



# Chapter

## 02

OVERVIEW OF  
THE TRIBUNAL

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

The Tribunal falls within the portfolio of the Attorney-General.

## ESTABLISHMENT

The Tribunal was established by the *Administrative Appeals Tribunal Act 1975* and commenced operations on 1 July 1976. The AAT 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 and some other tribunals. In limited circumstances, the Tribunal can review administrative decisions made by state government and non-government bodies. The Tribunal can also review decisions made by the Norfolk Island Government.

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. In some cases, the Tribunal cannot review a decision until there has been an internal review of the primary decision. In other cases, review by the Tribunal is only available after intermediate review by a specialist tribunal — for example, an application for review of a family assistance or social security decision may be made only after review by the Social Security Appeals Tribunal.

Section 33 of the AAT 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 or Norfolk Island 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 Commonwealth Acts and legislative instruments. The largest part of the Tribunal's workload arises from applications about decisions in the areas of family assistance and social security, taxation, veterans' affairs and workers' compensation. The Tribunal also reviews decisions relating to bankruptcy, child support, civil aviation, citizenship and immigration, corporations and financial services regulation, customs, freedom of information, industry assistance, mutual recognition of occupations, passports, and security assessments by the Australian Security Intelligence Organisation (ASIO). Since 1 July 2013, the Tribunal's jurisdiction includes the review of decisions made under the National Disability Insurance Scheme.

In relation to Norfolk Island, the Tribunal has jurisdiction to review decisions made under 39 enactments. The decisions subject to review are specified in the Administrative Appeals Tribunal Regulations and include decisions about customs, planning and social services.

Appendix 3 contains a list of the Commonwealth and Norfolk Island enactments under which decisions may be made that can be reviewed by the Tribunal.

## DIVISIONS

The Tribunal exercises powers in divisions: the General Administrative, National Disability Insurance Scheme, 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 where the amount of 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. 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 the different categories of members are set out in the AAT Act and 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 89 members of the Tribunal at 30 June 2014. 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 at 30 June 2014, and a profile of each member other than judges of the Federal Court and Family Court.

### President

The Hon Justice Duncan Kerr, *Chev LH* was appointed a judge of the Federal Court of Australia on 10 May 2012. He was appointed President of the Tribunal on 16 May 2012 for a term of five 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.

To be eligible for appointment as a Deputy President, a person must have been enrolled as a legal practitioner for at least five years.

### Senior Members

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

## Members

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

Table 2.1 Tribunal membership, 30 June 2014

Category of member	Judge	Full-time	Part-time	Total (Women)
President	1			1 (0)
Presidential members:				
Federal Court judges	11			11 (3)
Family Court judges	3			3 (2)
Deputy Presidents		6	7	13 (3)
Senior Members		8	16	24 (11)
Members		2	35	37 (13)
<b>Total</b>	<b>15</b>	<b>16</b>	<b>58</b>	<b>89 (32)</b>

## REGISTRAR AND EXECUTIVE DIRECTORS

The Tribunal's Registrar is Philip Kellow. He began his five-year appointment as Registrar on 22 July 2010.

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 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 was the Chief Executive for the purposes of the *Financial Management and Accountability Act 1997*, and became the Accountable Authority under the *Public Governance, Performance and Accountability Act 2013* on 1 July 2014.

The Registrar is assisted by two Executive Directors who hold office as senior executives in the Australian Public Service. The Executive Director, Information and Development is Christopher Matthies and the Executive Director, Operations is Nerrilee Cuthbertson. For information on their areas of responsibility, see Figure 2.3 below.

## STAFF

Tribunal staff are employed under the Public Service Act as ongoing, non-ongoing or intermittent employees. At 30 June 2014, the Tribunal had 156 staff.

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 communications, financial management, human resource management, legal and policy services, library and information services, property, security and technology services, and for overseeing the Tribunal’s alternative dispute resolution processes. Principal Registry staff are in Brisbane, Hobart, Perth and Sydney.

### District Registries

There are District Registries in each of the state capital cities and in Canberra. The Brisbane Registry manages Northern Territory applications and is responsible for ensuring an effective level of service to Northern Territory residents. The registry service in Hobart is provided by the Federal Court. The Supreme Court of Norfolk Island provides basic registry services on Norfolk Island with applications managed principally by the Sydney Registry.

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

Conference Registrars are appointed by the President in each District 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 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.

