



## **THE COUNCIL OF AUSTRALASIAN TRIBUNALS: THE NATIONAL PERSPECTIVE**

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Chair of the Council of Australasian Tribunals**

**Address to the Annual Conference of the  
New South Wales Chapter of the Council of Australasian Tribunals**

**26 May 2006**

### **Introduction**

I am very pleased to be speaking to you at this Third Annual Conference of the New South Wales Chapter of the Council of Australasian Tribunals. In early April, I was re-elected Chair of the National Council for a further year. As I have done at previous conferences, I would like to take this opportunity to give you an overview of what has been happening at the national level and in other chapters. There have been a number of developments which I believe confirm that the Council has established itself as a relevant and vibrant organisation. The strong attendance here today is further evidence that the Council is meeting its objects and, in particular, providing a forum for tribunal members, tribunal staff and those with an interest in tribunals to exchange ideas and information and learn from each other.

## **Membership of COAT**

I would like to begin today by giving you an update on the membership of the national organisation. As you will be aware, membership at the national level is reserved for organisations which meet the definition of a tribunal set out in the Council's Constitution - namely, any Commonwealth, State, Territory or New Zealand body whose primary function involves the determination of disputes, including administrative review, party/party disputes and disciplinary applications but which, in carrying out this function, is not acting as a court.

The Council currently has 69 members. Membership applications from a further two tribunals will be considered at the next meeting of the Executive. In terms of the jurisdictional distribution of the Council's members, New South Wales has the highest number of member tribunals with 14. There are 12 Commonwealth tribunals, 11 from South Australia, 8 from Victoria and 7 from Queensland. Four tribunals from each of New Zealand, Tasmania and Western Australia have become members of the Council. The Australian Capital Territory, the Northern Territory and Norfolk Island are also represented, with 3 from the ACT and 1 each from the Northern Territory and Norfolk Island. As you can see, representation from each of the jurisdictions in Australia and New Zealand make the Council a truly Australasian organisation.

If you have not done so already, I would encourage you to visit the Council's website and peruse the register of member tribunals. The register also shows the range of tribunals that have become members of the Council. There are large and small tribunals and tribunals undertaking a wide range of functions. Our diverse membership currently comprises tribunals such as the Chiropody Board of South Australia, the Independent Gambling Authority, the NSW Architects Registration Board and the Social Security Appeal Authority of New Zealand.

I am pleased that such a wide range of organisations have decided to join the Council. The Executive is also composed of members from a variety of tribunals. We all stand to benefit from this diversity. The perspectives and ideas that different tribunals bring to the Council will ensure that it is broad in its outlook.

### **Incorporation of the Council**

As many of you will know, the Council was established in 2002. The model for the Council was developed by the Administrative Review Council working with a steering group comprising the heads of a number of Commonwealth and State tribunals. The Council was established as an unincorporated association. Justice Kellam, then Chair of the Steering Group, noted at the inaugural meeting that remaining unincorporated provided greater flexibility in the initial phase of the Council's development. Once the Council had been in existence for some time, its membership could determine the appropriate model for its operations.

This desire for flexibility during the early stages of the Council's development also had an impact on the funding and administrative arrangements for the Council. The Council was to be self-funding with each tribunal bearing its own costs. Secretariat support would be provided by the home tribunal of the Chair of the Council.

In the four years since it was established, the Council has grown and matured considerably. Its membership has certainly expanded over that time. Perhaps more significantly, however, the Council has identified a range of projects that could be undertaken which would contribute to the achievement of its objects. These include:

- to provide training and support for members of tribunals, particularly of smaller tribunals which may not have the resources to undertake such activities alone;

- to develop best practice or model procedural rules based on collective experience of what works;
- to make and disseminate reports, commentaries and submissions on aspects of tribunal functions and tribunal practices and procedures;
- to co-operate with institutions of academic learning, and with other persons in promoting the Council's objects.

At the Council's Annual General Meeting in June 2005, the Constitution was amended to provide for the levying of membership fees. While the Council will identify and pursue funding from external sources where possible, it was considered important that there should be sufficient funds to administer the organisation and also to undertake projects that will benefit the members of the Council. I will refer to some of these projects shortly.

