parties, as possible while achieving a just outcome;
 - (d) use straightforward language and procedures; and
 - (e) act with as little formality and technicality as possible.

Independence of Tribunal

8. (1) The Tribunal is not subject to the direction or control of the Cabinet or any Minister in exercising its jurisdiction.
- (2) A member is not subject to the direction or control of the Cabinet or any Minister in the exercise of the member’s powers or the performance of the member’s functions.

Division 2 - Membership and structure of Tribunal

Membership

9. (1) The Tribunal consists of the following members —
 - (a) the President;
 - (b) the Deputy President;
 - (c) at least two other legal members; and
 - (d) as many ordinary members as are required.
- (2) The members of the Tribunal are appointed by the Governor, acting in accordance with the advice of the JLSC.
- (3) Section 106 of the Constitution applies to the appointment of members as if the office of member of the Tribunal were specified in section 106(4) of the Constitution.

President may establish divisions

10. (1) The President may establish divisions of the Tribunal to hear different classes of matters.
- (2) The President may assign members to one or more divisions and may vary the assignment at any time.



Qualifications of members

- 11.** (1) A person is eligible for appointment as the President or the Deputy President if the person is qualified for appointment as a Judge under section 6 of the *Grand Court Act (2015 Revision)*.
- (2) A person is eligible for appointment as a legal member if the person —
- (a) is an attorney-at-law; and
 - (b) has at least seven years of post-qualification experience, either in the Islands or in another jurisdiction mentioned in section 3(1) of the *Legal Practitioners Act (2022 Revision)*.
- (3) A person is eligible for appointment as an ordinary member if the person holds significant experience or qualifications relevant to the work of the Tribunal.
- (4) However, a person is not eligible for appointment as a member if the person:
- (a) is an undischarged bankrupt, either in the Cayman Islands or elsewhere; or
 - (b) has been convicted, either in the Cayman Islands or elsewhere, of an offence other than summary offence for which the person was not sentenced to a period of imprisonment.

Functions of President and Deputy President

- 12.** (1) The President has the following administrative functions —
- (a) to be primarily responsible for the administration of the Tribunal;
 - (b) to manage the work of the Tribunal, including by ensuring that the Tribunal operates efficiently and effectively and continually improves the way in which it carries out its functions;
 - (c) to manage the members and staff of the Tribunal;
 - (d) to issue practice directions for the Tribunal; and
 - (e) any other functions conferred on the President by this or any other Act.
- (2) The Deputy President has the following administrative functions —
- (a) to assist the President in the operations of the Tribunal;
 - (b) any other functions conferred on the Deputy President by this or any other Act.

Duration of appointment

- 13.** (1) The President and Deputy President hold office for the period, not less than 7 years, specified in the instrument of appointment and are eligible for reappointment.
- (2) A member other than the President or Deputy President holds office for the period, not less than 3 years, specified in the instrument of appointment and is eligible for reappointment.

Vacation of office

- 14.** A person ceases to be a member if —
- (a) the person resigns by giving written notice to the Governor;
 - (b) the person's term of office expires and the person is not reappointed;
 - (c) the person is removed from office under section 15; or
 - (d) the person ceases to be eligible for appointment under section 11.

Removal from office

- 15.** (1) The Governor may remove a member from office for inability to discharge the functions of the member's office or for serious misbehaviour.
- (2) The member may only be removed in accordance with this section.
- (3) If the Governor considers that the question of removing the member from office for inability or serious misbehaviour should be investigated —
- (a) the Governor shall refer the matter to the JLSC; and
 - (b) the JLSC shall inquire into the matter, report its findings to the Governor and advise the Governor whether the member should be removed from office.
- (4) The *Commissions of Enquiry Act (1997 Revision)* applies (with the necessary modifications) to the inquiry of the JLSC as if the members of the JLSC were Commissioners appointed under that Act.

- (5) The Governor may suspend the member from performing the functions of his or her office for the duration of the inquiry.
- (6) The powers conferred on the Governor by this section shall be exercised by the Governor acting in his or her discretion.

Validity of acts

16. The Tribunal's exercise of its jurisdiction is not affected only by reason of a vacancy in the membership of the Tribunal or a defect in the appointment of a person as a member.

Delegation

17. The President may delegate his or her administrative functions under this Act to —
- (a) a member; or
 - (b) the Registrar.

Remuneration

18. A member is entitled to the remuneration and other entitlements prescribed by Order by the Governor acting in his or her discretion.

Division 3 – Registrar and staff

Registrar

19. (1) The chief officer may, in accordance with the *Public Service Management Act (2018 Revision)*, appoint a person to be the Registrar of the Tribunal.
- (2) The Registrar has the following functions —
- (a) to assist the President in the administration of the Tribunal;
 - (b) to manage the registry and records of the Tribunal; and
 - (c) any other function as directed by the President or specified under the rules.

Secretariat and staff

20. (1) The Tribunal is to be supported by a Secretariat.
- (2) The chief officer may, in accordance with the *Public Service Management Act (2018 Revision)*, appoint staff members to the Secretariat.

Division 4 - Assessors

Appointment of assessors

21. (1) The President may, in writing, appoint a person to be an assessor for an appeal or a class of appeals to provide specialist or technical advice to the Tribunal.
- (2) The President may appoint a person to be an assessor only if the President is satisfied the person holds suitable qualifications, or has suitable knowledge or experience, to advise the Tribunal.

Functions of assessors

22. (1) The Tribunal may ask an assessor to —
- (a) give expert evidence in an appeal; or
 - (b) give advice about a matter that is the subject of an appeal.
- (2) In asking an assessor to give advice under subsection (1)(b), the Tribunal may ask the assessor to conduct an inquiry or investigation into a specified matter and give a written report of the assessor's findings to the Tribunal.



PART 3 – APPEALS

Division 1 – Obligations of decision makers

Information about appealable decision

- 23.** (1) This section applies if a decision maker makes an appealable decision under a relevant Act.
- (2) The decision maker is required to give each affected person written notice of —
- (a) the decision;
 - (b) the person’s right to appeal the decision to the Tribunal; and
 - (c) the person’s right to request a statement of reasons for the decision.
- (3) If an affected person is not readily identifiable or cannot be readily located, the decision maker complies with subsection (2) if the decision maker takes reasonable steps to give the notice.
- (4) A decision maker’s failure to comply with this section does not affect the validity of the appealable decision.
- (5) If this Act and the relevant Act both require the decision maker to give notice of a decision, the decision maker is only required to give the notice once.

