




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 mechanism of review 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 1975* and the *Administrative Appeals Tribunal Regulations 1976* set out the Tribunal's powers, functions and procedures.

## FUNCTIONS AND POWERS

### Review of decisions

The Tribunal is an independent body that reviews a wide range of administrative decisions made by Australian Government ministers, departments, agencies, authorities and other tribunals. The Tribunal can also review administrative decisions made by State government and non-government bodies in limited circumstances.

Merits review of an administrative decision involves its reconsideration. On the facts before it, the Tribunal decides whether the correct – or, in a discretionary area, the preferable – decision has been made in accordance with the applicable law. 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. In some cases, the Tribunal cannot review a decision until an internal review has been conducted by the person or body that made the primary decision. In other cases, review by the Tribunal is only available after intermediate review by a specialist tribunal. For example, in relation to family assistance and social security decisions, an application may be made to the Tribunal only after review by the Social Security Appeals Tribunal.

Section 33 of the *Administrative Appeals Tribunal Act 1975* 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 provides specifically that the decision is subject to review by the Tribunal. Jurisdiction is generally conferred by the enactment under which the reviewable decision was made.

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

Changes to the Tribunal's jurisdiction during the reporting year are set out in Appendix 5.

## ORGANISATION

The Tribunal consists of the President, other presidential members (who may be judges or Deputy Presidents), Senior Members and Members. The members exercise powers in Divisions which include the General Administrative Division, Security Appeals Division, Taxation Appeals Division and Veterans' Appeals Division.

Staff members are employed under the *Public Service Act 1999* to assist the Tribunal to carry out its functions.

The President, with the assistance of the Registrar, is responsible for the management of the Tribunal and its resources. The President has established a number of committees comprising Tribunal members and senior staff to provide advice and assistance in specific areas. Principal Registry managers and District Registrars also provide policy advice and operational assistance.

The Tribunal's Principal Registry is located in Brisbane and Sydney. The Tribunal has registry facilities in all capital cities. The Northern Territory is currently managed from Brisbane.

The President and Registrar are located in Sydney.

## MEMBERSHIP

### President

The Hon Justice Garry Downes AM was appointed as a judge of the Federal Court of Australia on 2 April 2002. On that day, Justice Downes was also appointed Acting President of the Tribunal. On 16 May 2005, he was appointed as President of the Tribunal for a period of seven years.

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

### Membership of the Tribunal

The qualification requirements for the different categories of members are set out in the *Administrative Appeals Tribunal Act 1975*.

### Presidential members

Judges of the Federal Court and the Family Court of Australia 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 skill relevant to the duties of a Senior Member.

### Members

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

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.

As at 30 June 2008, the Tribunal's membership totalled 87. The number of full-time and part-time members in each category is set out in Table 2.1.

Appendix 1 contains a list of the Tribunal's members by State and Territory and shows the Divisions to which each non-presidential member was assigned as at 30 June 2008.

**Table 2.1** Tribunal membership as at 30 June 2008

Category of member	Judges	Full-time	Part-time	Total (Women)
President	1			1 (0)
Presidential members:				
Federal Court judges	11			11 (1)
Family Court judges	5			5 (2)
Deputy Presidents		6	5	11 (1)
Senior Members		9	12	21 (8)
Members		3	35	38 (7)
<b>Total</b>	<b>17</b>	<b>18</b>	<b>52</b>	<b>87 (19)</b>

Appendix 1 also contains a profile of each of the Tribunal's members other than judges of the Federal Court and Family Court.

## REGISTRAR AND ASSISTANT REGISTRAR

The Tribunal's Registrar is Doug Humphreys. He was appointed as Registrar on 25 August 2003. In June 2008, Mr Humphreys was reappointed for a further term of five years which is to commence on 25 August 2008.

The Registrar assists the President to manage the Tribunal and advises on its operations and performance. The Registrar may act on behalf of the President in relation to the administrative affairs 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 1999* and is 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 and senior officers in the Principal Registry and District Registries.



The Tribunal's Assistant Registrar until August 2007 was Sian Leatham. Megan Cassidy (left) was appointed as Assistant Registrar in September 2007. The Assistant

Registrar holds office as a senior executive in the Australian Public Service.

## STAFF

Tribunal staff members are employed under the *Public Service Act 1999* as ongoing, non-ongoing or intermittent employees. As at 30 June 2008, a total of 161 staff members were employed by the Tribunal.

