

## Chapter 4: Our users and our partners



This chapter describes the Tribunal's performance in meeting the goals identified in the 2005–06 Organisational Plan in relation to its users and partners.

## Users of the Tribunal

The principal users of the Tribunal are parties to Tribunal proceedings and their representatives. Parties to proceedings include individuals, corporations and government agencies. The Tribunal also makes information available about its role and functions to members of the public and other organisations including government agencies.

The Tribunal's goal in relation to its users, as outlined in its Organisational Plan, is:

*to provide a national high-quality merits review process that contributes to community confidence in a system of open and accountable government.*

This section of the report outlines developments during the reporting year that relate to the achievement of this goal.

### PRACTICE AND PROCEDURE COMMITTEE

The Committee met in October 2005 and May 2006 and discussed a range of matters concerning practice and procedure in the Tribunal. Agenda items included the review of practice and procedure in the workers' compensation and social security jurisdictions, alternative dispute resolution (ADR), procedures relating to the taxation of costs and the management of taxation scheme applications. Significant developments in relation to practice and procedure issues, which have occurred in the reporting period, are described below.

### REVIEW OF PRACTICE AND PROCEDURE

For many years, the Tribunal has relied on the General Practice Direction to manage the majority of applications lodged with the Tribunal. It sets out the general procedure to be adopted by the Tribunal and imposes time limits on the parties for undertaking significant steps in the review process.

The Tribunal has decided that the General Practice Direction is no longer the most appropriate means

of managing its diverse workload. Each of the major jurisdictions has particular characteristics that impact on the way in which those cases proceed towards resolution. A jurisdiction-specific approach will provide greater clarity in relation to the management of those types of applications. Greater flexibility is also required in identifying what parties must do, and at what stage of the review process, so that cases progress in the most efficient and effective manner.

The Tribunal is undertaking a review of practice and procedure in each of its major jurisdictions in turn. The review of each jurisdiction will result in the development of a guide that sets out general information about the review process in that jurisdiction. The guide will provide the general framework for the review process. Specific requirements to be met in individual applications will be set out in directions made by Conference Registrars or Tribunal members. This will ensure that parties and their representatives have clear guidance as to what is required at each stage of the review process.

### Workers' Compensation Jurisdiction

The first stage of the review has involved an examination of practice and procedure in the workers' compensation jurisdiction. The Tribunal developed a consultation draft of the Guide to the Workers' Compensation Jurisdiction which was released for comment in September 2005. The draft guide together with proposed amendments to the Practice Direction on Procedures relating to Section 37 of the AAT Act were distributed to regular users in the workers' compensation jurisdiction. The documents were also sent to the broader community of Tribunal users and made available on the Tribunal's website. The Tribunal sought feedback on the general proposal to adopt jurisdiction-specific guides as well as the draft documents.

Comments received on the overall approach proposed by the Tribunal and the draft guide were positive. Specific comments relating to aspects of the Guide to the Workers' Compensation Jurisdiction have been considered by the Practice and Procedure Committee. The final version of the

Guide to the Workers' Compensation Jurisdiction and a revised Practice Direction on Procedures relating to Section 37 of the AAT Act will be published in the second half of 2006. The General Practice Direction will be amended to provide that it no longer applies to the workers' compensation jurisdiction.

### **Social Security Jurisdiction**

The second stage of the review involves an examination of practice and procedure in the social security jurisdiction.

In September 2004, the Practice and Procedure Committee appointed a subcommittee to conduct an evaluation of social security case management procedures introduced in the Victorian Registry in October 1999. The final report of the subcommittee was presented to the Committee in May 2006. The evaluation sought to assess the effectiveness and efficiency of the procedures through a comparison with the social security case management procedures in the New South Wales Registry and the South Australian Registry.

The evaluation found some notable differences in the case management of social security applications in Victoria including:

- the exclusive use of Conference Registrars in the conduct of outreach with self-represented parties;
- less frequent scheduling of second or subsequent conferences;
- quicker referral of matters to hearing; and
- no use of Statements of Facts and Contentions.

