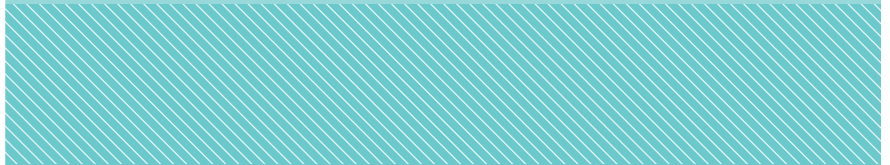




## CHAPTER 2

### OVERVIEW OF THE TRIBUNAL



The role of the Tribunal is to provide independent merits review of administrative decisions. The Tribunal aims to provide a review mechanism that is fair, just, economical, informal and quick.

The Tribunal falls within the portfolio of the Attorney-General, the Hon. Robert McClelland MP.

## ESTABLISHMENT

The Tribunal was established by the *Administrative Appeals Tribunal Act 1975* and commenced operations on 1 July 1976. The *Administrative Appeals Tribunal Act* and the *Administrative Appeals Tribunal Regulations 1976* set out the Tribunal's functions, powers and procedures.

## FUNCTIONS AND POWERS

### Review of decisions

The Tribunal reviews a wide range of administrative decisions made by Australian Government ministers, departments, agencies, authorities and other tribunals. In limited circumstances, the Tribunal can also review administrative decisions made by state government and non-government bodies.

Merits review of an administrative decision involves considering afresh the facts, law and policy relating to that decision. The Tribunal considers the material before it and decides what is the correct — or, in a discretionary area, the preferable — decision. It will affirm, vary or set aside the decision under review.

The Tribunal is not always the first avenue of review of an administrative decision. Sometimes, the Tribunal cannot review a decision until an internal review of the primary decision has been conducted. In other cases, review by the Tribunal is only available after intermediate review by a specialist tribunal. For example, an application in relation to a family assistance or social security decision may be made only after review by the Social Security Appeals Tribunal.

Section 33 of the *Administrative Appeals Tribunal Act* requires that proceedings of the Tribunal be conducted with as little formality

and technicality, and with as much expedition, as the requirements of the Act and a proper consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence and can inform itself in any manner it considers appropriate.

### Jurisdiction

The Tribunal does not have a general power to review decisions made under Commonwealth legislation. The Tribunal can only review a decision if an Act, regulation or other legislative instrument states that the decision is subject to review by the Tribunal.

The Tribunal has jurisdiction to review decisions made under more than 400 Acts and legislative instruments. Applications about decisions in the areas of family assistance and social security, taxation, veterans' affairs and workers' compensation constitute the largest part of the Tribunal's workload. The Tribunal also reviews decisions in areas such as bankruptcy, civil aviation, citizenship and immigration, corporations law, customs, freedom of information, industry assistance, passports and security assessments by the Australian Security Intelligence Organisation.

Changes to the Tribunal's jurisdiction during the reporting year are in Appendix 6.

## DIVISIONS

The Tribunal exercises powers in divisions which include the General Administrative, Security Appeals, Taxation Appeals and Veterans' Appeals Divisions. The Taxation Appeals Division is known as the Small Taxation Claims Tribunal for the review of certain tax decisions, including those where the tax in dispute is less than \$5,000.

## ORGANISATION

The Tribunal consists of the President, other presidential members (who may be judges or Deputy Presidents), Senior Members and Members. The President, with the assistance of the Registrar, is responsible for managing the Tribunal and its resources.

The Tribunal has a Principal Registry and District Registries. Principal Registry managers

and District Registrars provide policy advice and operational assistance. Staff are employed under the *Public Service Act 1999* to assist the Tribunal to carry out its functions.

### Membership of the Tribunal

Members of the Tribunal are appointed by the Governor-General. The qualification requirements for all categories of members in the Administrative Appeals Tribunal Act are outlined below. Appointments to the Tribunal may be full-time or part-time.

Presidential Members can exercise powers in any of the Tribunal's divisions. Senior Members and Members may only exercise powers in the division or divisions to which they have been assigned.

There were 91 members of the Tribunal at 30 June 2010; see Table 2.1 for the breakdown of full-time and part-time members by category.

See Appendix 1 for a list of the Tribunal's members by state and territory, the divisions to which each non-presidential member was assigned, and a profile of each member, other than judges of the Federal Court and Family Court.