Statement of reasons for decision

- 24.** (1) An affected person in relation to an appealable decision may request a written statement of reasons for the decision from the decision maker.
- (2) The request shall be made within 28 days after notice of the decision was given.
- (3) The decision maker shall comply with the request within 28 days after receiving the request.
- (4) The decision maker’s written statement shall contain the following —
- (a) the reasons for the decision; and
 - (b) any findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based.
- (5) If this Act and the relevant Act both require the decision maker to give a statement of reasons, the decision maker is only required to give the statement once.

Division 2 – Starting an appeal

Grounds for appeal

- 25.** (1) An affected person in relation to an appealable decision may appeal the decision to the Tribunal on the grounds that the decision is:
- (a) erroneous in law;
 - (b) unreasonable; or
 - (c) contrary to the principles of natural justice.
- (2) The relevant Act may specify additional grounds for appeal.

Starting an appeal

- 26.** An appeal shall be commenced within 28 days after:
- (a) the day the affected person was notified of the decision by the decision maker; or
 - (b) if the affected person requested a written statement of reasons for the decision under this Act or the relevant Act – the earlier of the following:
 - (i) the day the written statement is given to the affected person;
 - (ii) the day by which the written statement was required to have been given to the affected person.

Who constitutes the Tribunal for an appeal

- 27.** (1) When an appeal is commenced, the President shall assign one or more members to constitute the Tribunal for the appeal.

- (2) If the President assigns one member to constitute the Tribunal, the President shall assign the President, the Deputy President or a legal member.
- (3) If the President assigns more than one member to constitute the Tribunal —
 - (a) at least one member shall be the President, the Deputy President or a legal member; and
 - (b) the number of members shall be an odd number.
- (4) A member cannot be assigned to constitute, or be one of the members constituting, the Tribunal if the member was —
 - (a) the decision maker in relation to the relevant appealable decision; or
 - (b) a member of a body that was the decision maker in relation to the relevant appealable decision.

Who presides at a proceeding

- 28.** (1) If the Tribunal is constituted by two or more members, the presiding member is —
- (a) the most senior member determined by order of precedence; or
 - (b) if the President nominates a different member – that member.
- (2) The order of precedence is as follows —
- (a) President;
 - (b) Deputy President;
 - (c) legal member (in order of date of appointment if there are two or more legal members); and
 - (d) ordinary member (in order of date of appointment if there are two or more ordinary members).

Effect of appeal on decision

- 29.** Subject to the relevant Act, the commencement of an appeal in the Tribunal does not stay the operation of the relevant appealable decision unless the Tribunal orders otherwise.

Division 3 – Manner and outcome of appeal

Appeal by way of rehearing

- 30.** (1) An appeal against an appealable decision is by way of rehearing.
- (2) The Tribunal may —
- (a) examine the evidence or the material before the decision maker; and
 - (b) consider any further evidence or material that the Tribunal decides, in the circumstances of the particular case, to admit for a rehearing.

Determination of appeal

- 31.** (1) After hearing the appeal, the Tribunal may —
- (a) confirm the decision;
 - (b) vary the decision; or
 - (c) set aside the decision and —
 - (i) substitute its own decision; or
 - (ii) send the matter back to the decision maker for reconsideration in accordance with any recommendations the Tribunal considers appropriate.
- (2) The Tribunal may make any consequential orders it considers appropriate.
- (3) The fact that a decision is made on reconsideration under subsection (1)(c)(ii) does not prevent the reconsidered decision from being an appealable decision.

Effect of determination

- 32.** (1) If the Tribunal confirms the decision, no further appeal against the decision can be commenced in the Tribunal by any person.
- (2) If the Tribunal varies or substitutes the decision, the decision —
- (a) is taken to be the decision of the decision maker; and
 - (b) unless the Tribunal orders otherwise, has effect from the time when the original decision would have had effect.



- (3) Despite subsection (2)(a), the varied or substituted decision is not an appealable decision.

Appeal to Grand Court

33. (1) A party to a proceeding may appeal to the Grand Court against a decision of the Tribunal on a question of law.
(2) A person may appeal only with the leave of the Grand Court.

Division 4 – Procedures of Tribunal

Tribunal may determine own procedures

34. Subject to this Act, the rules or a relevant Act, the Tribunal may determine its own procedures.

Principles for conducting proceedings

35. (1) In conducting a proceeding, the Tribunal shall act fairly and according to the substantial merits of the matter that is the subject of the proceeding.
(2) The Tribunal —
(a) shall 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;
(c) shall act with as little formality and technicality, and with as much speed, as the requirements of this Act, the relevant Act and a proper consideration of the matter permit; and
(d) shall ensure, so far as is practicable, that all relevant material is disclosed to the Tribunal to enable it to decide the proceeding.

Tribunal to ensure parties are informed

36. The Tribunal shall —
(a) take reasonable steps to ensure that the parties to a proceeding have a reasonable opportunity to understand the nature of the matter under consideration;
(b) take reasonable steps to ensure that the parties to a proceeding understand the nature of any assertions made in the proceedings and the legal implications of those assertions; and
(c) explain to the parties, if requested to do so, any aspect of the procedure of the Tribunal, or any decision or direction made by the Tribunal.

When hearing may be dispensed with

37. Subject to the rules, the Tribunal may determine an appeal without holding a hearing if —
(a) it appears to the Tribunal that the issues for determination can be adequately determined in the absence of the parties; and
(b) the parties consent to the appeal being determined without a hearing.

Power to adjourn proceedings

38. The Tribunal may adjourn a proceeding at any time and to any place.

Sittings

39. The Tribunal may sit at the times and in the places in the Islands determined by the President, including at different places at the same time.

Proceedings to be heard in public

40. The hearing of a proceeding is to be open to the public unless the Tribunal orders otherwise under section 43.

Interpreters

41. Unless the Tribunal directs otherwise, a party or a party's representative may be assisted in a proceeding by an interpreter or another person necessary to make the proceeding intelligible to that party or representative.

Electronic hearings and proceedings on documents

42. The Tribunal may allow the parties or their representatives or any witnesses to participate in a proceeding by means of telephone, video link, or any other system or method of communication.

