

# CHAPTER

# 04

OUR USERS AND OUR RELATIONSHIPS

## OUR USERS

The principal users of the Tribunal are the parties to proceedings in the Tribunal – individuals, organisations, government departments and agencies – and their representatives. This section reports on actions undertaken during the reporting period to meet Goal One in the Tribunal's Strategic Plan 2011–2014: to provide a high quality independent merits review process that is fair, just, economical, informal and quick.

This includes:

- promoting and facilitating the use of appropriate ADR processes,
- providing accessible and effective registry services, and
- maintaining effective communication and engagement with our users and the public.

## TRIBUNAL PRACTICE AND PROCEDURE

The Tribunal monitors the operation of the review process and seeks to identify ways in which practice and procedure can be improved to promote the effective and timely disposition of applications lodged with the Tribunal. The Practice and Procedure Committee oversees the Tribunal's management of applications made under the Administrative Appeals Tribunal Act. The Committee met twice during the reporting year, in November 2011 and March 2012.

Significant developments in relation to practice and procedure during the reporting period are discussed below.

### GUIDELINES RELATING TO EXPERT EVIDENCE

The Tribunal completed work on two sets of guidelines relating to expert evidence in Tribunal proceedings during 2011–12.

The Guidelines for Persons Giving Expert and Opinion Evidence apply generally to evidence provided by experts for use in proceedings in the Tribunal. The guidelines are designed to inform experts, parties and their representatives of the Tribunal's expectations in relation to expert evidence. They cover the way in which the Tribunal approaches evidence of this kind, the nature of an expert's duty to the Tribunal, the expected content of expert reports and other matters such as the disclosure of conflicts of interest.

The second set of guidelines relate to the use of concurrent evidence – two or more experts giving evidence at the same time in a hearing. The Guidelines for the Use of Concurrent Evidence in the Administrative Appeals Tribunal outline factors that may be taken into account in deciding whether the procedure will be used, the process for making this decision and how the concurrent evidence procedure generally operates.

The guidelines took effect on 9 November 2011 and are available on the Tribunal's website.

### GUIDELINES FOR CONSTITUTING THE TRIBUNAL

The Tribunal has developed a set of guidelines which outline how the Tribunal determines which member or members will constitute the Tribunal for the review of a decision or for the purposes of other proceedings in the Tribunal. The guidelines cover the legislative provisions that govern the constitution of the Tribunal, the Tribunal's procedures for determining who will constitute the Tribunal for a particular proceeding and the matters to be taken into account when deciding who will constitute the Tribunal.

The guidelines provide readily accessible information on law, policy and procedure relating to how the Tribunal is constituted, promote consistency in the Tribunal's approach to constituting Tribunals and enhance the transparency of the Tribunal's operations. They took effect on 14 November 2011 and are available on the Tribunal's website.

#### GUIDELINES FOR OATHS AND AFFIRMATIONS

During the reporting year, the Tribunal published guidelines on the administration of oaths and affirmations for witnesses and interpreters appearing in Tribunal proceedings. The guidelines are intended to assist members and staff to ensure oaths and affirmations are administered in an appropriate and consistent manner across the Tribunal.

#### CHANGES TO THE TRIBUNAL'S ACT AND REGULATIONS

##### JURISDICTION TO REVIEW DECISIONS OF THE NORFOLK ISLAND GOVERNMENT

On 1 March 2012 the Administrative Appeals Tribunal Regulations were amended to confer on the Tribunal jurisdiction to review decisions made under a wide range of Norfolk Island enactments. The extension of the Tribunal's powers forms part of the Australian Government's decision to extend the coverage of a range of Australian administrative law mechanisms to Norfolk Island.

Liaison meetings were held with the Norfolk Island Administration on 28 October 2011, and the Tribunal coordinated an orientation program that was held on Norfolk Island from 27 February to 1 March 2012. The program involved representatives of the Tribunal, the Australian Information Commissioner, the Acting Commonwealth Ombudsman and an officer of the Attorney-General's Department.

