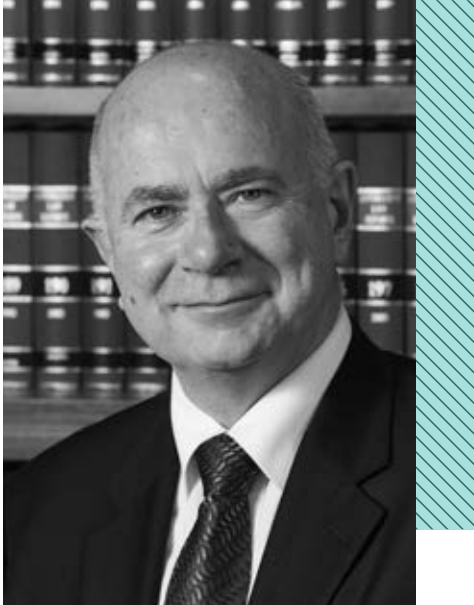


Chapter 01

THE YEAR
IN REVIEW

PRESIDENT'S OVERVIEW



Speaking at the launch of the Merits Review Special Edition of the *University of Queensland Law Journal* in October 2013 I reflected on the fact that every year, while perhaps tens of thousands of Australians will seek judicial review of administrative decisions, hundreds of thousands of Australians apply for one or another form of merits review.

Following the Administrative Appeals Tribunal's establishment in 1976, it became a model for merits review that has been drawn on across the Commonwealth and in most states and territories. After nearly 40 years the Tribunal still operates largely without fanfare offering accessible, informal and relatively cheap processes where those

who are affected can challenge the merits of administrative decisions.

Merits review in the Tribunal is undertaken by independent members supported by qualified and skilled alternative dispute resolution practitioners and the Tribunal's other registrars and support staff. The *Administrative Appeals Tribunal Act 1975* allows the Tribunal to review challenged decisions and, if a better decision could have been made, to make the correct or preferable decision.

These important rights are undervalued because Australians now take them for granted. That is understandable but illusory. While merits review seems firmly built into the architecture of the Australian system of government it remains exclusively the product of statute. To retain the support of the public and the Parliament, the Tribunal is keenly aware that it must remain responsive to the obligations set out in section 2A of the AAT Act: that is to ensure that its review functions continue to be economical, prompt and fair.

PRACTICE AND PROCEDURE DEVELOPMENT

The past 12 months have seen the Tribunal build robustly on its already strong foundations.

The Tribunal issued a new practice direction to support tailor-made procedures for the review of decisions made by the National Disability Insurance Agency under the National Disability Insurance Scheme. Applicants in the NDIS Division have a single point of contact within the Tribunal and there are streamlined mechanisms to ensure that delay and complexity in reviewing issues arising under the scheme will be minimised.

After wide consultations with our stakeholders, the Tribunal has introduced a practice direction to provide for expedited

review of those matters requiring urgent hearing and decision-making. It also adopted procedures intended to eliminate ‘trial by ambush’ where video surveillance evidence is concerned.

Those initiatives, and others like them, arose out of a shared commitment by the Tribunal’s staff, Conference Registrars and members to contribute to the Tribunal’s system of effective and integrated dispute resolution.

With more than 450 Acts and legislative instruments conferring jurisdiction on the Tribunal, no single approach can suit the circumstances of every review. However, these changes mean that we can be better at adapting our procedures to meet the diverse requirements of applicants, government agencies and other decision-makers across the range of jurisdictions in order to fulfil the Tribunal’s mission of undertaking high-quality merits review in a manner that is fair, just, economical, informal and quick.

TRIBUNAL PERFORMANCE

Sometimes a desire for speed and the requirement for a just solution give rise to conflicting rather than complementary pressures. When that happens speed must give way to fairness because the Tribunal has a legal duty to observe the rules of natural justice.

However, it is very pleasing that during this reporting period the Tribunal has exceeded its benchmark target of ensuring that 75 per cent of all reviews are completed within a year of their being lodged.

