



THE COUNCIL OF AUSTRALASIAN TRIBUNALS: THE NATIONAL PERSPECTIVE

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President of the Administrative Appeals Tribunal**

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

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Welcome to this, the second annual Conference of the New South Wales Chapter of the Council of Australasian Tribunals. Today, I have been asked to provide a national perspective on the operations and activities of COAT. Rather than simply focus on the activities of the National Council of COAT I will begin by outlining some of the developments in state chapters. It is the development of chapters in each state and territory that truly shows the success story that COAT has already become.

Update on COAT Chapters

Establishing a strong network of State, Territory and New Zealand chapters was always an important step towards making COAT an active and relevant organisation. Since speaking at the inaugural New South Wales Conference last year COAT has gone from strength to strength and is evolving into an organisation with a substantial national membership base. During the last 15 months I have had the opportunity of seeing the creation of two additional state chapters and seen all the other chapters in operation.

In August 2004 I was invited to address a meeting convened to establish a South Australian Chapter of COAT. That meeting was attended by several dozen people representing numerous Commonwealth and State Tribunals. The meeting resolved to establish a South Australian chapter of COAT. The South Australian Chapter has since met on two occasions. At each of these meetings keynote speakers addressed the Chapter on important issues common to all tribunals. This included an address from Dr Michael Wood on dealing with difficult or aggressive litigants or witnesses – an address we could all benefit from in our day to day work in our respective tribunals.

The most recent addition to the chapters of COAT is Western Australia. Justice Michael Barker, the President of the State Administrative Tribunal, is the Convenor. The creation of a Western Australian Chapter is a most welcome addition to COAT

Aside from the creation of new chapters I have also had the opportunity of seeing established chapters in operation. In May of this year I addressed a meeting of the COAT Victorian Chapter. Justice Stuart Morris, President of the Victorian Civil and Administrative Tribunal also addressed the meeting. We spoke on recent developments in our respective Tribunals.

In October I will travel to New Zealand to address the New Zealand Chapter of COAT. This will present an opportunity to foster relations with our New Zealand colleagues.

If you take the time to peruse the list of members of local chapters you will notice there are representatives from a broad range of tribunals and other backgrounds, including:

- Commonwealth, State and territory tribunals;
- Small and large tribunals;

- Tribunals undertaking diverse functions including the resolution of disputes between private citizens, those conducting administrative review and disciplinary tribunals; and
- Individuals who have an interest in or practice in tribunals

The breadth of membership of local chapters is an important feature of COAT. It encourages the sharing of information and experience and cross-fertilisation of ideas. The development of local chapters is very encouraging as it is indicative of the diverse and relevant organisation that we are part of. The dissemination of ideas and values between people involved with Australian tribunals can only serve to benefit the functioning of all of our member tribunals.

COAT Funding

The issue of the funding of the National Council of COAT was considered at the Annual General Meeting of COAT on 10 June 2005 in Sydney. The COAT Constitution was amended to allow for a membership fee. It was considered that the amendment was vital in ensuring that COAT could be proactive in entering into new activities and initiatives.

The appropriate membership fee has been paid by numerous members. Approximately \$10,000 has been collected so far. We are expecting to collect more. Having access to a source of funding for COAT will allow the Council to enhance the services that it can offer to its members and to undertake new projects.

At the same Annual General Meeting a number of amendments to the COAT constitution were adopted to clarify the role of COAT. These established that COAT is a not for profit organisation. The changes will allow COAT to seek tax exempt status from the Australian Taxation Office. Since the meeting the Secretary of COAT has been liaising with the ATO. I am pleased to inform the

conference that COAT is now recognised as a not for profit organisation and is pursuing tax exempt status.

Establishing a funding stream and clarifying the taxation status of COAT are important achievements. They will ensure that the objects of COAT can be met more effectively, without the need to rely entirely on funding from government or other bodies.

The COAT Website

I hope that many of you have visited the COAT website or will do so in the near future. The website is developing rapidly. It provides a broad overview of COAT, our structure and objectives. The website is one of the best ways that COAT can inform our community of tribunals and interested parties about the activities that COAT and its state and territory chapters are undertaking.