The program included:

- training sessions for government decision makers on the administrative law framework, better decision making, complaints handling, the role and procedures of the Tribunal, the Office of the Australian Information Commissioner and the Office of the Commonwealth Ombudsman, and what is expected of decision makers when dealing with these agencies,
- information sessions for the community and for lawyers and other representatives, and
- a formal public launch of the Tribunal's jurisdiction on Norfolk Island.

A range of other actions were undertaken to facilitate the conferral of this new jurisdiction on the Tribunal, including the development of an information sheet for Norfolk Island residents about the Tribunal and making arrangements for the Supreme Court of Norfolk Island to act as the Tribunal's Norfolk Island Registry (with support from the Tribunal's Sydney Registry).

##### ACCESS TO JUSTICE (FEDERAL JURISDICTION) AMENDMENT BILL 2011

On 23 November 2011 the Access to Justice (Federal Jurisdiction) Amendment Bill 2011 was introduced into the Parliament. The Bill contains, amongst other things, proposed amendments to provisions of the Administrative Appeals Tribunal Act relating to fees (Schedule 5).

The Bill proposes the repeal of section 29A which specifies that an application is not taken to be made unless a prescribed fee has been paid. It will also introduce a new section 69C which gives the Tribunal a discretion to dismiss an application if a fee has not been paid

within the time specified in the Administrative Appeals Tribunal Regulations. The intention is that the Regulations will contain all machinery provisions relating to the payment of fees. These changes will enable the Tribunal to deal with the payment of fees more flexibly.

The Bill also proposes to broaden the regulation-making power in section 70 of the Act. This will enable Regulations to be made that provide for the imposition of fees on government agencies that unsuccessfully appeal or defend decisions in proceedings before the Tribunal. This relates to a recommendation made in the 2009 report by the Access to Justice Taskforce.

As at 30 June 2012, the Access to Justice (Federal Jurisdiction) Amendment Bill 2011 has passed through the House of Representatives and is before the Senate.

## ALTERNATIVE DISPUTE RESOLUTION

The Tribunal makes extensive use of alternative dispute resolution. It is a core element of the review process. ADR processes assist the parties reach agreement or narrow the issues in dispute and contribute to a review process that is economical, informal and quick as well as fair and just. The Alternative Dispute Resolution Committee oversees the Tribunal's use of ADR. The Committee met in November 2011 and March 2012.

Significant developments in relation to ADR during the reporting year are outlined here.

The Tribunal became a Recognised Mediator Accreditation Body in 2011–12 and finalised its guidelines and procedures relating to accreditation. The Tribunal is in the process of accrediting or re-accrediting its ADR practitioners. The Tribunal's policy is that mediations will be conducted only by members and Conference Registrars who are accredited mediators. Conferences and conciliations will also ordinarily be conducted by accredited mediators.

During the reporting year, the Tribunal commenced a review of its Alternative Dispute Resolution Referral Guidelines. Work was also undertaken on developing fact sheets for parties and their representatives in relation to the following aspects of ADR processes at the Tribunal:

- the requirement to act in good faith in ADR, and
- privacy and confidentiality.

The Tribunal's National Conference in March 2012 included a session on the conduct of case appraisal and neutral evaluation. The session provided an opportunity to discuss lessons learned to date in using these processes and issues to consider in making case appraisal and neutral evaluation as effective as possible.

The Tribunal also continued to raise awareness of its ADR processes with external stakeholders. Members and staff spoke at external conferences and seminars about the Tribunal's approach. The Tribunal was also an active member of the ADR Inter-Agency Group, a forum for Australian Government agencies which encourages sharing information and training resources for alternative dispute resolution.

## eSERVICES

The Tribunal adopted an eServices Strategy in May 2011 which provides a road map to the implementation of a suite of integrated technology systems and online services over time. The strategy is a key aspect of the Tribunal's commitment to providing accessible and effective registry services. The Strategy identified a number of policy and service delivery

projects that could be pursued during a foundation phase of developing the Tribunal's suite of eServices. The Tribunal has undertaken work on a number of these projects in 2011–12.