Tribunal may make orders for private hearing, non-publication

43. (1) The Tribunal may make orders —
- (a) for a hearing, or part of a hearing, be held in private;
 - (b) prohibiting or restricting the publication of the name and address of a witness appearing before the Tribunal;
 - (c) prohibiting or restricting the publication of evidence given before the Tribunal; or
 - (d) excluding any person from a proceeding or any part of a proceeding.
- (2) The Tribunal may only do so if the Tribunal considers that the order is necessary —
- (a) in the interest of justice;
 - (b) by reason of the confidential nature of the evidence to be given before the Tribunal;
 - (c) to expedite proceedings of the Tribunal; or
 - (d) for any other reason.

Preserving subject matter of proceedings

44. (1) The Tribunal may make any order that may be necessary to preserve the subject matter of a proceeding, or to protect the interests of a party, until questions arising in a proceeding have been determined.
- (2) The Tribunal may make the order on the application of a party or on its own initiative.

Interlocutory orders

45. The Tribunal may make interlocutory orders.

Security as to costs

46. The Tribunal may order a party to a proceeding to give security for the payment of costs or to give an undertaking as to the payment of other monetary amounts that may be awarded against the party.

Conditional and ancillary orders

47. The Tribunal's power to make a decision in a proceeding includes a power to —
- (a) impose conditions on the decision; and
 - (b) make an ancillary order or direction the Tribunal considers appropriate.

Disclosure of interests for assessors

48. (1) This section applies if an assessor has or acquires an interest that may conflict with the performance of the assessor's functions in a proceeding.
- (2) The assessor shall disclose the nature of the assessor's interest to the President.
- (3) The assessor shall not perform any function as an assessor in the proceeding except with the consent of all parties to the proceeding.

Disclosure of interests for members

49. (1) This section applies if a member who constitutes, or is one of the members constituting, the Tribunal for a proceeding has or acquires an interest that may conflict with the performance of the member's functions in the proceeding.
- (2) The member shall disclose the nature of the member's interest to the President, or, if the member is the President, the Deputy President.
- (3) The member shall not constitute, or be one of the persons constituting, the Tribunal for the proceeding except with the consent of all parties to the proceeding.

Directions for conduct of proceeding

50. (1) The Tribunal may give a direction at any time in a proceeding and do whatever is necessary for the expeditious and fair conduct of the proceeding.
- (2) The Tribunal may give a direction on its own initiative or at the request of a party.
- (3) A directions hearing may be held for the purposes of this section before any other hearing in a proceeding.



Frivolous, vexatious or improper proceedings

- 51.** (1) This section applies if the Tribunal considers that a proceeding —
- (a) is frivolous, vexatious, misconceived or lacking in substance;
 - (b) is being made for an improper purpose; or
 - (c) is otherwise an abuse of process.
- (2) The Tribunal may dismiss the proceeding on the application of a party or on its own initiative.
- (3) If the proceeding is dismissed, another proceeding of the same kind in relation to the same matter cannot be commenced without the leave of the President.

Decisions and reasons for decisions

- 52.** (1) All decisions and orders made by the Tribunal shall be issued under the seal of the Tribunal.
- (2) The Tribunal shall give its decision, the reasons for the decision and any relevant findings of fact in writing to the parties to the proceeding within 28 days after the hearing of a proceeding.
- (3) However, the validity of a decision of the Tribunal is not affected merely because of a failure to comply with subsection (2).
- (4) The Tribunal may request an extension of the time limit mentioned in subsection (2) from the President.

Publication

- 53.** The Tribunal may publish its final decision in a proceeding, with or without the reasons for the decision, in any way it considers appropriate.

Proof of decisions and orders of Tribunal

- 54.** A document that is certified by the Registrar to be a copy of a decision or order of the Tribunal shall be accepted in any legal proceedings as a true copy of the decision or order of the Tribunal, in the absence of proof to the contrary.

Power to issue summons

- 55.** The Tribunal may, on the application of a party or on its own initiative, issue a summons requiring a person to do either or both of the following —
- (a) appear before the Tribunal to give evidence; or
 - (b) produce a document or thing specified in the summons.

Witnesses

- 56.** The Tribunal may require a witness to —
- (a) take an oath or make an affirmation before giving evidence; and
 - (b) answer a question put by a member or a person appearing before the Tribunal.

Parties

- 57.** (1) A person is a party to a proceeding before the Tribunal if the person is —
- (a) the person appealing the relevant appealable decision;
 - (b) the decision maker in relation to the relevant appealable decision;
 - (c) a person joined in the proceeding by order of the Tribunal;
 - (d) a person intervening in the proceeding under section 59; or
 - (e) any other person specified in this Act or the relevant Act to be a party to the proceeding.
- (2) Subsection (1) applies subject to the rules.

Person may be joined as party

- 58.** (1) The Tribunal may order that a person be joined as a party to a proceeding if the Tribunal considers that —
- (a) the person should be bound by, or have the benefit of, a decision of the Tribunal in the proceeding;
 - (b) the person's interests are affected by the proceeding; or
 - (c) it is desirable for any other reason for the person to be a party.

- (2) The Tribunal may make an order under this section on the application of any person or on its own initiative.

Person may intervene in proceeding

- 59.** (1) A person may intervene in a proceeding with the leave of the Tribunal.
- (2) The Tribunal may grant a person leave to intervene —
- (a) on the grounds specified in the rules; and
 - (b) on any conditions the Tribunal considers appropriate.

Representation

- 60.** (1) A party to a proceeding before the Tribunal is entitled to appear —
- (a) personally;
 - (b) by an attorney-at-law; or
 - (c) with the leave of the Tribunal and subject to the rules – by another representative.
- (2) Unless otherwise determined by the Tribunal, a person appearing before the Tribunal may be assisted by another person as a friend.

Parties bear own costs

- 61.** Subject to sections 62 to 64, parties bear their own costs in a proceeding before the Tribunal.