#### *President*

The Hon. Justice Garry Downes AM was appointed a judge of the Federal Court of Australia and Acting President of the Tribunal on 2 April 2002. He was appointed President of the Tribunal on 16 May 2005, for seven years.

The President of the Tribunal must be a judge of the Federal Court.

#### *Other presidential members*

Judges of the Federal Court and the Family Court may be appointed as part-time presidential members of the Tribunal.

Deputy Presidents must have been enrolled as legal practitioners for at least five years.

#### *Senior Members*

Senior Members must have been enrolled as legal practitioners for at least five years or have special knowledge or skills relevant to the duties of a Senior Member.

#### *Members*

Members must have knowledge or skills relevant to the duties of a Member. Current Members have expertise in areas including accountancy, aviation, engineering, law, medicine, pharmacology, military affairs, public administration and taxation.

### Registrar and Assistant Registrar

At 30 June 2010, the Tribunal's Acting Registrar was Megan Cassidy. She was appointed to act in that position following the resignation of the former Registrar, Doug Humphreys. He left the Tribunal on 19 March 2010 to take up the appointment of Principal Member of the Veterans' Review Board. Mr Humphreys was first appointed Registrar on 25 August 2003, and his second five-year term began on 25 August 2008.

**Table 2.1** Tribunal membership, 30 June 2010

Category of member	Judge	Full-time	Part-time	Total (Women)
President	1			1 (0)
Presidential members:				
Federal Court judges	8			8 (1)
Family Court judges	5			5 (2)
Deputy Presidents		5	7	12 (1)
Senior Members		10	17	27 (11)
Members		2	36	38 (11)
<b>Total</b>	<b>14</b>	<b>17</b>	<b>60</b>	<b>91 (26)</b>

Philip Kellow commenced his five-year appointment as Registrar on 22 July 2010, after the date of this report.

The Registrar assists the President manage the Tribunal and advises on its operations and performance. The Registrar may act on behalf of the President in the administration of the Tribunal.

The position of Registrar is a statutory office appointed by the Governor-General. The Registrar is the agency head for the purposes of the Public Service Act, responsible for the employment of the Tribunal's staff on behalf of the Commonwealth. The Registrar is also the Chief Executive for the purposes of the *Financial Management and Accountability Act 1997*.

The Registrar is assisted by the Assistant Registrar who holds office as a senior executive in the Australian Public Service. Ms Cassidy was appointed Assistant Registrar in September 2007. On her appointment as Acting Registrar, Christopher Matthies was appointed Acting Assistant Registrar for the remainder of the reporting period.

## Staff

Tribunal staff are employed under the Public Service Act as ongoing, non-ongoing or intermittent employees. At 30 June 2010, 162 staff were employed by the Tribunal.

See Appendix 2 for more staffing information, including equal employment opportunity data.

## Registries

### *Principal Registry*

Principal Registry staff advise and assist the President and the Registrar, and provide a range of services for members and staff. They are responsible for finance, human resource management, information technology, legal and policy services, library services, payroll and property.

Principal Registry staff are in Brisbane, Perth and Sydney.



District registry staff assist applicants and other parties as well as the general public.

### *District Registries*

There are District Registries in each of the state capital cities and in Canberra. The registry service in Hobart is provided by the Federal Court. The Brisbane Registry manages Northern Territory applications and is responsible for ensuring an effective level of service to Northern Territory residents.

In each District Registry, a Deputy President or Senior Member is appointed Executive Deputy President. The Executive Deputy President and the District Registrar are responsible for local registry management. District Registrars are assisted by Deputy Registrars.

Conference Registrars are appointed by the President in each registry to conduct the majority of the conferences held by the Tribunal. They also conduct other alternative dispute resolution processes.

District Registry staff:

- provide information to parties and their representatives and the general public

**Table 2.2** Executive Deputy Presidents, 30 June 2010

State/Territory	Executive Deputy Presidents
Australian Capital Territory	Senior Member Professor Robin Creyke
New South Wales	Deputy President Robin Handley
Queensland/Northern Territory	Deputy President Philip Hack SC
South Australia	Deputy President Deane Jarvis
Tasmania	Deputy President Raymond Groom AO
Victoria	Deputy President Graham McDonald
Western Australia	Deputy President Stanley Hotop



(L-R) Executive Deputy Presidents Hack, Hotop, Creyke, Handley, Groom and Jarvis, with Justice Downes (centre) at the Administrative Appeals Tribunal National Conference.

on the operation and procedures of the Tribunal

- process applications
- facilitate the listing and conduct of conferences, other alternative dispute resolution processes and hearings, and
- provide administrative and other support services to members.