Pending the introduction of a comprehensive electronic document lodgement system, the Tribunal has developed a set of protocols and system changes that will enable the Tribunal to increase the use of email as a primary means of communicating with parties and their representatives. The protocols cover matters such as the addresses to which emails may be sent, the types of documents that can be emailed to the Tribunal and the file formats and sizes that will be accepted. These will be fully implemented in 2012–13.

The Tribunal also made significant progress on the development of an online facility that will allow parties, their representatives and the public to access basic information about Tribunal cases at any time. Policy work on the information that may be accessed has been finalised and the Tribunal is completing a review of its privacy policy and associated communications to ensure users and the public are made aware of how the Tribunal handles information. Testing of the technical aspects of the facility is in its final stages. The facility will be made available in 2012–13.

## COMMUNICATION AND ENGAGEMENT WITH TRIBUNAL USERS

The Tribunal communicates with its users in a variety of ways to assist their understanding of its role and procedures. The Tribunal also uses a range of methods to engage with, and seek feedback from, its users in relation to the services that it provides.

### AAT ALERTS

An email notification service called 'AAT Alerts' was launched in May 2012. The service enables registered users to receive updates and news from the Tribunal to their nominated email address. Alerts will cover matters such as increases in fees, requests for comment on proposed changes to practice and procedure, the introduction of changes of this kind and invitations to attend liaison meetings.

Users can subscribe to the service by visiting the Tribunal's website and completing an electronic form. As at 30 June 2012, there were 507 subscribers to this alert service.

### CONSULTATION WITH USERS

As part of its commitment to being an open and transparent organisation, the Tribunal met with regular users and other stakeholders during 2011–12.

Senior Tribunal staff met with senior managers from the Australian Skills Quality Authority and Department of Human Services to discuss a range of operational issues. There was also ad hoc liaison with a range of other agencies in relation to operational issues, including the Australian Taxation Office and the Office of the Inspector-General of Intelligence and Security. The Tribunal has liaised with the Attorney-General's Department and law enforcement agencies in relation to the laws and procedures relating to the issuing of telecommunications interception, stored communications and surveillance device warrants.

District Registries arranged local liaison meetings with persons and organisations who appear regularly before the Tribunal, including departments, agencies and other decision makers, private legal practitioners, community legal centres and legal aid bodies. Some registries held meetings with users from all jurisdictions while others arranged jurisdiction-specific meetings. The meetings are a forum in which the Tribunal can inform users of changes to practice and procedure and users can give feedback on the service the Tribunal is providing.

## 2012 USER SATISFACTION STUDY

The Tribunal commissions user satisfaction studies at regular intervals to obtain feedback from parties and representatives on the services it provides. The Tribunal engaged Urbis Pty Ltd to carry out a study on its behalf in 2012. Similar studies were conducted in 2005 and 2008.

Two groups of users were invited to complete surveys about their experiences at the Tribunal:

- individuals who applied for a review or who were otherwise a party to a review that was finalised in 2011, and
- people who represented parties at the Tribunal in 2011.

The survey for individuals was distributed by post and could be completed either in hard copy or online. The survey for representatives was conducted online. Invitations were sent by email to a sample of representatives, primarily officers of organisations whose decisions are subject to review and legal practitioners from the community, legal aid, government and private sectors.

The surveys asked users to provide feedback on a range of aspects of the Tribunal and its processes, including:

- general registry services,
- the conduct of ADR processes and hearings,
- overall fairness of the review process and independence of the Tribunal, and
- usefulness of information and assistance provided by the Tribunal.

In total, 522 responses were received from individuals and 148 responses from representatives.

Overall, the results indicate that users are satisfied with the services provided by the Tribunal.

All aspects of the service provided by the Tribunal's registries received positive satisfaction scores from individuals and representatives. The courtesy of the Tribunal's staff received the highest satisfaction score from both groups.