Tribunal may make costs orders

- 62.** (1) If the Tribunal considers that a party caused unreasonable delay or obstruction before or during a proceeding, the Tribunal may order the party to pay the reasonable costs of the other party arising from the delay or obstruction.
- (2) If the Tribunal decides an appeal in favour of the appellant, the Tribunal may order the other party to pay the filing fee for the appellant.
- (3) The Tribunal may make a costs order in other circumstances if the Tribunal considers it is necessary, in the interests of justice, to make an exception to the presumption that parties bear their own costs.
- (2) Before making a costs order, the Tribunal shall take into account —
- (a) the main objectives of the Tribunal that are relevant to simplifying proceedings and issues before the Tribunal and to keeping costs to parties to a minimum; and
 - (b) the need to ensure that proceedings are fair and that parties are not disadvantaged by proceedings that have little or no merit.

Costs order against a representative

- 63.** The Tribunal may make a costs order against a representative of a party if the representative acted in, or delayed, the proceeding in a way that resulted in unnecessary costs.

Costs for assessor

- 64.** (1) The Tribunal may make an order requiring a party to a proceeding to pay or contribute to the Tribunal's costs of obtaining an assessor's assistance.
- (2) The Tribunal may only make an order under subsection (1) if —
- (a) before obtaining the assistance of the assessor, the Tribunal advised the party of —
 - (i) the Tribunal's intention of obtaining the assistance;
 - (ii) the estimated costs of obtaining the assistance;
 - (iii) the estimated amount of the party's payment or contribution; and
 - (b) the Tribunal gave the party an opportunity to be heard on the matter of obtaining the assistance.

Rules

- 65.** (1) The President may make rules for this Act.
- (2) The rules may, subject to this or a relevant Act —
- (a) regulate pleading, practice and procedure in the Tribunal;
 - (b) prescribe forms to be used in any proceedings before the Tribunal;
 - (c) subject to subsection (3), prescribe the fees of the Tribunal;



- (d) regulate matters relating to costs;
 - (e) regulate the taking, giving and admission of evidence; and
 - (f) provide for such other matters as may be reasonably necessary for or incidental to the administration of this Act.
- (3) A rule prescribing fees does not have effect until it has been approved by the Cabinet.
 - (4) The rules do not come into force until they have been gazetted.

Practice directions

- 66.** (1) The President may issue practice directions for the Tribunal as the President considers necessary or convenient for the operation of the Tribunal.
- (2) If there is an inconsistency between a practice direction and the rules, the rules prevail to the extent of the inconsistency.

PART 4 - MISCELLANEOUS MATTERS

Protection from liability and indemnity

- 67.** (1) In this section —
- “**exercise**”, of a power, includes the purported exercise of the power;
 - “**performance**”, of a function, includes the purported performance of the function.
- (2) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as a member.
- (3) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by the Tribunal in good faith in the exercise of a power or performance of a function under this or another Act.
- (4) The Government shall indemnify each member against all claims, damages, costs, charges or expenses incurred for an act done or omitted to be done in good faith in the exercise of a power or performance of a function as a member.

Protection from liability for disclosure

- 68.** If a person produces a document or other material under a requirement of this Act, the person is not civilly or criminally liable, or in breach of a professional code, for doing so.

Confidentiality of information

- 69.** (1) A person commits an offence if the person —
- (a) obtains information in the course of performing functions connected with the administration of this Act; and
 - (b) engages in conduct that results in the disclosure of the information.
- (2) The person is liable on conviction to a fine of ten thousand dollars and imprisonment for one year.
- (3) Subsection (1) does not apply if —
- (a) the person discloses the information —
 - (i) for the administration of this Act;
 - (ii) with the consent of the person to whom the information relates; or
 - (iii) for legal proceedings arising out of the operation of this Act; or
 - (b) the information is otherwise available to the public.

Annual report

- 70.** (1) The President shall prepare and give the Attorney-General a report on the administration and operation of the Tribunal for each financial year.
- (2) The report shall be given to the Attorney-General within 3 months after the end of the financial year.
- (3) The Attorney-General shall table a copy of the report in the Parliament at the next sitting after the Attorney-General receives the report.

Seal

- 71.** (1) The Tribunal shall have a seal for sealing documents issued out of the Tribunal and required to be sealed.

- (2) The seal shall be of a design approved by the President and shall include the words "The Seal of the Administrative Appeals Tribunal".
- (3) The seal of the Tribunal may be affixed to a document manually or electronically.

Regulations

- 72.** The Cabinet may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary to be prescribed for giving effect to the purposes of this Act.



APPENDIX 2

TABLE OF CONSEQUENTIAL AMENDMENTS

Administrative Appeals Tribunal Bill
Proposed Consequential Amendments

This table outlines the consequential amendments to existing laws that are proposed to facilitate the establishment of the Administrative Appeals Tribunal (“AAT”). The amendments would transfer rights of appeal to existing tribunals to the new AAT.

Unless otherwise specified below, it is proposed that provisions relating to appeal procedures, time limits and rights to further appeal will be removed from the relevant Acts. The provisions of the proposed Administrative Appeals Tribunal Act and the procedural rules made by the AAT will apply unless a relevant Act states otherwise.

Title	Amendments
Cayman Islands Coast Guard Act, 2021	<p>The proposed amendments would transfer the current right of appeal by members of the Coast Guard against disciplinary punishment from the Civil Service Appeals Commission to the AAT.</p> <p>A transitional provision is proposed so that appeals that are underway at the time the amendments take effect continue to be heard by the Civil Service Appeals Commission. Also, if a right to appeal exists at the time the amendments take effect but the appeal has not yet been started (i.e. the appeal period has not expired), the appeal would be heard by the Commission. This ensures the Commission can dispose of matters before it at the time the amendments take effect, and a person who is within the appeal period but has not yet started an appeal is not disadvantaged by being required to appeal to a different body with different procedures.</p>
Customs and Border Control Act (2022 Revision)	<p>The proposed amendments would transfer the current right of appeal by a person whose application for asylum has been refused from the Refugee Protection Appeals Tribunal (“RPAT”) to the AAT.</p> <p>In this case, it is proposed that the appeal period of 14 days be retained, together with the requirement for the appeal to be decided within 7 days after the appeal hearing.</p> <p>A transitional provision is proposed so that appeals that are underway at the time the amendments take effect continue to be heard by the RPAT. Also, if a right to appeal exists at the time the amendments take effect but the appeal has not yet been started (i.e. the appeal period has not expired), the appeal would be heard by the RPAT.</p>