Table 2.2 lists the Executive Deputy Presidents, at 30 June 2010, and Figure 2.3 shows the administrative structure of the Tribunal, including senior staff.

### Tribunal committees

The President has established a number of committees to provide advice and assistance in the management of the Tribunal.

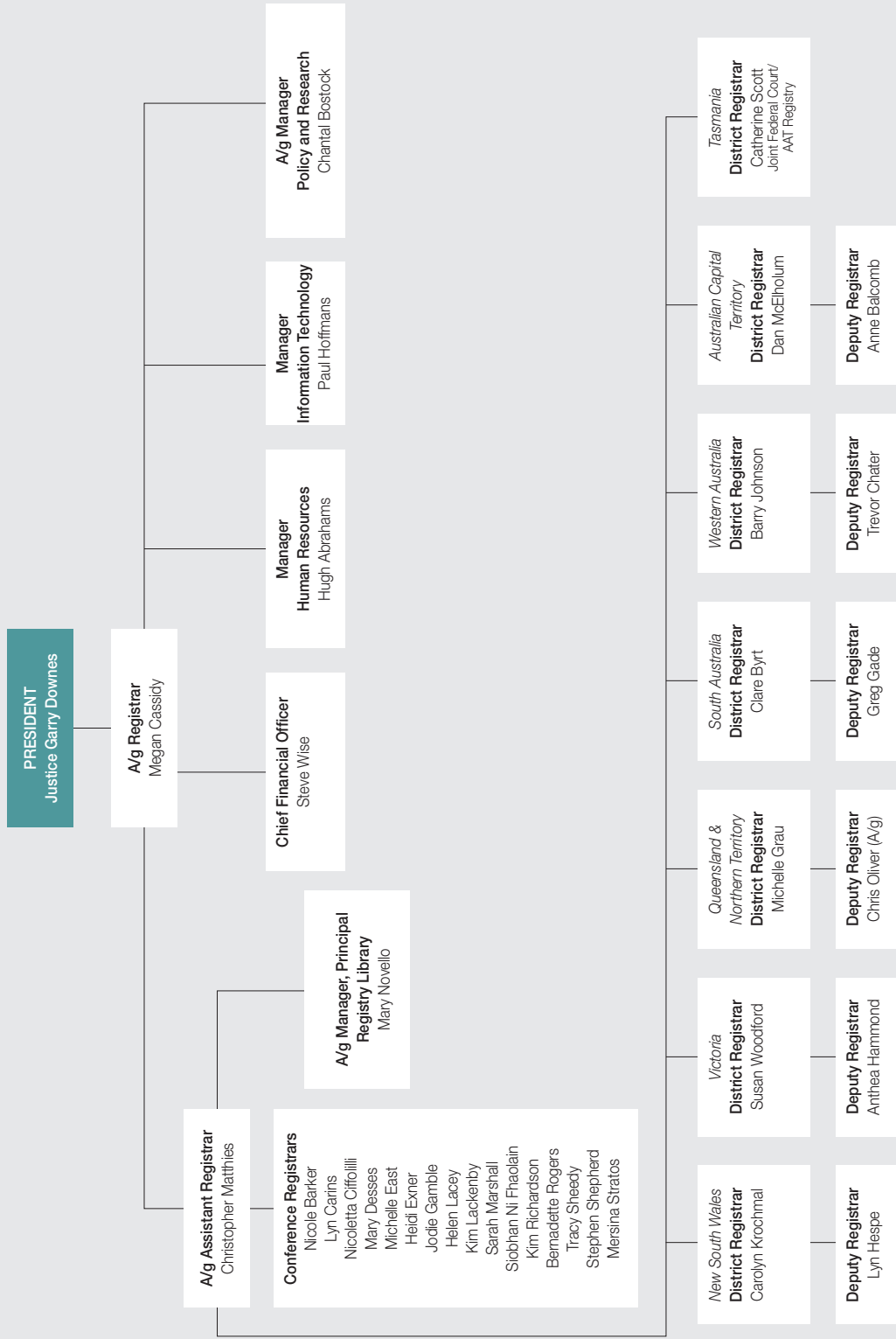
#### *Alternative Dispute Resolution Committee*

The Alternative Dispute Resolution Committee oversees the use of alternative dispute resolution processes in the Tribunal, including the development of policies and guidelines for their use. The committee is chaired by Deputy President Hack and consists of a group of members and senior staff with experience in alternative dispute resolution. For more information on the work of this committee, see Chapter 4.