Appendix 2 lists:

- numbers of ongoing, non-ongoing and intermittent staff of each classification in each Registry; and
- numbers of ongoing employees who fall into each equal employment opportunity category, where staff members have provided this information.

## REGISTRIES

### Principal Registry

Principal Registry staff members provide advice and assistance to the President and the Registrar as well as a range of services for Tribunal 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 members are located in Brisbane, Sydney and Melbourne. Frequent and regular communication between staff members is maintained via email, telephone and video conferences and periodic face-to-face meetings.

### District Registries

District Registries are located in each capital city. The registry service in Tasmania is provided by the Federal Court. The Queensland Registry manages Northern Territory applications and is responsible for ensuring an effective level of service to Northern Territory residents.

In each Registry, a Deputy President or Senior Member has been appointed as the State or Territory Coordinator. The Coordinator and the District Registrar are responsible for local registry management.

Conference Registrars conduct the bulk of the pre-hearing conferences in all District Registries with the exception of Tasmania, where the District Registrar performs that role. Conference Registrars also conduct other alternative dispute resolution (ADR) processes.

District Registry staff are responsible for:

- providing information to parties and their representatives as well as to the general public on the operation and procedures of the Tribunal;
- processing documents;
- facilitating the listing and conduct of conferences, other ADR processes and hearings; and
- providing administrative and other support services to members.

Table 2.2 identifies the State and Territory Coordinators as at 30 June 2008.

Information on the administrative structure of the Tribunal, including the names of senior staff as at 30 June 2008, is set out in Figure 2.3.

## TRIBUNAL COMMITTEES

The President has established a number of committees that provide advice and assistance in relation to aspects of the management of the Tribunal. A brief description of the role and membership of each committee is set out below.

The **Alternative Dispute Resolution Committee** is responsible for overseeing the use of ADR processes in the Tribunal, including the development of policies and guidelines concerning their use. The committee comprises the President and a group of members and senior staff with experience in ADR.

The **Library Committee** considers issues relating to the Tribunal's information needs and oversees the Tribunal's collection development policy. It comprises the President, a diverse group of members from different Tribunal Registries, the Registrar, the Assistant Registrar and the Principal Registry Librarian.

The **Practice and Procedure Committee** deals with practice and procedure issues and, in particular, proposals to improve the way in which the Tribunal manages applications for review. The committee comprises the President, the State and Territory Coordinators, the Registrar, the Assistant Registrar, the District Registrar from each Tribunal Registry and a representative of the Tribunal's Conference Registrars.