Individuals and representatives were generally satisfied with all aspects of the way ADR processes and hearings were conducted. The highest rated aspect was that the level of formality at conferences and hearings was appropriate.

In relation to fairness and the independence of the Tribunal, satisfaction levels among representatives were high. Results were somewhat lower for individuals, with responses correlating strongly to whether or not a person received a favourable outcome in the case. Of those individuals who expressed a view, 59 per cent felt the Tribunal had dealt with their review fairly.

Individuals rated the information and assistance provided by the Tribunal positively. The Tribunal's practice of contacting self-represented parties by telephone to talk about its procedures received the highest rating. Most individuals and representatives were able to find the information they were looking for on the Tribunal's website.

The results of the 2012 study were broadly similar to those in 2005 and 2008, with increases in satisfaction levels recorded for individuals in a number of areas.

The Tribunal is examining the findings from the study as well as the comments and suggestions made by participants. The feedback will assist the Tribunal to identify areas in which changes could be made to improve the services provided.

#### INDIGENOUS ACCESS TO THE TRIBUNAL

An Indigenous Access Working Group was established in 2011–12 to identify and plan the implementation of strategies to improve Indigenous access to the Tribunal.

The Working Group's first project was to compile for each state and territory a list of legal centres that offer services to Indigenous Australians. Work has also commenced on a pilot program in the Adelaide Registry that will promote communication and consultation with legal centres that deal with social security cases.

Areas for future consideration include:

- community legal education seminars,
- information kits for community legal centres, and
- nominating and training a contact person in each Tribunal registry who would be the primary point of contact for Indigenous applicants.

## OUR RELATIONSHIPS

This section reports on actions undertaken to meet Goal Four in the Tribunal's Strategic Plan 2011–2014: to engage effectively with Government, tribunals, the legal profession and other interested organisations in Australia and internationally. This includes:

- contributing to strategic discussions, reviews and forums dealing with administrative review and related issues in Australia,
- establishing and maintaining cooperative and collaborative engagements with courts and other tribunals, and with our international counterparts, and
- promoting greater understanding of the AAT and its role within the broader context of the AAT as an agency aimed at improving the accountability and transparency of government and the quality of government decision making.

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

The Tribunal maintained and developed its relationships with a range of departments and agencies, organisations and individuals during 2011–12.

#### LIAISON WITH THE ATTORNEY-GENERAL'S DEPARTMENT, 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, including the Tribunal's jurisdiction, workload and budget.

The Tribunal also liaises with other departments and agencies in the context of reviews that relate to work undertaken by the Tribunal or in relation to proposals that may impact on the Tribunal. In 2011–12, the Tribunal made a submission to the Inspector-General of Taxation's Review into the Australian Taxation Office's Use of Early and Alternative Dispute Resolution. The Tribunal also liaised with the Department of Education, Employment and Workplace Relations in relation to implementing the requirement for a nominated presidential member

of the Tribunal to issue any examination notice for the purpose of investigations under the *Fair Work (Building Industry) Act 2012*.

#### ADMINISTRATIVE REVIEW COUNCIL

The President of the Tribunal is an ex officio member of the Administrative Review Council. The Council's role is to monitor, and provide advice to government on, the operation of the Commonwealth system of administrative law. During his term as President, Justice Downes attended meetings and participated in the activities of the ARC.

For further information relating to the Council and its operations, please refer to the Council's annual report.

#### COUNCIL OF AUSTRALASIAN TRIBUNALS

The Tribunal is a member of the Council of Australasian Tribunals (COAT), an association for tribunals and those who work in, or have an interest in, tribunals in Australia and New Zealand. It consists of a National Council with local chapters, and was established to facilitate discussion and collaboration on matters relevant to tribunals.

