If you are interested in obtaining a copy of the report, contact EARC in Brisbane, phone number (07) 237 9696.

Paper: Administrative Justice in Future South Africa

The Council recently received a copy of *Empowerment and Accountability: Towards Administrative Justice in a Future South Africa*, a paper by Professor Hugh Corder of the University of Cape Town, dated December 1991. The stated object of the paper is to stimulate discussion and change in the field of South African administrative law.

The author argues that with the growth of executive power at the expense of the legislature in the late 20th Century, and particularly in the context of an activist executive trying to restructure society, the theory that ministerial responsibility to parliament and judicial review of administrative action together control the executive is severely limited. He therefore conducts a review of the new structures and procedures that the UK and several members of the British Commonwealth have developed to increase executive accountability. The hope is that, whatever the form of a future SA Constitution, change will mean that the executive will be both empowered to make South Africa a safer, more equitable and less corrupt society and at the same time more accountable to the people in various ways.

The paper contains an interesting synopsis of the administrative law in each of Australia, New Zealand, Canada, Britain, Singapore and Malaysia, Hong Kong, Sri Lanka, India, Nigeria and Namibia. Professor Corder suggests that a future Constitution should protect only 'a right to review of administrative action' and provide for structures to enforce this right, leaving the details to legislation. The changes he recommends South Africa adopt following his comparative study are:

- creation of an ombudsman-type office;
- a liberalised notion of standing to sue;
- a statutorily defined extension of the grounds for judicial review;
- an amendment to the Rules of the Supreme Court for faster and more skilled handling of judicial review applications;
- creation of 2 new tribunals with lay participation in the areas of police powers and access to land, with a view to the possible foundation of an Administrative Appeals Tribunal of general jurisdiction in the future;
- establishment of a code for proper decision-making and rule-making;
- establishment of an Administrative Review Council with general supervisory and advisory powers over the whole state administration; and
- continuing education programs for public officials and a public awareness program
- to inform all South Africans of their rights and duties under this scheme.

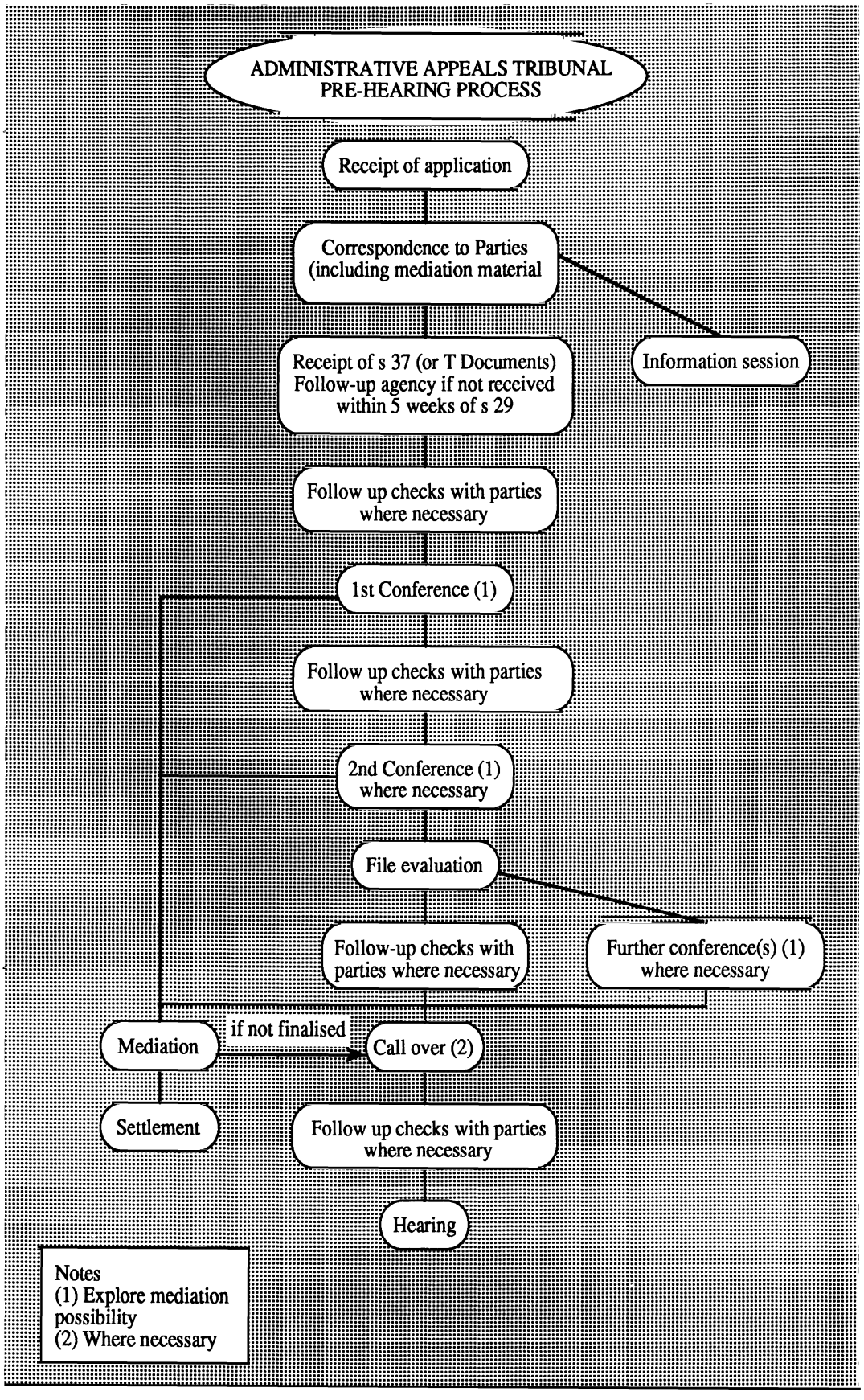
The preface by Albie Sachs places the author's work into a broader political context, raising several questions in relation to the development of a new Constitution. He suggests that the right to judicial review of administrative action will be an essential element of a Bill of Rights under a new Constitution, and that the Bill of Rights should be open and self-explanatory so that people know what their basic rights are without having to go to a lawyer.