Overall, the evaluation found that between the three registries there does not appear to be a marked difference in the time taken to finalise matters, the method of finalisation or the satisfaction levels of the parties. However, the report does note that the Victorian Registry has a slightly higher proportion of matters that meet the Tribunal's 12-month time standard of finalising applications. Frequent users of the Tribunal in each of the three registries appear to have a high level of satisfaction with the Tribunal's procedures.

The report did not recommend any immediate changes to case management practices in any registry. However, the findings of the evaluation will be used to inform the development of the guide for managing social security applications. A draft guide will be developed and released for consultation in 2006–07.

### **ALTERNATIVE DISPUTE RESOLUTION**

It was noted in last year's annual report that the ADR provisions in the AAT Act were amended in May 2005. Conciliation, case appraisal and neutral evaluation are now included specifically as ADR processes that are available to the Tribunal in addition to conferences and mediation.

The subcommittee that was formed to consider the Tribunal's use of ADR was replaced by a standing committee in late 2005. The Alternative Dispute Resolution Committee has been examining what is involved in the different ADR processes and how they may best be applied in the Tribunal context.

The Committee has developed process models for each type of ADR. Each process model sets out a definition of the process and a range of information relating to the conduct of the process, including the stage of the proceedings at which the process is likely to be undertaken, a description of the way in which the process will proceed, the role of the person conducting the process, as well as the role of the parties and their representatives.

The Committee has also developed referral guidelines which set out a range of considerations to be taken into account in deciding whether to refer a matter to an ADR process and which ADR process may be appropriate. Relevant factors include such things as the capacity of the parties to participate, the attitudes of the parties, the nature of the issues in dispute, the likelihood of reaching agreement or reducing the issues in dispute and the cost to the parties. The guidelines also identify factors that may make a particular form of ADR suitable for use.

The Committee has run a series of information sessions for members and staff of the Tribunal on the process models and referral policy. The Tribunal will be delivering similar information sessions to external users in the first half of 2006–07. Copies of the ADR referral guidelines and process models are available on the Tribunal’s website.

### **TAXATION OF COSTS**

The Tribunal has the power to order that costs should be paid under a number of pieces of legislation. Costs orders are made most commonly under section 67 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

Subsection 67(13) of the SRC Act provides that the Tribunal may ‘tax or settle the amount of costs or order that costs be taxed by the Registrar, a District Registrar or Deputy Registrar’. This provision is complemented by subsection 69A(1) of the *Administrative Appeals Tribunal Act 1975*, which provides that, where the Tribunal has ordered a party to pay costs and the parties are unable to agree as to the amount of those costs, the President may give directions for the costs to be taxed by the Tribunal.

Neither the AAT Act nor the AAT Regulations provides any guidance on the procedures to be followed in assessing the costs that are payable in accordance with a costs order. The Practice and Procedure Committee appointed a subcommittee to develop a plain English practice direction setting out the Tribunal’s approach to taxation of costs. The draft has been subject to internal consultation and will be released to external users for comment in the first half of 2006–07.

### **CONCURRENT EVIDENCE STUDY**

In 2002, the Tribunal commenced a study in the New South Registry on the use of concurrent evidence. This procedure involves taking evidence from more than one expert witness at the same time. It provides a forum in which, in addition to providing their own evidence, expert witnesses can listen to, question and critically evaluate the evidence of the other expert or experts.

The Tribunal released its report on the study in November 2005. A total of 199 cases were examined for the purposes of deciding whether or not concurrent evidence should be used at hearing. Concurrent evidence was considered to be suitable for use in 138 of these cases and the procedure was actually used in 48 hearings. All but one of the cases were workers’ compensation and veterans’ entitlements cases involving expert medical evidence.

The Tribunal used a combination of techniques to collect data in relation to the study. These included:

- surveys completed by Tribunal members when deciding whether concurrent evidence would be used in a case and following use of the procedure at hearing;
- focus groups conducted with representatives;
- a telephone survey conducted with experts; and
- an audit of the files of cases that were part of the study.