Over time, it has also become apparent that there are a number of disadvantages associated with the Council being an unincorporated association. First, the introduction of membership fees means that the Council is managing a larger amount of money and will be contracting with a wider range of organisations and people to undertake work in relation to the Council's projects.

Secondly, in relation to contracting for the provision of goods or services, some organisations will not enter into contracts with unincorporated bodies. This was an issue, for example, in relation to the production of the COAT Practice Manual and could impact on the Council's ability to engage the best person for a particular job. Issues would also arise if the Council sought to obtain public liability insurance in order to organise public events. I understand that this was one of the reasons that led to the incorporation of the New South Wales chapter of the Council in 2004.

At the Council's last Annual General Meeting held in Canberra in April, it was agreed that the Council should become an incorporated association. Given that there is no Commonwealth legislation providing for the incorporation of

associations, incorporation must occur under one of the State or Territory legislative schemes. For convenience, given that the current Chair is located in New South Wales, the Council will apply to become an incorporated association under the *New South Wales Associations Incorporation Act 1984*. This will not cause any difficulties in relation to the operation of the Council as a trans-national organisation.

The proposed constitution for the Council generally follows the model rules under the New South Wales Act with some modifications. The Council's objects will remain unchanged and the overall structure of a National Council and State, Territory and New Zealand chapters will also stay the same. Membership of the National Council will continue to be limited to tribunals.

There are changes under the Constitution relating to the way in which the Executive is constituted. To date, the Executive has comprised:

- the Chair and Deputy Chair who are elected at the Annual General Meeting;
- the Convenors of each of the State, Territory and New Zealand chapters; and
- any person co-opted to assist the Executive.

Under the revised constitution, a number of additional positions have been created. First, a Secretary and a Treasurer must be elected at each Annual General Meeting. Further, one of the members of the Executive must be appointed as the Public Officer for the Council.

To date, the functions of the Secretary and the Treasurer have been undertaken by the Chief Executive Officer or Registrar of the Chair's Tribunal. The new constitution provides for the appointment of an Executive Officer to assist the Executive Committee in carrying out its duties. The Executive Officer must continue to be the Chief Executive Officer or Registrar of a member tribunal and will be appointed by the Chair in consultation with the Executive.

The Executive has been authorised to apply to incorporate the Council and undertake other necessary actions to establish the Council of Australasian Tribunals Inc. The existing Executive of the Council has been appointed as the interim Executive Committee of the incorporated body until the next Annual General Meeting. Members of the existing Executive will be appointed to the newly created positions until that time.

I believe the incorporation of the Council marks a further important stage in its development. The Council will now be in a stronger position to undertake a range of activities and projects.

### **COAT Practice Manual**

I would now like to provide you with an update on the first major project undertaken by the Council, the Practice Manual for Tribunals.

The Council took the view that a manual dealing with a range of practice issues commonly arising in tribunals would be a valuable resource, particularly for smaller tribunals. Some of you may have been involved in the consultations undertaken by Livingston Armytage in 2004 which explored the needs of tribunal members for a resource of this kind. Funding for the production of the manual was secured from the Australian Institute of Judicial Administration and the Standing Committee of Attorneys-General and a team from Monash University was engaged to write and edit the content.

As many of you will be aware, the practice manual was launched by the New South Wales Attorney General, Bob Debus, at the AIJA Tribunals Conference in April this year. Its publication is an achievement of which the Council and its authors can be particularly proud. It is a resource which will be of great assistance to tribunal members in the broad range of tribunals that may be members of the Council. It provides a wealth of information and practical guidance on a range of topics including statutory interpretation, procedural fairness, conducting hearings and making decisions.

A copy of the manual has recently been sent to the head of each tribunal that is a member of the Council. Each tribunal will consider how the manual may best be employed as a resource for its members. In particular, each tribunal will consider how it may be integrated with existing resources or supplemented to include material specific to that tribunal. The Administrative Appeals Tribunal is in the process of doing this.

The component parts of the manual are now available electronically to tribunals that are members of the Council, through the COAT website. The head of each member tribunal has been given the user name and password required to access the documents comprising the manual. At this stage, they have been made available primarily to enable tribunals to print the manual. They are not designed to be used as an online resource. It is clear, however, that a version of the manual that can be used effectively online is desirable. The Executive will be looking at options in relation to this in the near future.