<p>Development and Planning Act (2021 Revision)</p>	<p>The proposed amendments would transfer the current rights of appeal from the Planning Appeals Tribunal and the Cayman Brac and Little Cayman Appeals Tribunal to the AAT.</p> <p>In this case, it is proposed that the appeal period of 14 days be retained. It is also proposed that the additional ground of appeal of inconsistency with an applicable development plan be retained.</p> <p>Section 11 currently provides for objections to development plans to go to either the Planning Appeals Tribunal or a Development Plan Tribunal. It is proposed that these matters would go to a Development Plan Tribunal only.</p> <p>A transitional provision is proposed so that appeals that are underway at the time the amendments take effect continue to be heard by the relevant Tribunal. Also, if a right to appeal exists at the time the amendments take effect but the appeal has not yet been started (i.e. the appeal period has not expired), the appeal would be heard by the relevant Tribunal.</p>
<p>Health Practice Act (2021 Revision)</p>	<p>The proposed amendments would transfer the current rights of appeal from the Health Appeals Tribunal (“HAT”) to the AAT.</p> <p>A transitional provision is proposed so that appeals that are underway at the time the amendments take effect continue to be heard by the HAT. Also, if a right to appeal exists at the time the amendments take effect but the appeal has not yet been started (i.e. the appeal period has not expired), the appeal would be heard by the HAT.</p>
<p>Immigration (Transition) Act (2022 Revision)</p>	<p>The proposed amendments would transfer the current rights of appeal from the Immigration Appeals Tribunal (“IAT”) to the AAT.</p> <p>A transitional provision is proposed so that appeals that are underway at the time the amendments take effect continue to be heard by the IAT. Also, if a right to appeal exists at the time the amendments take effect but the appeal has not yet been started (i.e. the appeal period has not expired), the appeal would be heard by the IAT.</p>
<p>Labour Act (2021 Revision)</p>	<p>The proposed amendments would transfer the current rights of appeal from the Labour Appeals Tribunal (“LAT”) to the AAT.</p> <p>A transitional provision is proposed so that appeals that are underway at the time the amendments take effect continue to be heard by the LAT. Also, if a right to appeal exists at the time the</p>

	<p>amendments take effect but the appeal has not yet been started (i.e. the appeal period has not expired), the appeal would be heard by the LAT.</p>
Parliament (Management) Act 2022	<p>The proposed amendments would transfer the current rights of appeal by staff of the Parliament and the chief officer from the Civil Service Appeals Commission to the AAT.</p> <p>For appeals by the chief officer, the proposed amendments would retain the status quo that decisions on appeal are recommendations to the Parliament Management Commission only.</p> <p>A transitional provision is proposed so that appeals that are underway at the time the amendments take effect continue to be heard by the Civil Service Appeals Commission. Also, if a right to appeal exists at the time the amendments take effect but the appeal has not yet been started (i.e. the appeal period has not expired), the appeal would be heard by the Commission.</p>
Public Service Management Act (2018 Revision)	<p>The proposed amendments would transfer the current rights of appeal by civil servants and chief officers from the Civil Service Appeals Commission to the AAT.</p> <p>For appeals by chief officers, or relating to appointments of chief officers, the proposed amendments would retain the status quo that decisions on appeal are recommendations to the Governor only.</p> <p>A transitional provision is proposed so that appeals that are underway at the time the amendments take effect continue to be heard by the Civil Service Appeals Commission. Also, if a right to appeal exists at the time the amendments take effect but the appeal has not yet been started (i.e. the appeal period has not expired), the appeal would be heard by the Commission.</p>
Personnel Regulations (2022 Revision)	<p>A single proposed consequential amendment would replace a reference to the Civil Service Appeals Commission with a reference to the AAT.</p>
Trade and Business Licensing Act (2021 Revision)	<p>The proposed amendments would transfer the current rights of appeal from the Trade and Business Licensing Appeals Tribunal ("TBLAT") to the AAT.</p> <p>A transitional provision is proposed so that appeals that are underway at the time the amendments take effect continue to be heard by the TBLAT. Also, if a right to appeal exists at the time the amendments take effect but the appeal has not yet been started (i.e. the appeal period has not expired), the appeal would be heard by the TBLAT.</p>

Trade Marks Act, 2016	<p>The proposed amendments would transfer the current rights of appeal from the Trade Marks Appeals Tribunal ("TMAT") to the AAT.</p> <p>A transitional provision is proposed so that appeals that are underway at the time the amendments take effect continue to be heard by the TMAT. Also, if a right to appeal exists at the time the amendments take effect but the appeal has not yet been started (i.e. the appeal period has not expired), the appeal would be heard by the TMAT.</p>
Traffic Act (2021 Revision)	<p>The proposed amendments would transfer the current rights of appeal from the Public Transport Appeals Tribunal ("PTAT") to the AAT.</p> <p>The proposed amendments would also transfer the current rights of appeal by driving instructors from a court of summary jurisdiction to the AAT.</p> <p>A transitional provision is proposed so that appeals that are underway in the PTAT at the time the amendments take effect continue to be heard by the PTAT. Also, if a right to appeal exists at the time the amendments take effect but the appeal has not yet been started (i.e. the appeal period has not expired), the appeal would be heard by the PTAT.</p>
Traffic (Public Transport Appeals Tribunal) Regulations, 2012	It is proposed that these Regulations be repealed to reflect the proposed abolition of the Public Transport Appeals Tribunal.

APPENDIX 3

DISCUSSION PAPER – APPEALS TRIBUNALS



THE CAYMAN ISLANDS LAW REFORM COMMISSION



APPEALS TRIBUNALS

**DISCUSSION PAPER
13TH DECEMBER, 2021**

THE CAYMAN ISLANDS LAW REFORM COMMISSION

Chairman	Mr. Hector Robinson, QC
Commissioners	Hon. Justice Alexander Henderson, QC, (retd.)
	Mr. Vaughan Carter, Attorney-at-Law
	Mr. Abraham Thoppil, Attorney-at-Law
	Ms. Reshma Sharma, QC, Solicitor General
	Mrs. Candia James-Malcolm, Director of Public Prosecutions (actg.)
Director	Mr. José Griffith, Attorney-at-Law
Senior Legislative Counsel	Ms. Catriona Steele, Attorney-at-Law
Paralegal Officer	Ms. Felicia Connor
Administrative Secretary	Ms. Milicia Bodden

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.