I am particularly proud of the significant effort, chiefly encouraged by Deputy President Hack, which has been made by our members, Conference Registrars and staff in the Taxation Appeals Division to improve timeliness. A taxpayer challenging an assessment can choose between proceeding in the Tribunal or in the Federal Court of Australia. It reflects the high standing of the Tribunal members who deal with this workload in the eyes of the community that approximately 80 per cent of all tax matters are commenced in the Tribunal. The data in this report shows that from a 2012–13

baseline of 67 per cent the Tribunal has significantly improved the rate of finalisation and is currently completing 77 per cent of matters lodged within that Division within 12 months.

A highlight of the year was the Tribunal’s biennial National Conference. We were greatly honoured that the Attorney-General, Senator the Hon George Brandis QC, made himself available to open the conference. The work of the conference delegates will continue to be reflected in improving our outcomes in managing the work of the Tribunal and ensuring that we provide the best possible integrated dispute resolution system. Our members are the visible part of the iceberg—but our staff and Conference Registrars are critical parts of a team that achieves the remarkable result that approximately 80 per cent of matters lodged in the Tribunal can be resolved without a requirement for a formal hearing.

TRIBUNAL INDEPENDENCE

In the Tribunal’s *Annual Report 2012–2013* I observed that, ‘As Peter Cane observed in *Administrative Tribunals and Adjudication*, [R]eview by the AAT involve[s] the transformation of the decision-making process from a two-party to a three-party affair by the insertion of a neutral third party’.

For such a process to command the confidence of the community, Tribunal decision-makers must be, and must be perceived to be, neutral – independent of any government agency, person or body whose decision is under review.

Recently the Australasian Institute of Judicial Administration, in association with the Council of Australasian Tribunals (COAT), published *Tribunal Independence* based on research the Institute commissioned from Associate Professor Pamela O’Connor. As President of the Tribunal and in my roles with the Institute and the Council I want to ensure that Associate Professor O’Connor’s ground-breaking work focusing on best practice to ensure tribunal independence gets the attention it deserves. An electronic version of that report is on the COAT website.

THE FUTURE

The Tribunal's future will inevitably be impacted by the Government's budget announcement that it intends to amalgamate the Tribunal with the Migration Review Tribunal – Refugee Review Tribunal, the Social Security Appeals Tribunal and the Classification Review Board. At the launch of the Merits Review Special Edition of the *University of Queensland Law Journal*, well before that announcement, I had proposed that it might be timely to revisit the recommendations of the Administrative Review Council's *Better Decisions Report* of 1995 which proposed the amalgamation of all Commonwealth merits review bodies.

While the principle is sound and I have welcomed the Government's announcement, until the details are known large change is unsettling. I will work with the staff and members of the Tribunal and liaise closely with the Attorney-General to ensure that the process builds on the Tribunal's legacy of professional and independent decision-making. Once that fundamental objective is secured, the procedures of a merged tribunal can continue to evolve on the basis that no single approach will suit the circumstances of every case. It is in the Government's and the Tribunal's shared interest that the proposed amalgamated tribunal will continue to fulfil the central mission of undertaking high-quality merits review.

OUR PEOPLE

Finally I must take the opportunity to welcome those members of the Tribunal who were appointed during this reporting period and farewell those whose terms came to an end.

WELCOME

The Tribunal was particularly pleased to welcome four part-time Members appointed because of their experience relevant to the NDIS Division. They are Lynne Coulson Barr (Victoria), Professor Ronald McCallum AO (NSW), Ms Sandra Taglieri (Tasmania) and Mr Ian Thompson (South Australia). The Tribunal also welcomed part-time Senior Member Dr Nicholas Manetta in South

Australia. All of our new members have already made a significant contribution to the work of the Tribunal.