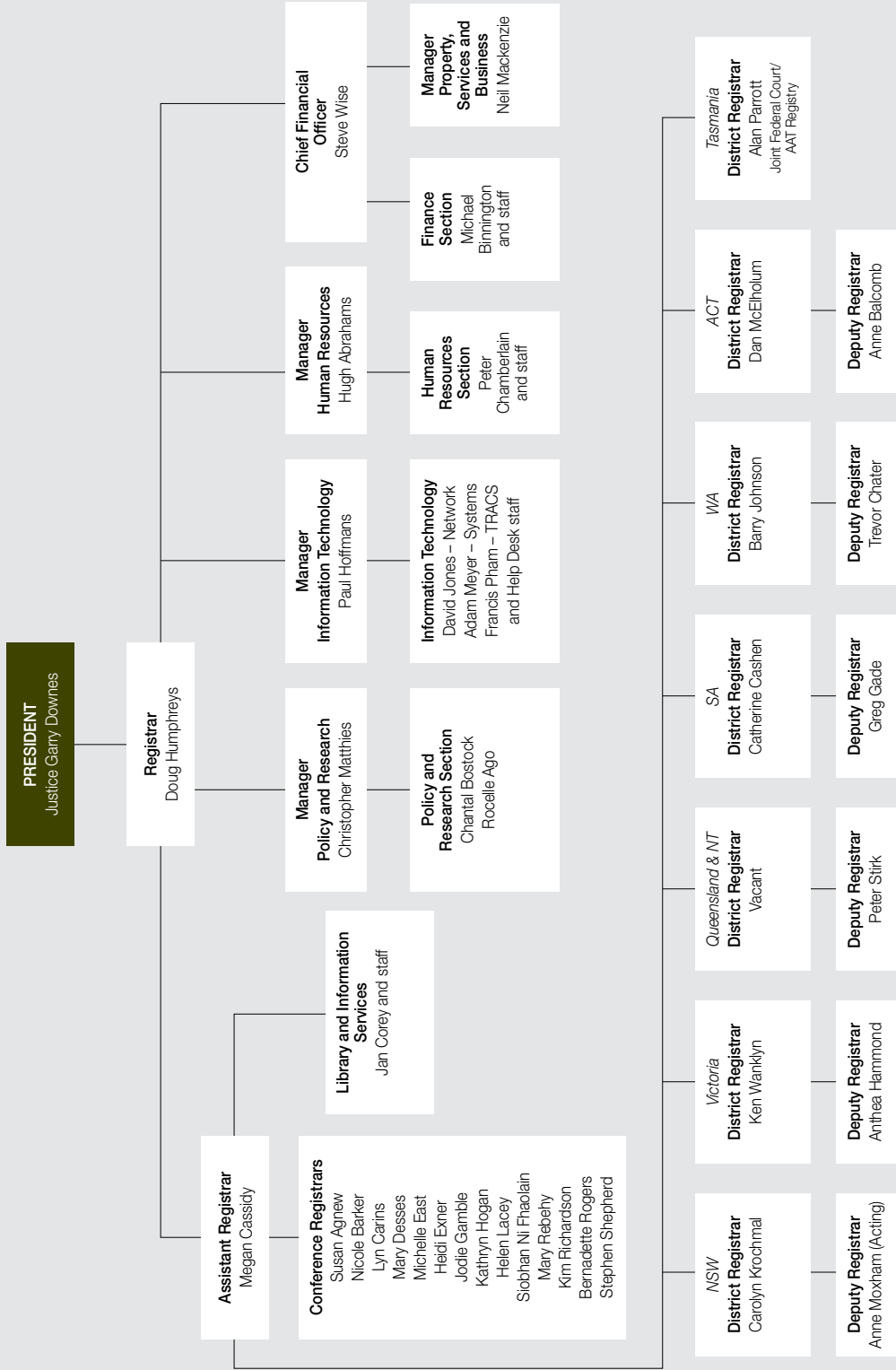
The **Professional Development Committee** considers issues relating to the professional development of Tribunal members. The committee comprises the President, a diverse group of members from different Tribunal Registries with an interest in professional development, and the Registrar.

The **State and Territory Coordinators Committee** comprises the President and the State or Territory Coordinator from each Registry. It provides a forum for coordinators to discuss issues relating to case management and other matters of common interest.

**Table 2.2** State and Territory Coordinators as at 30 June 2008

Registry	State/Territory Coordinator
Australian Capital Territory	Senior Member James Constance
New South Wales	Deputy President Geoffrey Walker
Queensland/Northern Territory	Deputy President Philip Hack SC
South Australia	Deputy President Deane Jarvis
Tasmania	Deputy President Raymond Groom
Victoria	Deputy President Graham McDonald
Western Australia	Deputy President Stanley Hotop

Figure 2.3: Administrative structure of the Tribunal as at 30 June 2008



## THE CASE MANAGEMENT PROCESS

The Tribunal has a case management process that aims to deal with applications in a flexible and timely manner. It is designed to promote:

- the orderly and controlled passage of matters from lodgement to resolution;
- the achievement of case management targets;
- the equitable treatment of parties;
- the effective use and allocation of Tribunal resources; and
- the maintenance and enhancement of public confidence in the Tribunal.

On receipt of an application in relation to which the Tribunal has jurisdiction, the Tribunal notifies the decision-maker that the application has been made. Within 28 days of receiving notice of an application, the decision-maker must provide to the Tribunal and to the applicant a statement of reasons for the decision and all documents that are relevant to the review. These are known as the 'Section 37 documents' or the 'T documents'.

One or more conferences, conducted by a Conference Registrar or Tribunal member, are held with the parties to discuss the issues in dispute, identify any further material that parties may wish to obtain and explore whether the matter can be settled. Conferences also provide an opportunity to discuss the future conduct of the application and, in particular, whether another form of ADR may assist in resolving the matter. The other forms of ADR available in the Tribunal are conciliation, mediation, case appraisal and neutral evaluation.

The Tribunal assists the parties to attempt to reach an agreed resolution, while ensuring that appropriate steps are taken to prepare for hearing those matters that do not settle. Parties are expected to play an active role in identifying legal and factual issues early in the pre-hearing process. This encourages early resolution of disputes or, where that is not possible, a clear framework within which the parties can prepare for hearing.