Rather than simply communicating our objectives to the wider community the site is taking on a more interactive role. Each state or territory chapter has a section of the site where individual members can keep abreast of COAT news, activities and upcoming events at a local level. Papers presented at local events can be made available nationally for download.

The site now has a dedicated section that advertises vacancies in member Tribunals. I invite all COAT members to utilise this service.

I am informed by the Secretary of COAT, Doug Humphreys, that the site is receiving a particularly high amount of traffic and that the website is receiving regular, if not daily, queries relating to COAT. The generation of such interest from the site is very encouraging. Even more can be done to make the website valuable to our membership.

I encourage member tribunals to contact Doug Humphreys if they are conducting training or Continuing Legal Education within their tribunal that may be of interest to members of other tribunals. Advertising such training

opportunities on the COAT website is another way that COAT members can share information with each other. This also ensures that members of different tribunals are given the widest opportunities to broaden and develop their skills.

On that note, I suggest that members consider other local tribunal members as potential audiences when designing or creating professional development courses or seminars. Considering the diversity of the membership of COAT there may often be COAT members who have an interest in a course that is being conducted by your organisation. Opening up training and development exercises to other members of COAT is a valuable way of fostering the exchange of ideas and values. Moreover, it will provide new training opportunities for those tribunal members who come from smaller tribunals that do not have the resources or experience to develop or conduct professional development training.

My final comment in relation to the website is that I hope you visit it often. A short visit to the site will allow you to keep abreast of developments at both the New South Wales and national level. The New South Wales Chapter's page contains a wealth of information regarding the activities of your Chapter. The efforts of the New South Wales Committee should be recognised in this respect. The site appropriately reflects the high level of activity that your chapter has undertaken and continues to engage in.

The Remuneration Survey

Recently, COAT has conducted a voluntary survey of the remuneration levels in member tribunals. The survey was, of course, voluntary. Participants are aware that the results will be published. However, most of the information is already publicly available and the effect of the survey is really to do no more than collect this publicly available information in one place. The survey will provide a comprehensive summary of the levels of remuneration offered by various member tribunals of COAT. It is anticipated that the results of the survey will be available on the COAT website by the end of this month.

By accessing the survey results, members will be able to quickly compare and contrast the levels of remuneration that members receive at different tribunals. This will be a useful resource for all tribunals. A comprehensive survey informs members of the remuneration conditions provided in various jurisdictions. This is important information considering the diverse nature of our member tribunals. Having a single source of information concerning tribunal remuneration levels ensures that tribunals can accurately research issues of remuneration.

The COAT Practice Manual

Last time I spoke to this Conference I had just received a report concerning the production of a COAT bench book from Livingston Armytage, Director of the Centre for Judicial Studies. The report, its recommendations and the further progress of this project were discussed at the COAT National Council and the Annual General Meeting in Brisbane in June of last year. The proposal had particular support from representatives of smaller Tribunals who may not have the resources to fund such a project solely for the needs of their own tribunals.

The National Council decided to proceed with the project subject to securing sufficient funding. Requests for funding were made to a number of organisations including the Australian Institute of Judicial Administration and the Standing Committee of Attorneys General. I am pleased to report that the issue of funding the bench book has been successfully resolved. The AIJA and the Standing Committee of Attorneys General have generously provided funding of \$70,000 for the project.

The final report of the consultant contained a range of recommendations relating to the development of the practice manual which would aim to establish, promote and support a universal benchmark standard of competence and best practice for all tribunal members on common issues.

Livingston Armytage recommended that the COAT Practice Manual be comprised of three parts:

- The first part is to include information on generic principles of tribunal practice.
- The second part is to provide information on the principles relating to the operations and jurisdiction of each particular member tribunal. This section is to be developed by each tribunal.
- The final part of the manual will allow for the notes of the individual tribunal member or officer.

A copy of Mr Armytage's report is available on the COAT website.

The Council's Practice Manual Subcommittee sought expressions of interest for the development of the first part of the Practice Manual. The Council received a number of expressions of interest from a range of people with expertise relevant to the writing, editing and production of the manual.