The Tribunal continued its involvement in the Council during the year, participating in the Annual Tribunals Conference as well as other training and networking opportunities. Tribunal members and staff were active contributors to the work of the Council. Senior Member Anne Britton was the Secretary for the National COAT Executive as well as Convenor of the New South Wales Chapter. Senior Member Katherine Bean, Member Regina Pertou and District Registrar Susan Woodford were members of the local committees in South Australia and Victoria.

#### LIAISON WITH OTHER COMMONWEALTH TRIBUNALS

The major Commonwealth merits review tribunals — the Administrative Appeals Tribunal, Migration Review Tribunal/Refugee Review Tribunal, Social Security Appeals Tribunal and the Veterans' Review Board — maintained their cooperative relationship during 2011–12. There was ongoing liaison in relation to opportunities for achieving efficiencies through cooperative action, and communication between officers of the tribunals about matters such as learning and development activities, property, staff vacancies and workforce planning.

On 8 June 2012, the Government released the *Report of the Strategic Review of Small and Medium Agencies in the Attorney-General's Portfolio*.

The Government accepted the recommendations that the President of the AAT convene a forum involving the other major merits review tribunals and representatives of their portfolio departments to identify initiatives for efficiencies or improvements that might be achieved by cooperative or shared efforts. The Commonwealth Tribunals Collaborative Forum had its first meeting in July 2012.

The Government also accepted a recommendation that the President of the AAT should be responsible for promoting cooperation between, and the identification and adoption of best practice tribunal administration by, all Commonwealth merits review bodies. Work on these matters will commence in 2012–13.



## OTHER FORUMS

The Tribunal participates each year in a meeting of the Australian and New Zealand bodies that are responsible for resolving workers' compensation disputes. The meeting provides an opportunity to share information and discuss common issues. The most recent meeting was held in Sydney in June 2012.

## RESOURCE-SHARING ARRANGEMENTS

The Tribunal had in place arrangements with a number of organisations in relation to the provision of facilities and services in 2011–12, details of which are below.

### *FEDERAL COURT OF AUSTRALIA*

The Tribunal and the Federal Court operate a joint registry in Hobart. Court staff provide registry services and conduct ADR processes for the Tribunal.

### *INDEPENDENT PROTECTION ASSESSMENT OFFICE*

The Tribunal made meeting rooms and other facilities available in most of its registries for reviewers and staff from the Independent Protection Assessment Office to interview irregular maritime arrivals.

### *MIGRATION REVIEW TRIBUNAL/REFUGEE REVIEW TRIBUNAL*

The Tribunal provided accommodation and hearing room facilities for Migration Review Tribunal/Refugee Review Tribunal members in 2011–12, including hearing room assistance and videoconferencing facilities. Tribunal staff in Adelaide, Brisbane and Perth receive applications and handle enquiries on behalf of the Migration Review Tribunal/Refugee Review Tribunal.

### *NATIONAL NATIVE TITLE TRIBUNAL*

The Tribunal provided additional accommodation to the National Native Title Tribunal at its Adelaide premises.

### *SOCIAL SECURITY APPEALS TRIBUNAL*

The Tribunal entered into an agreement with the Social Security Appeals Tribunal in 2011–12 to provide hearing rooms and related facilities in its Canberra Registry.

### *SUPREME COURT OF NORFOLK ISLAND*

The Tribunal entered into an agreement with the Norfolk Island Administration for the Supreme Court of Norfolk Island to provide basic registry services in relation to applications made to the Tribunal.

### *VETERANS' REVIEW BOARD*

The Tribunal made facilities available in its registries in Adelaide, Canberra and Perth for the Veterans' Review Board to conduct hearings.

## INTERNATIONAL RELATIONSHIPS AND DELEGATIONS

*INTERNATIONAL ASSOCIATION OF SUPREME ADMINISTRATIVE JURISDICTIONS*

The Tribunal is a member of the International Association of Supreme Administrative Jurisdictions (IASAJ), an organisation for bodies that are empowered to adjudicate public law disputes. The association's purpose is to promote the exchange of ideas and experiences between jurisdictions. The IASAJ was founded in 1983, and the Tribunal has been a member since 2004.