Where an agreed resolution cannot be reached, the Tribunal conducts a hearing and makes a formal decision. For the purposes of the hearing, the Tribunal may be constituted by one, two or three members.

A flow chart outlining the progress of an application through the Tribunal from receipt of application to resolution appears in Figure 2.4.

The Tribunal has developed a number of practice directions and jurisdictional guides which outline the procedures that are generally adopted to manage applications lodged with the Tribunal. These include:

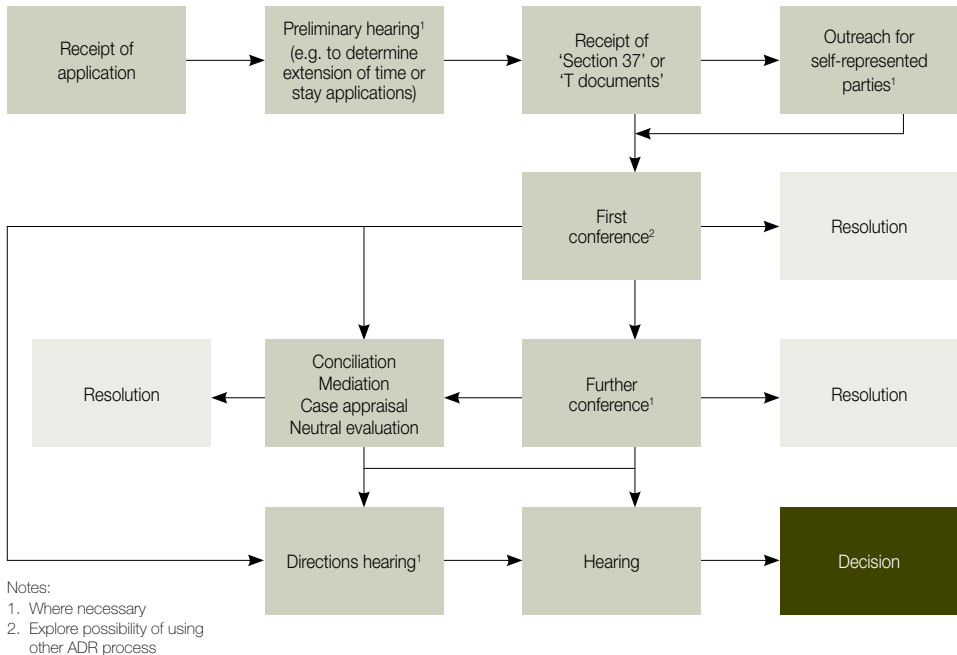
- the General Practice Direction, which applies to applications lodged with the Tribunal where the applicant is represented unless another specific legislative procedure, practice direction or jurisdictional guide applies;
- the Guide to the Social Security Jurisdiction;
- the Guide to the Workers' Compensation Jurisdiction; and
- the Small Taxation Claims Tribunal Practice Direction.

These practice directions and guides are complemented by practice directions on specific issues. These include:

- the Practice Direction relating to Section 37 of the *Administrative Appeals Tribunal Act 1975*;
- the Freedom of Information Practice Direction; and
- the Listing and Adjournment Practice Direction, which sets out the Tribunal's approach to listing hearings and dealing with requests for adjournments.

The Tribunal has also developed process models for each of the different forms of ADR that are available in the Tribunal and a policy that guides referral of applications to the different ADR processes.

Figure 2.4 Case management process flow chart



## ACCESS TO THE TRIBUNAL

### Information on the Tribunal

The Tribunal has developed a range of leaflets which contain information about when the Tribunal can be of assistance, how to make an application, the pre-hearing process, what happens at a hearing and what to do once a Tribunal decision is made. This information is also available in a range of languages, in large print and on audio cassette.

A video/DVD 'Getting Decisions Right' is available to parties and provides information about the Tribunal's practice and procedure.

The Tribunal has also developed:

- an information sheet on the Tribunal's procedures for overseas applicants which has been translated into a number of community languages; and
- information sheets on applications subject to expedited review procedures in the immigration jurisdiction.

The Tribunal is undertaking a review of the way in which it communicates with external users. Further information on this review appears in Chapter 4.