FAREWELL

The tenure of two of our most valuable presidential members, the Honourable Justice Cowdroy and the Honourable Justice Lander, came to an end with their departure from the Federal Court of Australia. I cannot overstate the value that the Tribunal places on having available to it the service of presidential members holding joint commissions with the Federal or Family Courts of Australia. Where matters involve great issues or are novel and complex, their willingness to contribute to the work of the Tribunal has repeatedly proven its value.

During the year Member Dr Kerry Breen AM resigned from the Tribunal to focus on his medical research and writing. He was a much used and appreciated member of the Tribunal in Melbourne and will be greatly missed.

The term of Senior Member Narelle Bell expired at the end of this reporting year. She was an outstanding member and mentor and still has much to offer to public service.

And, last but far from least, after a decade of service Deputy President Ray Groom AO advised that he would be relinquishing his position with the Tribunal and as Executive Deputy President for Tasmania. DP Groom helped me find my feet in Hobart after my appointment and I thank him for that. He departed the Tribunal with a rare record for such a long serving member: none of his decisions became the subject of a successful appeal.

REGISTRAR'S REVIEW



In 2013–14 the Tribunal improved its performance against key indicators notwithstanding an 18 per cent increase in its workload. At the same time it continued to develop and implement a range of strategic and operational projects designed to maintain its role as an accessible, expert and innovative organisation that ensures administrative justice for individuals and organisations and improves the quality of government decision-making. I once again acknowledge the hard work of the members and staff of the Tribunal that has led to these achievements.

During the reporting year the Tribunal received 7,263 applications, compared with 6,176 in 2012–13. The number of applications finalised also increased, from 6,042 to 6,748. Eighty-two per cent of applications were finalised within 12 months of the date of lodgement, compared with 76 per cent 2012–13. The greater number of applications did, however, result in a 10 per cent increase in the number of applications on hand as at 30 June 2014. Further information about the Tribunal's workload is set out in Chapter 3 and Appendix 4.

In the first half of 2014 the Tribunal prepared its new Strategic Plan 2014–2017. Finalisation of the Plan coincided with the Government's announcement that the Tribunal will be merged with the Migration Review Tribunal – Refugee Review Tribunal, Social Security Appeals Tribunal and the Classification Review Board from 1 July 2015. While elements of the Plan will be refined as work towards the amalgamation progresses, most aspects will be important to the Tribunal's operations during the next 12 months and will be relevant to the strategic priorities of the merged tribunal in the future. The proposed amalgamated tribunal creates a significant opportunity to strengthen the existing merits review system by building on the successful processes and practices of the tribunals that are to be brought together.

On 1 July 2013 the Tribunal's jurisdiction to review certain decisions of the National Disability Insurance Agency commenced. This provided an opportunity to implement new case management procedures; increase collaboration between members, registrars and other staff; enhance the Tribunal's electronic case management system; develop new information products and introduce new monitoring and evaluation measures (including a mechanism for regular user feedback throughout the review process).

These developments are now being adopted, or are informing innovations, in other areas of the Tribunal's jurisdiction. In particular, an integrated dispute resolution project has been established to help capture and build upon the National Disability Insurance Scheme and other initiatives.

In June 2014 the Tribunal's Canberra District Registry moved into new accommodation following the end of its previous lease. The new design and fit-out is a considerable improvement on the previous accommodation and illustrate how the Tribunal's property master plan and strategic property principles work in practice. During the year the Tribunal initiated discussions with the Migration Review Tribunal–Refugee Review Tribunal, Social Security Appeals Tribunal and Veterans Review Board about new opportunities for co-location in Adelaide, Brisbane and Perth as leases end. These principles and discussions will now help inform the development of a broader strategic property plan to guide the location and design of consolidated property arrangements for the amalgamated tribunal over the next few years.

During the reporting year the Tribunal continued to progress a number of projects as part of the Electronic Services and Information Management Programme. In particular, it implemented a new information and records management framework that will help to support the move to an electronic document and records management system. The Tribunal's new records authority was formally approved by the National Archives of Australia and implemented in all registries.