Monash University was identified as the preferred candidate. It is anticipated that Monash will be able to prepare a high-quality manuscript within the Council's timeframe, at a reasonable cost.

The Practice Manual is the first major project to be undertaken by the Council. There are high hopes for its success. Judging by the enthusiasm with which members have expressed their support for the project I have no doubt about the utility of the manual once it has been completed. I envisage that the manual will be an extremely useful tool to both new and existing tribunal members across Australia and New Zealand.

The development of the manual will significantly contribute to one of the main objects of the Council. It will assist in the training and support for members of

tribunals. This is particularly so for the smaller tribunals. However, I have no doubt that it will also be very useful to larger tribunals. My own tribunal, the Administrative Appeals Tribunal, for example, does not have a practice manual.

Proposed Projects

Now that the first of the Council's major projects is moving towards completion it is opportune to consider what new projects might be adopted at the national level. The creation of the Practice Manual was an obvious first choice for a project in many respects. It can be a flagship.

The Practice Manual may act as a suitable building block or stepping off point for future COAT projects. The quality of the work of tribunals is inevitably closely related to the level of professional development that is undertaken by tribunal members. It would be remiss not to further build on our initial project. One of the best ways to get the most from the Practice Manual may be to create a general induction or orientation course for new members or officers of tribunals.

There is much to be learnt from the development of courses within Australia in recent years relating to judicial induction and further education. There has been a national annual course for newly appointed judges for many years. The National Judicial College of Australia was set up with a primary goal of developing the skills of judicial officers. Keeping abreast of issues relating to judicial practice is important for judges.

The Phoenix Magistrates Program and Phoenix Judges Program are conducted by the NJCA. These programs are two examples of courses that orientate and develop new or experienced members of the judiciary. They are residential programs that are devised and conducted by members of the judiciary for other members of the judiciary.

A peer orientation and professional development course could be highly relevant to an organisation like COAT. The issues that face new members of the judiciary regarding the intricacies of judicial practice are often more pronounced for new members of tribunals.

Tribunal practice and procedures can vary widely between jurisdictions and tribunals. These practices may be quite unfamiliar to newly appointed members of a tribunal who, unlike most judicial appointments, may never have appeared before the tribunal. Many of you will come from tribunals where the membership is drawn from a wide variety of backgrounds and experiences. Members of the AAT come from professions as diverse as the armed forces, medicine and accounting. It follows that many new appointees have had little or no experience in a court room or tribunal hearing prior to their appointment. Yet, from the outset members are often required to guide parties through their tribunal's practices and procedures. I am sure that this experience is reflected throughout COAT's diverse membership.

That being said, many tribunals, including the AAT, conduct their own induction programs. These programs cover unique issues and practises relating to individual tribunals. However, there is an argument for developing a general induction course for new members to a tribunal. Not all tribunals have the resources or expertise to run such induction courses. The course could cover issues that are common to members of tribunals irrespective of the jurisdiction they cover.

If the course were loosely modelled on those of the NJCA, COAT could develop something that dealt with the following themes, common to most of our membership:

- The process of fact finding by tribunal members;
- Effectively communicating and dealing with unrepresented litigants;
- Decision-writing;

- Obtaining evidence from witnesses, including expert evidence and the assessment of credibility;
- Conducting hearings;
- Ethical issues; and
- Social and cultural awareness.

The program could be conducted over a short, intensive period in a residential setting. This model would also allow new and existing tribunal members to meet and share their ideas and experiences.

Considering the truly national focus of our membership it may be beneficial to also run the course through a correspondence format. That will allow a wide variety of COAT members to benefit.

Of course such a project may be too broad for COAT to develop on its own. In that respect it may be beneficial for COAT to develop strategic partnerships with a university or organisation that has the resources to develop such a program.

There are many factors for exploration associated with such a proposal. The idea to create a general induction or orientation course for tribunal members is appealing. However it is only one of many ideas that COAT is working on. Many of you may have ideas for activities for COAT. Forums such as today's conference are an excellent opportunity to explore and develop ideas at a state and national level. The National Council is eager to receive suggestions from members and chapters on the direction that COAT should take and the activities its efforts should be invested in.