TABLE OF CONTENTS

1.	INTRODUCTION.....	1
2.	HISTORY AND PURPOSE OF TRIBUNALS.....	2
	Origins and functions of tribunals.....	2
	Purpose and essential characteristics of tribunals	4
3.	TRIBUNALS IN THE CAYMAN ISLANDS	6
	Existing tribunals.....	6
	Features of existing appeals tribunals	7
	Membership.....	8
	Administration	9
	Powers and procedures	9
	Costs of tribunal administration	10
4.	ARGUMENTS FOR AND AGAINST TRIBUNAL CONSOLIDATION	10
	Accessibility.....	12
	Expertise.....	13
	Efficiency	13
	Procedures	14
	Independence	15
5.	THE CASE FOR TRIBUNAL REFORM IN THE CAYMAN ISLANDS	15
6.	TRIBUNAL REFORM IN OTHER JURISDICTIONS	18
	Australia	18
	United Kingdom	22
	New Zealand	25
7.	OPTIONS FOR TRIBUNAL REFORM IN THE CAYMAN ISLANDS	28
	7.1 Option 1: Centralised administration	28
	7.2 Option 2: Centralised management.....	29
	7.3 Option 3: Creation of a consolidated tribunal	30
8.	PROPOSAL FOR REFORM	33
9.	CONCLUSION.....	37
	APPENDIX 1 – CAYMAN ISLANDS TRIBUNALS	39
	APPENDIX 2 - CAYMAN ISLANDS APPEALS TRIBUNALS: SUMMARY OF FEATURES	41

APPENDIX 3 – CAYMAN ISLANDS APPEALS TRIBUNALS: BUDGET AND CASE STATISTICS.....	47
LIST OF REFERENCES	51

CAYMAN ISLANDS LAW REFORM COMMISSION

APPEALS TRIBUNALS

DISCUSSION PAPER

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;

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 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 <i>Public Service Management Act (2018 Revision)</i>	<ul style="list-style-type: none"> Chairperson plus between 4 and 6 other members (cannot be civil servants, MPs or political party office holders) Appointed by the Governor 	<ul style="list-style-type: none"> Office of the Governor Secretary appointed by the Commission 	Appeals from: <ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> 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 <i>Health Practice Act (2021 Revision)</i>	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> Ministry of Health and Wellness Secretary appointed by Cabinet 	Appeals from decisions of Health Practice Commission and Councils for each professional group relating to: <ul style="list-style-type: none"> certificates to operate health facilities registration of health professionals practicing licences disciplinary action 	<ul style="list-style-type: none"> 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 <i>Immigration (Transition) Act (2021 Revision)</i>	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> Cabinet Office Unlimited secretaries appointed by Cabinet 	Appeals from: <ul style="list-style-type: none"> certain decisions of Director of WORC decisions of Boards (except from appeals decided by Boards) 	<ul style="list-style-type: none"> 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 <i>de novo</i> 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 <i>Traffic (Public Transport Appeals Tribunal) Regulations 2012</i>	<ul style="list-style-type: none"> Chairperson, deputy chairperson plus 4 others Appointed by the Governor 	<ul style="list-style-type: none"> Ministry of Tourism and Transport Secretary appointed by the Governor 	Appeals from decisions of Public Transport Board regarding permits to drive public passenger vehicles	<ul style="list-style-type: none"> 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 <i>Trade Marks Law, 2016</i>	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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 <i>Customs and Border Control Act (2021 Revision)</i>	<ul style="list-style-type: none"> Chairperson (attorney-at-law of 7 years standing) Deputy Chairperson (attorney-at-law of 5 years standing) 3 others Appointed by Cabinet 	<ul style="list-style-type: none"> Cabinet Office Secretary appointed by Cabinet 	Appeals from decisions of Director to refuse asylum application	<ul style="list-style-type: none"> Quorum – 3 members (so no need for legally qualified member) Parties may appear in person or be represented
Labour Appeals Tribunal <i>Labour Act (2021 Revision)</i>	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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 <i>Mental Health Commission Act, 2013</i>	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Ministry of Health and Wellness • Part-time secretary appointed by Chief Officer 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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 <i>Development and Planning Act (2021 Revision) – s46 & 48</i>	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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) <i>Development and Planning Act (2021 Revision) – s47 & 49</i>	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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 <i>Trade and Business Licensing Act (2021 Revision)</i>	<ul style="list-style-type: none"> • Chairperson (attorney-at-law) • Deputy chairperson • 3 others • Appointed by Cabinet 	Secretary appointed by Cabinet	Appeals against decisions of Trade and Business Licensing Board	<ul style="list-style-type: none"> • 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 <i>Land Adjudication Act (1997 Revision)</i>	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> • 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	-	-	-

LIST OF REFERENCES

Books, articles and reports

Bacon, *Amalgamating Tribunal: A Recipe for Optimal Reform* (Faculty of Law, University of Sydney, 2004)

Brennan, “The AAT – Twenty Years Forward” [Speech delivered at the Twentieth Anniversary Conference, Canberra, 1 July 1996]

Council of Australasian Tribunals, Tribunal Excellence Framework - http://coat.asn.au/wp-content/uploads/2018/11/Tribunals_Excellence_Framework_Document_2017_V4.pdf

Hopkins, “Order from Chaos? Tribunal Reform in New Zealand”, *Journal of the Australasian Law Teachers Association*

Leggatt, *Tribunals for Users - One System, One Service*, (U.K. Stationery Office, 2001)

Ernst & Young, “Project Future: Creating a Sustainable Future for the Cayman Islands”- <https://cnslibrary.com/wp-content/uploads/EY-Report-Project-Future-September-2014.pdf>

New Zealand Law Commission, *Tribunal Reform* (NZLC SP20, 2008)

New Zealand Law Commission, *Tribunals in New Zealand* (NZLC IP6, 2008)

Northern Territory Law Reform Committee, *Report on the Review of Administrative Decisions and an Administrative Tribunal* (NTLRC Report No. 29, 2004)

Wade and Forsyth, *Administrative Law* (10th ed, Oxford University Press, 2009)

Legislation

Cayman Islands

Public Service Management Act (2018 Revision)

Health Practice Act (2021 Revision)

Immigration (Transition) Act (2021 Revision)

Labour Act (2021 Revision)

Mental Health Commission Act, 2013

Development and Planning Act (2021 Revision)