The findings of the study provide support for the continued use of concurrent evidence in the Tribunal in appropriate cases. In particular, the data suggests that the procedure has significant benefits for Tribunal decision-making. Tribunal members reported that the concurrent evidence process improved the quality of the expert evidence presented, made evidence comparison easier and enhanced the decision-making process. In relation to its impact on the overall length of hearings and the time spent by experts giving evidence, the study revealed that the concurrent evidence process led either to time savings or was neutral in approximately 80 per cent of cases. It was noted, however, that individual experts tended to spend longer giving evidence and this can have an impact on costs for the parties.

The Tribunal will be developing guidelines in relation to the use of concurrent evidence to address a number of concerns raised by participants in the study and to ensure consistency across the Tribunal. The guidelines will address the identification and selection of cases in which concurrent evidence would be appropriate to use as well as the

procedures to be followed in taking concurrent evidence. The Tribunal will make a draft of the guidelines available for comment. Once the guidelines are finalised, the Tribunal anticipates that it will conduct information sessions for representatives and experts in relation to its use.

### **EARLY DISPUTE RESOLUTION PILOT IN THE COMPENSATION JURISDICTION**

This pilot provides for the Tribunal to conduct an early settlement conference in applications in the workers' compensation jurisdiction that meet the criteria for the pilot. It was originally envisaged that the pilot would operate in the Victorian and Western Australian Registries from 1 September 2004. However, given the small number of eligible applications in Western Australia, it was decided to limit the pilot to the Victorian Registry. The pilot has a proposed finish date of 31 October 2006.

The criteria for the pilot have been expanded during the course of the pilot and are now as follows:

- the applicant must be a current or former employee of an agency in relation to which Comcare is the claims manager;
- the claim must come within one or more of the following categories:
  - initial liability for psychological injuries;
  - rejected claim for medical treatment, e.g. physiotherapy;
  - rejected claim for aids and appliances;
  - ceased pre-premium claims;
  - rejected periods of incapacity; and
  - permanent impairment where the percentage is in dispute.

The objectives of the pilot include:

- an examination of early intervention opportunities;
- a reduction in the number of disputed claims proceeding to hearing; and
- a reduction in the duration of applications.

The Tribunal will conduct an evaluation of the pilot at the conclusion of the trial period.

### **LEGAL ADVICE SCHEMES**

The Tribunal has entered into arrangements with legal aid bodies in a number of states to provide a legal advice service at the Tribunal's premises. The Tribunal invites self-represented parties to make an appointment with the service. A legal aid solicitor attends the Tribunal's premises on a one-day or half-day per week or fortnight basis and provides clients with initial advice and assistance. Further assistance and representation may be provided if the person is eligible for a grant of legal aid.

The scheme has been operating successfully in New South Wales, Queensland and Victoria since 2004 and in Western Australia since May 2005. Legal aid bodies in those states have agreed to continue to provide the service. The scheme was introduced in South Australia in November 2005.

Legal advice schemes have not been established in either the Australian Capital Territory or Tasmania. Community legal centres provide advice and representation in those regions. The Tribunal refers self-represented parties to community legal centres for assistance as and when appropriate.

### **MANAGEMENT OF TAXATION SCHEME MATTERS**

Between January 1999 and June 2003, the Tribunal received in excess of 7,400 applications for review of decisions relating to taxation schemes and employee benefit arrangements. The majority of these were subject to orders deferring further action pending the outcome of test cases in the Federal Court and the High Court on the various schemes and arrangements. Most of these test cases have been finalised and the Tribunal is dealing with the applications that were on hold.

In December 2003, the Tribunal devised a case management strategy to deal with all matters not awaiting the outcome of an appeal. This strategy centred around the appointment of a Managing Member to coordinate applications relating to the same taxation scheme or type of arrangement. Managing Members have been appointed on the basis of their experience in the taxation jurisdiction.

Where possible, they are attached to the Registry where the majority of applications reside.

More than 92 per cent of the applications received before 1 July 2003 have now been finalised. Those that remain outstanding are the subject of ongoing appeals before the courts or are in the process of being finalised. The Tribunal has been involved in ongoing discussions with the Australian Taxation Office concerning the most effective way to manage the remaining taxation scheme and employee benefit matters.