Comprehensive information about the Tribunal and its procedures is available on the Tribunal's website ([www.aat.gov.au](http://www.aat.gov.au)).

### Outreach Program

The Tribunal has an Outreach Program which aims to help self-represented parties understand the Tribunal's processes. Outreach is conducted by Tribunal staff, usually over the telephone, prior to the first conference.

During the Outreach call, the staff member provides information about the review process and answers any questions the person may have about procedural issues. The staff member will arrange to send out any further information the person may find helpful such as a copy of the video/DVD 'Getting Decisions Right'. The Outreach call



also offers an opportunity for the Tribunal to ascertain whether a self-represented party may require an interpreter or any particular assistance because of a disability during the review process.

### **Legal advice schemes and referrals**

The Tribunal hosts legal advice schemes in cooperation with the legal aid bodies in New South Wales, Queensland, South Australia, Victoria and Western Australia. A legal aid solicitor attends the Tribunal Registry on either a weekly or fortnightly basis. The Tribunal advises self-represented parties that the service is available and will make an appointment if the person expresses interest.

The solicitor is able to provide self-represented parties with advice and minor assistance. Further assistance, including representation, may be provided if a person makes a successful application for legal aid. The majority of appointments are conducted with self-represented parties in the social security jurisdiction.

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

### **Interpreter services**

Where a party requires an interpreter for a conference, other ADR process or hearing, the Tribunal engages an interpreter and meets the associated 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 in languages where no professional-level interpreter is accredited.

The Tribunal has developed an information sheet for interpreters that provides information on Tribunal procedures and terminology used in the Tribunal. The information sheet is available from the Tribunal's Registries and can be accessed on the Tribunal's website ([www.aat.gov.au](http://www.aat.gov.au)).

### **Access by persons with disabilities**

In accordance with the Tribunal's Disability Action Plan, the Tribunal strives to make access to the Tribunal easier for people with a disability by:

- making electronic and printed material available in appropriate formats;
- providing hearing aid induction loops in Tribunal premises, including conference and hearing rooms, and at registry counters;
- 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.

Further information about the Tribunal's Disability Action Plan and its performance in relation to the Commonwealth Disability Strategy is outlined in Chapter 5 and Appendix 9 of this report.

### **Service Charter and complaints**

The Tribunal's Service Charter sets out the rights and responsibilities of the Tribunal and its users. It provides information about the Tribunal's service standards, commitments to clients, responsibilities of the parties and contact information. The Charter also includes information on how to make a complaint together with information on the Tribunal's complaint-handling procedures.

The Charter is written in clear, simple language. A copy of the Charter can be viewed on the Tribunal's website ([www.aat.gov.au](http://www.aat.gov.au)).

Information in relation to compliance with aspects of the Tribunal's obligations under the Charter and in relation to complaints is set out in Chapter 3.

## ADDITIONAL FUNCTIONS CONFERRED ON TRIBUNAL MEMBERS

In addition to carrying out their functions under the *Administrative Appeals Tribunal Act 1975*, members of the Tribunal may exercise powers under a number of other Acts.

Deputy Presidents and full-time Senior Members, and any part-time Senior Member or Member who has been enrolled as a legal practitioner for at least five years, may be nominated to undertake the following functions:

- issue telecommunications interception warrants and stored communications warrants under the *Telecommunications (Interception and Access) Act 1979*;
- issue warrants and exercise related powers under the *Surveillance Devices Act 2004*; and
- review certificates that authorise controlled operations under the *Crimes Act 1914*.

The President and Deputy Presidents, and any Senior Member who has been enrolled as a legal practitioner for at least five years, may be nominated to make orders allowing information given to the Inspector of Transport Security to be disclosed to another government agency under the *Inspector of Transport Security Act 2006*.

The President and Deputy Presidents may be appointed as issuing authorities in relation to the making of continued preventative detention orders under the *Criminal Code*.

All members of the Tribunal are authorised to exercise a range of powers under the *Education Services for Overseas Students Act 2000* and the *Migration Act 1958* relating to the monitoring of compliance with student visa conditions.

Presidential members of the Tribunal, and any Senior Member or Member who has been enrolled as a legal practitioner for at least five years, may be appointed as an approved examiner under the *Proceeds of Crime Act 2002*. Approved examiners are authorised to issue examination notices at the request of the Commonwealth Director of Public Prosecutions and oversee compulsory examinations in connection with confiscation proceedings.