In 2013–14 the Tribunal successfully developed and implemented policies and guidelines to comply with the requirements of the Protective Security Property Framework, Rehabilitation Management Scheme, *Public Governance, Performance and Accountability Act 2013* and *Public Interest Disclosure Act 2013*. It also strengthened the governance of, and updated its policies and arrangements for, business continuity, disaster recovery, fraud control and risk management.

During the reporting year the Tribunal continued to work closely with the Attorney-General's Department on amendments to the *Administrative Appeals*

Tribunal Act 1975 and the *Administrative Appeals Tribunal Regulations 1976*. It also worked with the Department and other agencies on issues relating to expected changes in the Tribunal's workload, including the impact of the Government's proposal to broaden the range of corporations that may apply to be covered by the *Safety, Rehabilitation and Compensation Act 1988*, and to transfer the merits review of Freedom of Information matters, currently undertaken by the Office of the Australian Information Commissioner, to the Tribunal from 1 January 2015.

The Tribunal recorded an operating surplus for 2013–14, before taking depreciation into account, primarily as a result of lower than anticipated spending on supplier and employee costs during the year. This was due in part to a significantly smaller number of National Disability Insurance Scheme cases being lodged than had been expected.

During 2013–14 there were various changes in the membership and staff of the Tribunal. I record my thanks for the contributions made by those members and staff whose time at the Tribunal came to an end during this period, and welcome the members and staff who have joined us. The President's overview sets out some of the membership changes. There were also some important staff changes, including the departure of District Registrars Clare Byrt and Lee Cross, long-serving Conference Registrar Helen Lacey and the inaugural Executive Director, Operations, Megan Cassidy. The Tribunal welcomed the return of Michelle Grau as the District Registrar in Brisbane and Catherine Cashen as the District Registrar in Adelaide, and the appointment of Franca Petrone as a Conference Registrar in Adelaide.

During the next 12 months the Tribunal must continue to provide a high-quality merits review mechanism while working towards the successful amalgamation with other key merits review tribunals from 1 July 2015. I am confident that the members and staff of the Tribunal will meet the challenges that these dual tasks present.

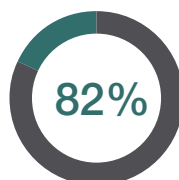
2013–14 HIGHLIGHTS AND ACHIEVEMENTS



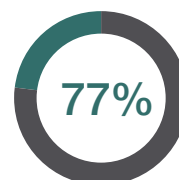
applications lodged with the Tribunal – 18 per cent more than in 2012–13



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of applications finalised within 12 months of lodgement compared with 76 per cent in 2012–13



In the Taxation Appeals Division, 77 per cent of applications finalised within 12 months, an improvement of 10 percentage points over the result for the previous year

Our users – to provide a high-quality independent merits review process that is fair, just, economical, informal and quick

- 7,263 applications lodged with the Tribunal – 18 per cent more than in 2012–13
- 6,748 applications finalised with 82 per cent finalised other than by way of a Tribunal decision following a hearing – three percentage points higher than in the previous year
- 82 per cent of applications finalised within 12 months of lodgement compared with 76 per cent in 2012–13
- In the Taxation Appeals Division, 77 per cent of applications finalised within 12 months, an improvement of 10 percentage points over the result for the previous year
- The Tribunal began reviewing decisions made under the National Disability Insurance Scheme, employing a case management model that aims to deliver a review process that is accessible, fair, informal and quick.
- Changes to practice and procedure were introduced in the workers' compensation jurisdiction to promote effective case management and the timely progress of applications
- Two new practice directions were issued, one dealing with release from the implied undertaking not to use documents obtained under compulsion in Tribunal proceedings and the second with the use of video surveillance material at the Tribunal. The Tribunal also developed and consulted on a practice direction for the expedited review of certain decisions in the Tribunal
- The Tribunal reviewed its policies and procedures relating to access to information and privacy, publishing its new Privacy Policy and new web pages dealing with access to information and documents in Tribunal proceedings
- Two new guidelines jurisdiction were issued in relation to alternative dispute resolution at the Tribunal: *Confidentiality in ADR Processes* and *The Duty to Act in Good Faith in ADR Processes*
- New fact sheets for the National Disability Insurance Scheme and access guides for each of the Tribunal's registries were published in 2013–14. Brochures and the Service Charter were made available in more community languages
- The Tribunal's Reconciliation Action Plan was reviewed and updated and the *Working with Aboriginal and Torres Strait Islander People at the Administrative Appeals Tribunal* guide for Tribunal members and staff was published