Since 1 July 2003, the Tribunal has received more than 4,000 applications relating to taxation schemes and employee benefit arrangements. The Tribunal is assigning Managing Members to schemes with a significant number of applications to ensure that matters progress in a coordinated and timely manner. More information on current taxation matters at the Tribunal is contained in Appendix 3.

### **REGULAR USER FORUMS AND MEETINGS WITH USERS**

The Tribunal met with regular users and other stakeholders in a range of forums during the reporting year. The Tribunal remains committed to being an approachable and transparent organisation that takes account of the needs of the people and organisations that use its services.

Individual Tribunal registries arrange user group meetings with departments and agencies, legal practitioners and others who appear regularly before the Tribunal in that location. New South Wales and Victoria held separate meetings with users in different jurisdictions. Other registries held a single meeting for all regular users once or twice during the year.

While the format of the user forums may vary between registries, they provide an excellent opportunity for the Tribunal to explain any changes to practice and procedure affecting parties. In addition, the Tribunal receives valuable feedback on areas where we are performing well and areas where we might be able to make improvements.

The AAT/Law Council of Australia liaison committee met in November 2005 and June 2006. Principal Registry staff also met with representatives from the Australian Taxation Office, Centrelink and the Department of Employment and Workplace Relations at different times during the year to discuss operational issues arising in the jurisdictions involving those agencies.

### **USER SURVEY**

As was noted in last year's annual report, the Tribunal engaged Profmark Consulting to conduct a major user survey, which took place in May 2005. The Tribunal received the final report on the survey in July 2005.

Written surveys were sent to all individuals whose applications were finalised in 2004. The consultant also conducted telephone surveys with employees of government departments and agencies and legal practitioners who appear regularly in the Tribunal.

A total of 1,177 responses were received from individuals which was a response rate of 22%. Most individuals who responded to the survey had applications in the following jurisdictions: social security (33%), veterans' affairs (32%) and workers' compensation (18%).

Key findings of the survey responses from individuals were as follows:

- 59% of survey respondents who represented themselves did not feel disadvantaged;
- 65% felt that the Tribunal dealt fairly with their review;
- survey respondents were generally satisfied with all aspects of the service with the courtesy of staff receiving the highest rating (4.1) on a scale of 1–5 and the perceived independence of the Tribunal receiving the lowest rating (3.5);
- Tribunal facilities were rated highly and the majority of participants with a disability believed the facilities fully or partly met their needs.

Representatives of departments and agencies rated all aspects of service higher than 4.0 as did legal practitioners who represent non-government

parties. Most legal practitioners representing non-government parties (62%) and representatives of departments and agencies (60%) believed Tribunal decisions are generally correct. Slightly fewer legal practitioners for government parties (52%) held that view.

The Tribunal plans to conduct another user survey in 2007–08.

### **REVIEW OF COMMUNICATION WITH TRIBUNAL USERS**

The Tribunal communicates with its users in a variety of ways and using a number of different media. These have developed in a relatively ad hoc manner over time. A range of written materials are provided to parties and their representatives, including practice directions, brochures and letters. Information is provided by members and staff in person and by telephone during outreach, conferences and other contacts with the Tribunal. The Tribunal has a DVD that demonstrates how the Tribunal operates, which is made available to self-represented parties. Practice directions, brochures and other written materials on the Tribunal are available on the Tribunal's website.

The Tribunal has decided to undertake a review of the ways in which it communicates with the diverse range of people who use the Tribunal. The initial part of the review will involve the development of a communication policy that sets the broad principles for communicating with the different groups of users. This policy will provide the framework for reviewing the Tribunal's audiovisual and written information products and other ways of communicating with parties and their representatives.

While initial development work was undertaken during the reporting period, substantive work on the review will commence in 2006–07. This will include engaging a consultant to provide advice and assistance in relation to the development of the communication policy.

### **CONSTITUTION COMMITTEE**

The Committee met in October 2005 and May 2006 and finalised the content of guidelines for determining how the Tribunal should be constituted for the

purposes of reviewing a decision. The guidelines will be published in the next reporting period. Having completed this project, the Committee will meet as required to consider further issues relating to the constitution of the Tribunal.