Since the Practice Manual was launched, the Council has received a number of requests for copies of the Practice Manual from individuals and organisations who are not members of the Council or chapters. The Executive will also be considering issues relating to the wider availability of the manual.

I trust that, in the coming months, many of you will receive copies of the manual or have access to the manual. The Council would welcome your feedback in relation to its form and content and, in particular, any suggestions you may have for additional matters that should be covered. The Council anticipates that the manual will be reviewed at least once each year and updated as necessary to ensure that it remains a current and useful resource for tribunal members.

## **Future Projects**

Now that the Practice Manual has been launched, the Council will be focussing on a number of other projects.

### *Induction course for new members*

Last year, I mentioned that the Council was looking at the development of an induction course for new tribunal members which would build on the work undertaken in relation to the Practice Manual. The course could cover a range of issues that are common to tribunal members irrespective of the particular jurisdiction in which they operate. Relevant issues may include:

- conducting hearings;
- effective communication;
- dealing with self-represented parties;
- fact finding;
- decision-writing; and
- ethical issues.

In relation to the mode of delivery of the induction program, I noted that it could be conducted as a residential program over a short period or by correspondence. The correspondence format would clearly be more attractive to tribunals that do not have the resources to conduct their own induction course or pay for their members to attend a residential program.

The Executive has been giving further consideration to these issues and is looking at the potential for development of an internet-based induction program. There would appear to be several advantages in pursuing this option.

- Members would be able to commence the program upon their appointment and would not have to wait until the next residential program takes place.



- An online program would be more cost effective, particularly for smaller tribunals.
- It may improve access to training opportunities for tribunal members who are located remotely.

The Executive is currently exploring the possibilities for developing a partnership with an organisation with expertise in relation to the production of programs of this kind.

#### *Appointment processes*

The Executive has also been discussing a project relating to the processes for appointing and reappointing tribunal members. This is an issue which is of obvious significance to tribunals and tribunal members and one in relation to which there appear to be a variety of practices. While decisions relating to the appointment of tribunal members are clearly the responsibility of government, there would appear to be value in the Council developing a model for the appointment process which may result in greater consistency in this area across jurisdictions.

The first stage of the project will involve the collection of information from the Council's member tribunals on current practice in this area. A survey will be conducted similar to the Remuneration Survey that was undertaken last year. Materials relating to Australian and overseas experience in this area will also be collected and analysed. Once this has been completed, the Council will begin the process of developing the model.

#### *Member and staff development*

There are two further projects relating to professional development that I would like to mention, both of which are in their early stages. Trish McConnell, Principal Tenancy Adjudicator of the New Zealand Tenancy Tribunal, is looking at developing a program on leadership for tribunals heads.

This would cover issues relating to the particular roles and responsibilities of tribunal heads and skills development in relation to these. Some initial investigation is also being undertaken in relation to the development of programs tailored to tribunal staff.

I look forward to progressing these projects over the coming year.

### **COAT Chapters**

Other chapters of the Council have also been active in the last year conducting lectures and seminars about areas of tribunal practice and procedure. I was fortunate to be able to attend and speak at the New Zealand chapter's annual conference in October last year. This was an excellent opportunity to meet and learn from our New Zealand colleagues.

Also in October last year, the Victorian chapter conducted a seminar entitled "Challenging Behaviours, Successful Strategies". Papers were given by three speakers from different backgrounds in relation to the practical issues facing members and participants in handling the occasional challenging behaviours of particular participants.

On 11 May 2006, the South Australian chapter held a seminar on concurrent evidence which is an area of growing interest for many tribunals.

Information relating to these events and papers given at these and earlier events are available on the Council's website. I urge you to visit the website to keep abreast of developments and initiatives in other chapters.

I hope this short presentation has given you greater insight into the range of activities that are occurring under the auspices of COAT. It has developed into a truly dynamic organisation which I believe is offering tangible benefits to its members. I would like to congratulate the NSW Chapter for putting together another stimulating program today. I am looking forward to the

presentations and the opportunity this conference provides to learn and exchange ideas.