Our relationships – to engage effectively with government, tribunals, the legal profession and other interested organisations in Australia and internationally

- The Tribunal made a submission to the Productivity Commission's Inquiry into Access to Justice Arrangements and worked with the Australian Bureau of Statistics on a project to analyse data gaps in the collection of consistent data on the civil justice system
- The Tribunal engaged with other Commonwealth merits review tribunals in a range of forums, including the Commonwealth Tribunals Collaborative Forum and the Commonwealth Heads of Tribunals, as well as with the Attorney-General's Department in the context of the Government's decision to amalgamate the Administrative Appeals Tribunal, the Classification Review Board, the Migration Review Tribunal–Refugee Review Tribunal and the Social Security Appeals Tribunal from 1 July 2015
- Cooperative service arrangements continued with the Federal Court, Migration Review Tribunal–Refugee Review Tribunal, Social Security Appeals Tribunal, Supreme Court of Norfolk Island and Veterans' Review Board
- Tribunal members and staff continued to be active participants in the Council of Australasian Tribunals and other forums, and gave presentations at a wide range of conferences and seminars as well as to community organisations
- The Tribunal piloted a new Negotiating Outcomes on Time Competition (Noot) to offer students an insight into conciliation processes at the Tribunal. It complements the Tribunal's National Mooting Competition to give students a comprehensive experience of the administrative review process at the Tribunal
- The Tribunal offered a significant number of internship and work experience placements in 2013–14. A memorandum of understanding was entered into with the University of Newcastle regarding placements for law students

Our organisation – to manage our resources strategically and effectively

- The Tribunal developed a new Strategic Plan for 2014–17
- The Tribunal reviewed and updated its Business Continuity Plans, Fraud Control Plan and Risk Management Plan
- The Tribunal achieved a high level of compliance against the Australian Government Protective Security Policy Framework
- The Canberra Registry successfully located to new, more efficient premises designed in accordance with the Tribunal's strategic property principles
- The Tribunal implemented a new information and records management framework and policy as well as a new records authority approved by the National Archives of Australia under the *Archives Act 1983*
- An enhanced internal weekly *AAT Bulletin* was launched improving access to the latest information on reported cases, new books and journal articles
- A major server upgrade was completed and the Tribunal moved to a new secure internet gateway supporting the robustness of the Tribunal's ICT systems

Our people – to maintain a professional, productive, rewarding and safe workplace

- The Tribunal delivered extensive training for members and staff to prepare for its new National Disability Insurance Scheme jurisdiction with sessions on disability awareness, accessibility issues, support schemes for applicants and the Tribunal's case management approach
- A successful National Conference was held for members, registrars and staff offering an opportunity to discuss the development of more effective integrated dispute resolution processes and to build capacity through professional development on a range of practical topics
- Training on foundation and core knowledge and skills was conducted for all staff in all registries on topics including the APS Values, Code of Conduct and Employment Principles, privacy and confidentiality, records management and security awareness
- The Tribunal's managers participated in a pilot of the Australian Public Service Commission's new Performance Management learning program
- An audit of the Tribunal's Rehabilitation Management System confirmed full compliance with Comcare's *Guidelines for Rehabilitation Authorities 2012*
- A survey of members and staff indicated increased levels of satisfaction with internal communication following the introduction of the monthly internal newsletter in 2012–13