Traffic (Public Transport Appeals Tribunal) Regulations 2012

Customs and Border Control Act (2021 Revision)

Land Adjudication Act (1997 Revision)

Trade and Business Licensing Act (2021 Revision)

Trade Marks Act, 2016

Utility Regulation and Competition Act (2021 Revision)

Other jurisdictions

ACT Civil and Administrative Tribunal Act 2008 (Australian Capital Territory)

Administrative Appeals Tribunal Act 1975 (Commonwealth)

Northern Territory Civil and Administrative Tribunal Act 2014 (Northern Territory)

Queensland Civil and Administrative Tribunal Act 2009 (Queensland)

South Australian Civil and Administrative Tribunal Act 2013 (South Australia)

Tasmanian Civil and Administrative Tribunal Act 2020 (Tasmania)

Victorian Civil and Administrative Tribunal Act 1998 (Victoria)

State Administrative Tribunal Act 2004 (Western Australia)

Civil and Administrative Tribunal Act 2013 (New South Wales)

Tribunals, Courts and Enforcement Act 2007 (United Kingdom)

APPENDIX 4

PUBLIC AND STAKEHOLDER RESPONSES TO DISCUSSION PAPER

The Cayman Islands Law Reform Commission

Paper for consideration: Discussion Paper titled - “Appeals Tribunals”.



Appeals Tribunals -
Discussion Paper 13

Consultation Period: 6th January 2022 – 15th March 2022

Submissions requested from the following stakeholders:

Organisations -

- Governor Martyn Roper, Office of the Governor
- Zena Merrin-Chin, Clerk of Parliament
- Samuel Rose, JP, Chief Officer, Cabinet Office
- Hon. Anthony Smellie, Chief Justice
- Erik Bodden, Cayman Islands Legal Practitioners Association
- Wesley Howell, Cert Hon., JP, Chief Officer, Ministry of Border Control & Labour
- Chief Officer, Ministry of District Administration & Lands
- Chief Officer, Ministry of Tourism & Transport
- Chief Officer, Ministry of Investment, Innovation & Social Development
- Chief Officer, Ministry of Planning, Agriculture, Housing and Infrastructure
- Chief Officer, Ministry of Health & Wellness
- Chief Officer, Ministry of Financial Services & Commerce
- Chief Officer, of Ministry of Financial Services & Commerce
- Chairperson, Huw St. J. Moses, of Civil Service Appeals Commission
- Former Chair, Alliyah McCarthy, Public Transport Appeals Tribunal
- Chairperson, Buck Grizzel, Immigration Appeals Tribunal
- Chairperson, Lorna Dilbert-Hampson, Refugee Protection Appeals Tribunal
- Chairperson, Paul Simon, Health Appeals Tribunal
- Chairperson, Phillip Ebanks, Labour Appeals Tribunal

- Chairperson, A. Steve McField, Planning Appeals Tribunal
- Chairperson, Hon. Kirsty-Ann Gunn, Magistrate, Planning Appeals Tribunal (Cayman Brac & Little Cayman)
- Chairperson, Alistair Walters, of Trade and Business Licensing Appeals Tribunal

Respondents:**Organisations**

- Chairperson, Hon. Kirsty-Ann Gunn, Magistrate, Chairman, Planning Appeals Tribunal (Cayman Brac & Little Cayman) (“PAT (CB & LC)”)
- Chairperson, Paul Simon, Health Appeals Tribunal (“HAT”)
- Chairperson, Phillip Ebanks, Labour Appeals Tribunal (“LAT”)

Individuals

- **John Harris, Nelsons Legal**
- **Selina Tibbetts, JacksonLaw**
- **Christine Maltman**

DISCUSSION PAPER ON APPEALS TRIBUNALS – PUBLIC AND STAKEHOLDER RESPONSES

OPTIONS FOR REFORM	RESPONSES
<p>Option 1:</p> <p>Centralised tribunal administration while maintaining existing individual tribunals</p>	<p><u>Christine Maltman:</u> I see the merit in Options 1 and 2 (or some hybrid thereof). Centralized administration would no doubt be an outcome of the Commission’s Option 3, so why not take the smaller step of centralizing administration first? Consolidation might still come in the future but centralizing administration only (at the outset) will allow for some much needed (and less costly and less time-consuming) improvements such as scheduling, document coordination/dissemination, common format/timeframe for judgements and central reporting of same.</p>
<p>Option 2:</p> <p>Centralised tribunal management and administration while maintaining existing individual tribunals</p>	<p><u>Phillip Ebanks, Chairperson, LAT:</u> I wholeheartedly agree that the tribunal system needs to be reviewed and overhauled. Having read with interest the varying pros and cons of the differing options I favor the introduction of a quasi version of Option 2.</p>
<p>Option 3:</p> <p>Creation of a consolidated tribunal</p>	<p><u>Paul Simon, Chairperson HAT:</u> I support Option 3.</p> <p><u>Kirsty-Ann Gunn, Chairperson PAT (CB & LC):</u> It is my considered opinion that a consolidated appeals tribunal would be the most appropriate system for the Cayman Islands for the reasons outlined by the Commission.</p> <p><u>Christine Maltman:</u> The Commission’s proposed option 3 seems too drastic and too expensive a step for Cayman, at this time. It will be a very time-consuming exercise to review/amend all relevant legislation to create the new body, not to mention extremely costly to the public purse. It is difficult enough to find suitably qualified and interested people to sit on tribunals now. Trying to attract suitably qualified practitioners from the</p>

	private sector to the consolidated tribunal in full time roles will be challenging to say the least, with the result either being insufficient interest or settling for second-best options.
RECOMMENDATIONS IN PART 8	RESPONSES
8.2 The Commission recommends naming the new tribunal the Cayman Islands Administrative Appeals Tribunal (the “CIAAT”).	
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.	
8.4 This proposal would mean that the existing appeals tribunals would be abolished, with their functions being transferred to the CIAAT.	
8.5 The CIAAT would have the jurisdiction conferred on it by any law.	
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.	<u>Phillip Ebanks, Chairperson, LAT:</u> I respectfully suggest that there should be an overarching single management structure with a Head of Tribunals position. Within that body there should be Divisions of Tribunals, with each division headed by a President of the Tribunal Division in question. Each President would then be in overall charge of the various panel members.