#### *Executive Committee*

The Executive Committee assists and advises the President on executive management issues. Its members are the President, Deputy President Hack, Member Webb, the Registrar, the Assistant Registrar and the Chief Financial Officer.

Figure 2.3 Administrative structure of the Tribunal at 30 June 2010



*Executive Deputy Presidents Committee*

The Executive Deputy Presidents Committee provides a forum for discussion of case management and other matters of common interest. Its members are the President and the Executive Deputy President for each District Registry.

*Library Committee*

The Library Committee considers the Tribunal's information needs and oversees the collection development policy. It is chaired by Deputy President Hotop and consists of members from different registries, the Assistant Registrar and the Principal Registry Librarian. For more information on the work of this committee, see Chapter 5.

*Practice and Procedure Committee*

The Practice and Procedure Committee deals with issues relating to the Tribunal's management of applications. Members of the committee are the President, the Executive Deputy Presidents, the Registrar, the Assistant Registrar, the District Registrar of each registry and a representative of the Conference

Registrars. For more information on the work of this committee, see Chapter 4.

*Professional Development Committee*

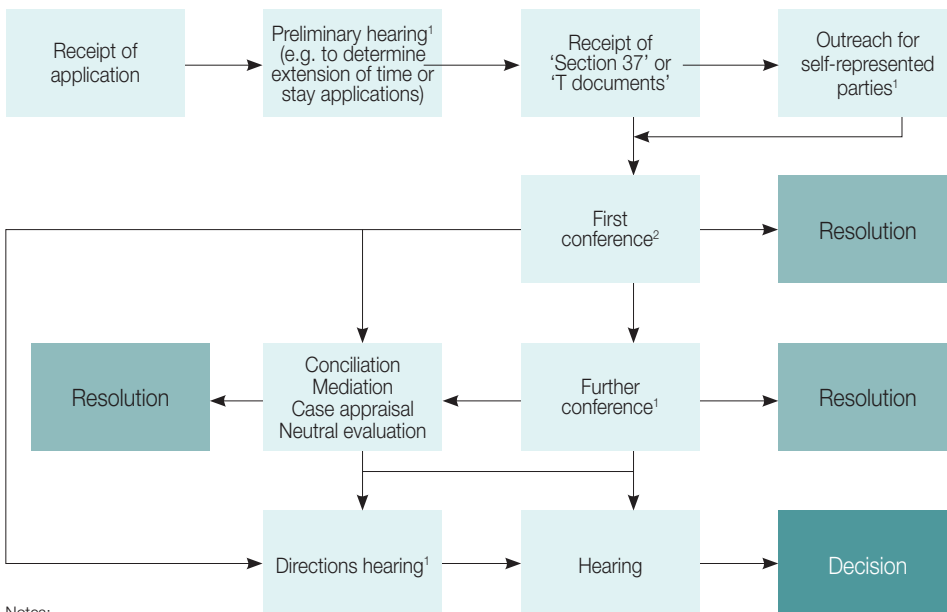
The Professional Development Committee considers matters relating to the professional development of Tribunal members. The committee is chaired by Deputy President Jarvis and its members are the Registrar, members who have an interest in professional development and the Tribunal's Learning and Development Officer. For more information on the work of this committee, see Chapter 5.

For information about the Tribunal's Audit Committee, see page 49.

**THE CASE MANAGEMENT PROCESS**

The Tribunal's case management process aims to deal with applications in a flexible and timely manner. It is designed to promote: orderly and controlled passage of matters from lodgement to resolution; equitable treatment of parties; achievement of case management targets; effective use and allocation of Tribunal resources; and public confidence in the Tribunal.

**Figure 2.4** Case management process



Notes:

1. Where necessary

2. Explore possibility of using other ADR process

## The process

When the Tribunal receives an application that is within its jurisdiction, it notifies the decision-maker of the application. The decision-maker then has 28 days to provide the Tribunal and the applicant with a statement of reasons for the decision and all documents relevant to the review, the 'Section 37 Documents' or the 'T Documents'.