The paper was published by the SA Constitution Studies Centre, London and Cape Town. If you are interested in obtaining a copy of the paper, contact Hugh Corder or Albie Sachs, Department of Public Law, University of Cape Town, Rondebosch 7700, South Africa.

New Zealand FOI Review

The Law Commission of New Zealand has advised the Council that it will be reviewing specific provisions of the *Official Information Act 1982* (NZ). The review will be of a fine-tuning nature rather than a comprehensive examination of the principles underlying the Act. The subject of the review will include:

- provisions dealing with both confidentiality of advice and the free and frank expression of opinion, with a view to more precise definition of the interests to be protected;
- provisions used to deal with broadly defined requests and requests for large amounts of information;
- whether there should be an ability to charge for time spent and other expenses incurred in assessing requests for information;
- whether grounds for refusal should apply to requests for personal information; and
- whether diplomatic documents should be subject to special rules.


ADMINISTRATIVE APPEALS TRIBUNAL
PRE-HEARING PROCESS
Receipt of application
Correspondence to Parties (including mediation material
Information session
Receipt of s 37 (or T Documents) Follow-up agency if not received within 5 weeks of s 29
Follow up checks with parties where necessary
1st Conference (1)
Follow up checks with parties where necessary
2nd Conference (1) where necessary
File evaluation
Follow-up checks with parties where necessary
Further conference(s) (1) where necessary
Mediation
if not finalised
Call over (2)
Settlement
Follow up checks with parties where necessary
Hearing
Notes
(1) Explore mediation possibility
(2) Where necessary

Tribunal Watch

AAT General Practice Direction

The AAT has completed its evaluation of the operation of the General Practice Direction issued on 26 April 1991. After consideration of the results of the evaluation and comments from interested persons, the President of the AAT, Justice O'Connor, decided to revoke that Direction and to issue a slightly revised general direction in its place, with effect from 1 June 1992. The new general direction differs from the previous one in that:

- it has effect from 1 June 1992 regardless of when an application was lodged;
- The Exchange of Documents section requirements have been altered so that documents 'should' rather than 'must' be sent or given to the other party as the case may be, and so that failure to comply with this may prevent some documents from being 'taken into account' rather than 'admitted into evidence';
- The Statements of Facts and Contentions section requires the addition to such statements of references to legislation and principal case law to be put in the hearing of the application; and
- there is a requirement that the Certificate of Readiness be served on the other party as well as on the Tribunal.

AAT Mediation Program

The AAT mediation program is to continue so as to enable the Tribunal to offer a range of dispute resolution mechanisms to persons involved in cases before it. The President of the AAT took this decision following the completion of a pilot mediation program and its evaluation at the Tribunal's Members' Conference.

The definition of mediation developed by the Tribunal's consultant, Professor Jennifer David, and adopted by the Tribunal, is:

> 'a voluntary process in which a mediator independent of the parties facilitates the negotiation by the parties of their own solution to the application for review. The mediator must not attempt to coerce a party into agreement nor make any substantive decisions for them.'

AAT mediations are conducted by Tribunal personnel who are accredited mediators, and participation in a mediation is voluntary. The mediation program currently operates in the Melbourne, Brisbane and Sydney AAT Registries in social security and customs matters. As of 1 September 1992, the program will be extended to all Registries in social security and customs matters, and to the Melbourne and Brisbane Registries in veterans and compensation matters. The President will consider further extensions of the program in early 1993.

Flowing on from the pilot program, mediation is now to become part of the Tribunal's pre-hearing process, as illustrated in the flow chart on the preceding page.