## **Tribunal partners**

Tribunal partners are organisations or individuals with whom the Tribunal has a relationship beyond the context of participation in Tribunal proceedings. Partners may be organisations or individuals involved in administrative review or with an interest in issues relating to tribunals. They may also be organisations with which the Tribunal develops cooperative arrangements for the sharing of resources. Tribunal partners include government departments and agencies, tribunals, courts, the legal profession, individuals and other national and international organisations.

The Tribunal's goal in relation to its partners, as outlined in its Organisational Plan 2005–06, is:

*to cooperate with government, other tribunals, the legal profession and other interested groups.*

This section of the report describes the activities undertaken by the Tribunal during the reporting period that are directed to meeting this goal.

### **DEVELOPING AND ENHANCING LINKS WITH GOVERNMENT, OTHER TRIBUNALS AND OTHER RELEVANT INDIVIDUALS AND ORGANISATIONS**

The Tribunal worked with a range of other agencies, organisations and individuals during the reporting period.

#### **Liaison with the Attorney-General's Department and other departments and agencies**

The Tribunal worked closely with the Attorney-General's Department during the reporting year on a wide range of issues relating to the Tribunal and its operations. This included significant liaison in relation to workload and budget issues as well as the timely completion of processes for the appointment and re-appointment of Tribunal members.



The Tribunal also liaised with a number of other departments and agencies including the Australian Taxation Office, Centrelink, Comcare, the Department of Employment and Workplace Relations and the Therapeutic Goods Administration in relation to issues and proposals that are likely to impact on the Tribunal.

### **Council of Australasian Tribunals**

The Tribunal continued to make a significant contribution to the work of the Council of Australasian Tribunals (COAT) during the reporting year.

Justice Downes was elected Chair of the Council for a fourth term at the Annual General Meeting held in April 2006. In accordance with the Council's Constitution, the Tribunal's Registrar, Doug Humphreys, was the Secretary of the Council during the reporting period.

The Tribunal performed secretariat functions for the Council at the national level. This included managing the Council's finances as well as arranging and providing administrative support for meetings of the Council and the Executive. The Tribunal continued to host and maintain the content on the Council's website.

In April 2006, the Council published the COAT Practice Manual for Tribunals. The manual is designed to be a practical resource for tribunal members and covers topics that are relevant to a broad range of tribunals, such as statutory interpretation, procedural fairness, conducting hearings and making decisions. The Tribunal managed this project on the Council's behalf and has undertaken work on a number of other Council projects during the reporting year.

Tribunal members and staff have been active in the Council's State and Territory Chapters. Senior Member Geri Ettinger is a member of the committee of the New South Wales Chapter. Deputy President Deane Jarvis is a member of the committee of the South Australian Chapter and Deputy President Stephanie Forgie and Member Regina Pertou are members of the committee of the Victorian Chapter.

### **Administrative Review Council**

As President of the Tribunal, Justice Downes is an ex-officio member of the Administrative Review Council, a body responsible for advising the Attorney-General on the operation of the Commonwealth system of administrative law and recommending possible reforms. The President attended meetings and participated in the activities of the Council during the reporting year. For further information relating to the Council and its operations, please refer to the Council's Annual Report.

### **Cooperation with other tribunals, courts and agencies**

In April 2006, Justice Downes met with the presiding members of the Migration Review Tribunal and Refugee Review Tribunal, the National Native Title Tribunal and the Veterans' Review Board to discuss issues of common interest. The registrars of the tribunals also met in April and have communicated on a regular basis in relation to areas of common interest and opportunities for efficiencies through cooperative action between tribunals. These include joint training activities, use of facilities and advertising of staff vacancies within tribunals.

The Tribunal had arrangements with a number of courts, tribunals and other agencies in relation to the provision of facilities and services during the reporting year. These included:

– *Australian Institute of Criminology*

The Tribunal provided personnel and payroll services to the Australian Institute of Criminology.