Justice Downes is a past co-president of the IASAJ and was a member of the Board of the association.

*INTERNATIONAL DELEGATIONS*

The Tribunal regularly hosts visitors from international courts and tribunals and other organisations and individuals interested in the Tribunal and its operations. These visits also provide an opportunity for the Tribunal to learn about the public law systems of other countries and how similar organisations undertake their work.

The Tribunal welcomed the following visitors during 2011–12:

- Mr Neville Devete, Solicitor General of Papua New Guinea, with a delegation from the Office of the Solicitor General,
- a delegation from the National Anti-Corruption Commission of Thailand led by its President, Mr Panthep Klanarongran,
- Ms Robin Adams, Speaker of the Norfolk Island Legislative Assembly and Mr Allen Bataille, Registrar of the Supreme Court of Norfolk Island, and
- Mr PK Malhotra and Mr SSN Moorthy, Members of the Indian Securities Appellate Tribunal.

The Tribunal also received Mr Oh Jun Gen, Chairman of the Korean Central Administrative Appeals Commission, in September 2011. This led to an invitation for Justice Downes to visit the Central Administrative Appeals Commission in Korea in April 2012.

**BETTER UNDERSTANDING OF THE TRIBUNAL AND ITS ROLE**

The Tribunal undertook a range of activities aimed at promoting a better understanding of the Tribunal and its role in administrative law.

**TRIBUNAL PARTICIPATION IN EXTERNAL CONFERENCES, SEMINARS AND OTHER ACTIVITIES**

Members and staff gave presentations about the Tribunal and its operations at a number of external conferences, seminars and forums during the reporting period: see Appendix 8 for more information on these activities.

As part of National Law Week in 2012, the Tribunal participated in the Community Legal Expo held in Martin Place, Sydney on 14 May 2012. Staff members provided information about the Tribunal to more than one hundred interested members of the public.

## MOOTING COMPETITION

The Tribunal held its seventh National Mooting Competition for Australian university students between June and October 2011. The moots are abridged versions of Tribunal hearings adjudicated by members of the Tribunal. The competition allows students to demonstrate their research and advocacy skills and provides a unique opportunity for students to expand their knowledge and understanding of merits review processes. Twenty one teams from ten Australian universities participated in the 2011 competition.

The final involved teams from the University of Queensland and the University of Sydney mooting before Justice Downes, Senior Member Britton and Senior Member Fice. The winning team was the University of Queensland comprising Abraham O'Neill, Mitchell Beebe and Hannah McConnachie. The members of the runner-up team were Nicholas Olson and Reuben Ray. The Registrar's Best Oralist Prize, donated by the Law Council of Australia, was presented to Reuben Ray of the University of Sydney.

## SPONSORING WORK EXPERIENCE PLACEMENTS

The Tribunal seeks to provide a range of opportunities for work experience candidates, creating meaningful opportunities for the students to develop an understanding of the Tribunal's role and processes.

The Adelaide Registry provided placements for two students as part of the University of Adelaide Public Law Internship Program. The students attended the Tribunal for a two week period initially then for the equivalent of one day per week over 12 weeks. The Adelaide Registry also offered placements to a university student from the Flinders University Law School and a high school student from Nazareth Catholic College.

Two students from Bond University spent a week on placement at the Brisbane Registry in April 2012, attending a number of hearings and observing the workings of the Tribunal.

The Tribunal provided opportunities for students in the Melbourne Registry through an agreement with the Leo Cussen Centre for Law. In addition, Deputy President Constance spoke to a group of students from the Centre who visited the Tribunal during the last financial year.

The Tribunal worked with Wollongong University, placing one student in the Sydney Registry in the reporting period. As a partner organisation in the University of New South Wales Law Faculty Public Interest Internship Program, Sydney Registry also offered work experience to six students to enable them to gain practical legal experience with a designated supervisor/mentor. After selection, these interns attended the Tribunal for the equivalent of one day a week over 13 weeks.

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