I would respectfully suggest that the current existing tribunals can be grouped together as follows:

1. Immigration Appeals Tribunal and Refugee Protection Appeals Tribunal. - Immigration Division.

2. Planning Appeals Tribunal, Planning Appeals Tribunal Cayman Brac, and Special Land Disputes Tribunal, Public Transport Appeals Division - Planning Division.

3. Trade and Business Licensing Appeals Tribunal, and Trade Marks Appeals Tribunal. - Trade and Business Division.

4. Civil Service Appeals Tribunal and Labor Appeals Tribunal - Labor Division.

5. Health Appeals Tribunal - Health Division.

I would advocate for a centralized system of application in order that any applicant goes through the same process irrespective of the tribunal Division being applied to. Each Division however, should have authority to implement specific regulations based on the requirement to function in their appellate capacity. I fear that such an open ended empowerment as outlined in section 8.6 will have the result of creating confusion and disparity across any divisions that are created.

<p>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. 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. 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.</p>	<p><u>Phillip Ebanks, Chairperson, LAT:</u> The Head of Division should be given flexibility on appointments but each division should have at least two suitable qualified legal members, and such ordinary members holding the requisite qualifications and expertise relating to the work of the tribunal. I would agree and endorse the membership recommendations in 8.7. By maintaining a smaller number of Divisions we are able to maintain the expertise that currently exists and allow for continuity as we move through a transition period.</p> <p><u>Selina Tibbetts:</u> The tribunal should be structured in a manner that intentionally seeks to identify Caymanians who would be ideal candidates for membership of the tribunal and provide mentorship and training programs for young Caymanian professionals, particularly attorneys in order to fill tribunal positions and administrative vacancies.</p>
<p>8.8 The Commission proposes the following membership structure:</p> <p>(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</p>	<p><u>Phillip Ebanks, Chairperson LAT:</u> Given the necessity for legislative review the Head of Tribunals should be akin to an appointment commensurate with that of a Grand Court Justice. Each President position should be fulfilled again by a qualified attorney at Law (or relevant equivalent professionally qualified individual).</p> <p><u>Selina Tibbetts:</u> The suggestion at paragraph 8.8(b) that only two attorneys of 7 years call form part of the membership is insufficient, even as a minimum, especially where appeals are being conducted as re-hearings and questions in respect of evidence arise.</p>

<p>(b) at least 2 other legal members, who are attorneys-at-law of at least 7 years' standing; and</p> <p>(c) such other ordinary members as are required, who hold experience or qualifications relevant to the work of the Tribunal.</p>	
<p>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.</p>	<p><u>Phillip Ebanks, Chairperson LAT:</u> I would respectfully suggest that such panel membership is made up of members of the judiciary, the legal sector, the government and opposition, and lay persons (of professional and non-professional standing). There should be a representative mix from Caymanian and non-Cayman members. I would recommend that invitations are sought from those who are interested in joining such a panel to ensure as fair a process as possible.</p>
<p>8.10 The CIAAT should have the option of drawing on a panel of expert assessors to assist it during hearings as required.</p>	
<p>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.</p>	<p><u>Phillip Ebanks, Chairperson LAT:</u> I would suggest that each matter is heard, irrespective of Division, by a professional member, a lay member and a legal member.</p> <p><u>Selina Tibbetts:</u> A single member tribunal should be avoided, particularly in light of the range of matters which would be heard by such a proposed combined tribunal, and especially if the hearing is to be conducted as a re-hearing. It is submitted that no less than three members should be permitted to form a sitting tribunal in the interest of justice and combined expertise.</p>

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.	
8.13 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.	
8.14 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.	<u>Phillip Ebanks, Chairperson LAT:</u> I agree that all powers and regulations and procedures should be available publically - to encourage transparency.
8.14 The Tribunal should have the power to consider new evidence, make inquiries of its own, summon witnesses and compel the production of documents.	<u>Selina Tibbetts:</u> It is not appropriate for all appeals before the tribunal to be conducted as re-hearings. Firstly, the tribunal is unlikely to have the technical expertise required to make a determination in respect of all applications which come before original decision-making bodies. Secondly, structuring the appeals as a re-hearing with fresh evidence will result in significant preparation time and expenses to the parties who have in many cases

	<p>already undergone a complete “hearing” process before the originating decision maker. Thirdly, conducting appeals as a re-hearing risks opens the floodgates to vexatious and frivolous litigants who may use the opportunity to introduce fresh grounds/evidence as a delay tactic. This is particularly true in light of the suggestion if costs are generally not awarded. Appeals from decisions which have been arrived at as a result of a hearing and in accordance with the rules of natural justice, should be conducted as appeals on the record with fresh evidence being permitted only under exceptional circumstances. It is therefore suggested that divisions may be appropriate within the tribunal to separate appeals which are appeals on the record from those which are re-hearings and provide rules and procedures applicable to a particular division.</p>
<p>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.</p>	<p><u>Phillip Ebanks, Chairperson LAT:</u> I strongly believe in the right for an oral hearing if so requested.</p>
<p>8.16 The legislation should set out clear principles for the conduct of hearings, including that the Tribunal:</p>	<p><u>Selina Tibbetts:</u> Ease of access to the appeals tribunal must be balanced against the potential for abuse of process. In order to prevent the filing of vexatious and/or frivolous appeals, costs should generally be awarded against a party where the tribunal has made a determination that the subject appeal and/or defence thereof was hopeless, frivolous or</p>

<p>(a) must comply with the rules of natural justice;</p> <p>(b) may inform itself in any way it considers appropriate and is not bound by the rules of evidence; and</p> <p>(c) must act with as little formality and technicality, and with as much speed as a proper consideration of the matter permits.</p>	<p>vexatious, or where any party is found to have caused undue delay and/or unreasonable costs to be incurred.</p>
<p>8.17 Administrative arrangements</p> <p>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.</p>	<p><u>Selina Tibbetts</u>: It is currently difficult, if not impossible for the public to obtain access to decisions of the various appeals tribunals. A combined appeals tribunal would offer an opportunity to centralize public access to decisions of the tribunal via an online database.</p>
<p>GENERAL COMMENTS</p>	
<p><u>John Harris</u>: If the ultimate course chosen is to consolidate the various tribunals, some thought should also be given to updating and rationalizing the provisions relating to legal aid before the new body.</p>	