– *Federal Court of Australia*

The Tribunal shares a joint registry with the Federal Court in Hobart. The court provides staff to meet the needs of the Tribunal in that registry.

– *Inquiry in relation to the UN Oil-for-Food Programme*

The Tribunal made two hearing rooms available to the inquiry in its New South Wales registry during the first half of 2006.



– *Migration Review Tribunal (MRT)*

The MRT has registries in Melbourne and Sydney. In Adelaide, Brisbane and Perth, AAT staff receive applications and handle enquiries on behalf of the MRT. The Tribunal provided accommodation and hearing room facilities for MRT members, including hearing room assistance and video conferencing facilities.

– *National Native Title Tribunal (NNTT)*

The Tribunal provided additional accommodation to the NNTT from within its Adelaide premises.

### **Information technology strategic alliances**

The Tribunal is replacing its existing case management system with a system that will be the platform for improved workflow and e-business practices into the future. The Tribunal recognises the value of liaising with other tribunals, courts and other organisations to evaluate possible alliances where business requirements are similar. The Tribunal's Manager of Information Technology is a member of the Australian Government Information Management Office's Chief Information Officer Forum. The Tribunal also maintains a cooperative relationship with other tribunals and courts in order to exchange knowledge, experience and ideas.

The template of the new case management system selected by the Tribunal is already in use in several state tribunals and courts. This provides opportunities to work with other users to enhance the system on a cost-share basis.

### **International delegations and relationships**

During the reporting year, the Tribunal hosted a number of delegations from overseas courts and tribunals and met with foreign government officials interested in gathering information on the Tribunal and its operations. The Tribunal met with representatives from:

- Mexico;
- New Zealand;
- the Supreme Administrative Court of Taiwan; and
- the United Kingdom's Tribunals Service.

In February 2006, Justice Downes visited Thailand in response to an invitation from the Supreme Administrative Court of Thailand. Presentations were given on the structure, powers and duties of the Tribunal and its case management and case-tracking systems. A longer-term capacity building project, which will involve the Tribunal and the Federal Court providing assistance to judges and staff of the Supreme Administrative Court of Thailand, will commence in 2006–07.

### **RAISING AWARENESS OF THE TRIBUNAL AND ITS ROLE IN ADMINISTRATIVE LAW**

The Tribunal was involved in a range of activities during the reporting period which were directed to raising awareness of the Tribunal and its role.

#### **Tribunal participation in education, training and other activities**

Members and staff gave presentations on the tribunal and its operations at a variety of conferences and seminars and other forums during the reporting period. Members and staff were also involved in training and education programs for advocates and other persons appearing before the Tribunal. Specific information about these activities is set out in Appendices 1 and 8.

#### **Administrative Appeals Tribunal Mooting Competition**

The Tribunal's second annual mooting competition involved 16 teams of law students from universities in the Australian Capital Territory, New South Wales, Queensland and Victoria. The aims of the organising committee were to raise the Tribunal's profile among students and to give future practitioners experience in presenting a matter to a tribunal conducting merits review of administrative decisions.

Each team consisted of two students acting in the roles of senior and junior counsel. A third student could participate as a research assistant. The teams were issued with detailed factual scenarios in each round and were required to prepare submissions and formulate oral arguments to



The winners of the 2006 Tribunal Mooting Competition: Sarah Kemeny and Nicole Lynch from the University of Melbourne.

present to the Tribunal members who adjudicated the moots. The areas of administrative law covered included freedom of information, immigration and migration agents' registration.

The final involved teams from Bond University and the University of Melbourne. The teams presented arguments to a three-member tribunal comprising the President, Justice Downes, Senior Member Josephine Kelly and Senior Member Ivan Shearer. The competition was won by the University of Melbourne team.

The Tribunal will conduct a third mooting competition in 2007.

### **Sponsoring work experience placements**

The Tribunal's registries provided a number of work experience placements for university students during the year. The Tribunal provides these opportunities to the extent that staff availability and accommodation will allow. Work experience placements included near-graduate and graduate law students from the College of Law in New South Wales, Monash University, Notre Dame University, Queensland University of Technology and Wollongong University.