A Conference Registrar or Tribunal member holds one or more conferences with the parties to discuss the issues in dispute, identify and consider additional material that may be obtained and explore whether the matter can be settled. The future conduct of the review will also be discussed, including whether another form of alternative dispute resolution — conciliation, mediation, case appraisal or neutral evaluation — may be appropriate. The Tribunal assists the parties to reach an agreed resolution.

If agreement cannot be reached, the Tribunal — constituted by one, two or three members — conducts a hearing and makes a decision.

Figure 2.4 illustrates the progress of an application through the Tribunal.

## Practice directions, guides and process models

The Tribunal's practice directions and jurisdictional guides outline the general procedures for managing applications, and are supplemented by practice directions on specific issues.

The General Practice Direction applies to all cases in which the applicant is represented, unless another specific legislative procedure, practice direction or jurisdictional guide applies. The Tribunal has a Small Taxation Claims Tribunal Practice Direction and two jurisdictional guides: the *Guide to the Social Security Jurisdiction* and the *Guide to the Workers' Compensation Jurisdiction*.

Practice directions on specific issues include the Practice Direction relating to section 37 of the Administrative Appeals Tribunal Act, the Freedom of Information Practice Direction, and the Listing and Adjournment Practice Direction.

The Tribunal is developing a new practice direction on the procedure for taxing costs.

The Tribunal has developed process models for each form of alternative dispute resolution that is available in the Tribunal, and a policy for guiding referral of applications to the different ADR processes.

The practice directions, guides and process models are all available on the Tribunal's website, [www.aat.gov.au](http://www.aat.gov.au).

## ACCESS TO THE TRIBUNAL

### Information on the Tribunal

The Tribunal offers information on its role and procedures in multiple formats. A series of brochures for self-represented applicants explain the Tribunal's role, when it can assist and the stages in a review. They are designed to be clear and easy to understand, and are available in a range of languages and in large print.

A DVD, *Getting Decisions Right*, illustrates the Tribunal's practices and procedures for applicants.

Comprehensive information about the Tribunal and its procedures is on the website, [www.aat.gov.au](http://www.aat.gov.au), and is regularly updated.

### Outreach program

The Tribunal's Outreach program aims to help self-represented parties understand the Tribunal's processes and gives them the opportunity to ask questions about practices and procedures. Tribunal staff provide the Outreach services, usually by telephone before the first conference. Staff also ascertain whether a person will require an interpreter or assistance because of a disability, and assess what further information may assist the person.

### Legal advice schemes and referrals

The Tribunal hosts legal advice schemes in co-operation with legal aid organisations in New South Wales, Queensland, South Australia, Victoria and Western Australia. A legal aid solicitor who can advise and give minor assistance to self-represented parties attends the registry on a weekly or



fortnightly basis. Further assistance, such as representation, may be provided if a person makes a successful application for legal aid.

The Tribunal advises self-represented parties of the service and makes appointments for them. The majority of these appointments are for self-represented parties in the social security jurisdiction.

The Tribunal also refers self-represented parties to community legal centres and other legal service providers that may be able to provide advice or representation.

### Interpreter services

If a party requires an interpreter, the Tribunal engages one and meets the cost. The Tribunal's policy is to arrange interpreters who are accredited by the National Accreditation Authority for Translators and Interpreters (NAATI) at the 'professional' level. A 'paraprofessional' interpreter may only be used for languages without an accredited professional-level interpreter.

The Tribunal has information for interpreters on its procedures and terminology. The information sheet is available from the Tribunal's registries and the Tribunal's website.

### Access by persons with disabilities

The Tribunal strives to make access easier for people with a disability by:

- making electronic and printed material available in appropriate formats
- providing portable hearing loop systems in Tribunal premises
- facilitating telephone contact for those with a hearing or speech impairment
- making all premises wheelchair accessible, and
- providing facilities for participation in conferences or hearings by telephone or video link.

### Service Charter and complaints

The Service Charter sets out the standards of service that people can expect when they deal with the Tribunal. The Charter also includes information on how to make a complaint about the Tribunal and its complaint-handling procedures.

The Charter is written in clear, simple language. It can be viewed on the Tribunal's website. Information about the Tribunal's compliance with its commitments under the Charter and about complaints is in Chapter 3.



The first in the series of brochures that explains the Tribunal's role to the self-represented applicant.