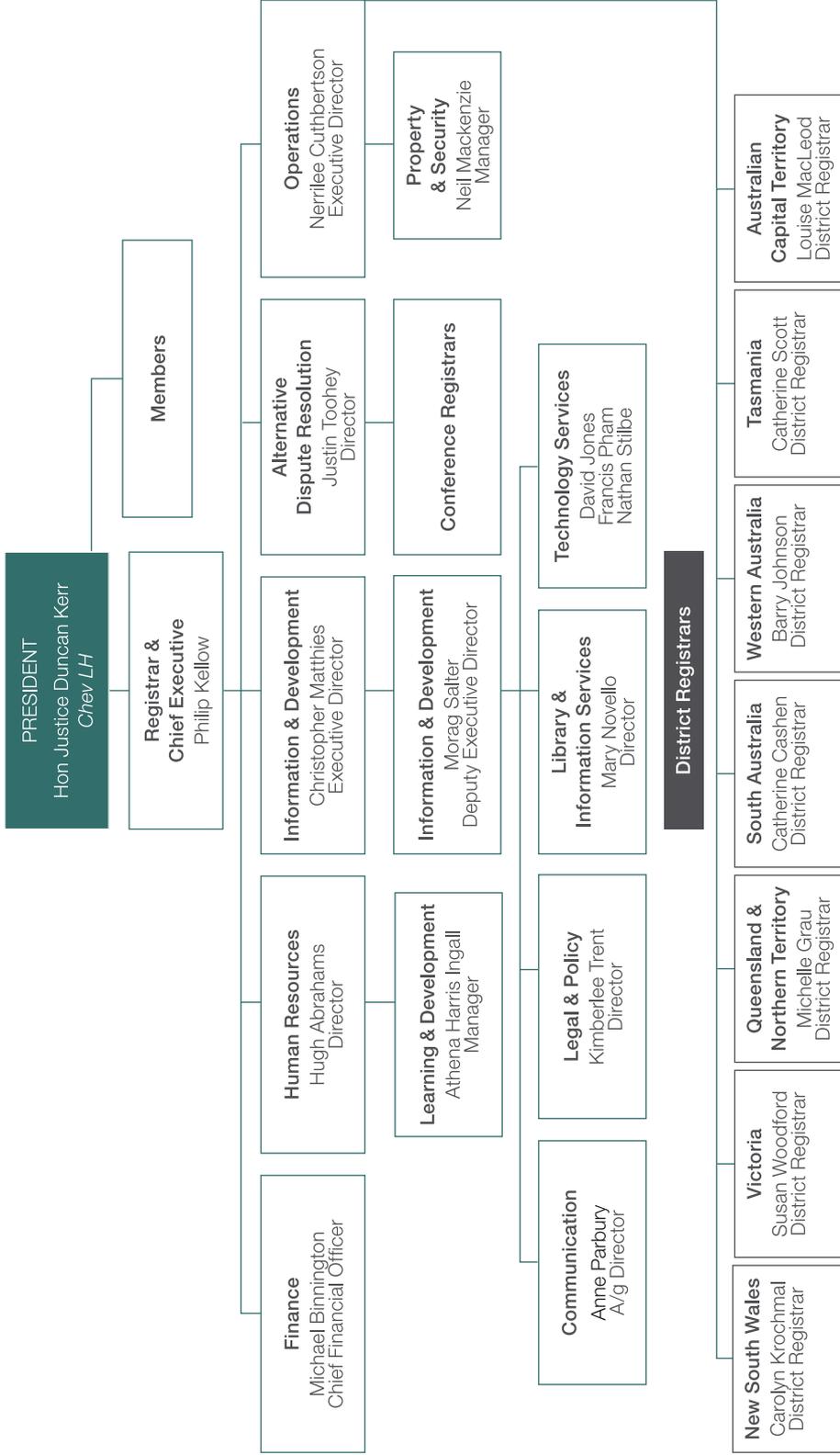
Table 2.2 lists the Executive Deputy Presidents/Senior Member at 30 June 2014.

Table 2.2 Executive Deputy Presidents/Senior Member, 30 June 2014

State/Territory	Executive Deputy Presidents/Senior Member
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 Katherine Bean
Tasmania	Deputy President Raymond Groom AO
Victoria	Deputy President James Constance
Western Australia	Deputy President Stanley Hotop

Figure 2.3 shows the administrative structure of the Tribunal, including senior staff.

Figure 2.3 Administrative structure of the Tribunal, 30 June 2014



## TRIBUNAL COMMITTEES

A number of committees comprising Tribunal members and staff advise and assist the President in relation to the management of the Tribunal.

### Alternative Dispute Resolution Committee

The Alternative Dispute Resolution Committee considers issues relating to alternative dispute resolution processes in the Tribunal, including the development of policies and guidelines for their use. The committee is chaired by the Tribunal's Director, Alternative Dispute Resolution and includes four members and two Conference Registrars.

### Executive Committee

The Executive Committee provides high level advice and assistance to the President on executive management issues, including oversight of the Tribunal's Strategic Plan. It is chaired by the President and its members include Deputy President Constance, the Registrar, the Executive Directors, the Director, Alternative Dispute Resolution and District Registrar Carolyn Krochmal.

### Executive Deputy Presidents Committee

The Executive Deputy Presidents Committee comprises the President and the Executive Deputy President/Senior Member for each District Registry. It is the primary mechanism for the Executive Deputy Presidents to discuss issues relating to the management of the Tribunal and to provide high level input to the President on key developments.

### Library Committee

The Library Committee oversees the development and improvement of the Tribunal's library collection and the delivery of training related to the use of library services. It is chaired by Deputy President Hotop and consists of three other members, the Executive Director, Information and Development and the Director, Library and Information Services.

### NDIS Monitoring Committee

The NDIS Monitoring Committee oversees the operations and performance of the Tribunal's NDIS Division and supports best practice in the NDIS Division. The committee is chaired by Senior Member Toohey and includes Senior Member Handley, the Registrar, the Executive Directors, the Director, Alternative Dispute Resolution, and the Tribunal's Manager, Learning and Development.

### Practice and Procedure Committee

The Practice and Procedure Committee oversees the development and implementation of changes to the management and resolution of applications before the Tribunal and facilitates the adoption of consistent best practice case management practices. It is chaired by the President and includes either the Executive Deputy President/Senior Member or District Registrar from each registry, the Registrar, the Executive Directors and the Director, Alternative Dispute Resolution.

### Practice and Procedure Consultative Group

The Practice and Procedure Consultative Group identifies and provides feedback to the Practice and Procedure Committee on issues and proposed improvements in relation to case management and dispute resolution. Members of the committee are the President, the Executive Deputy Presidents/Senior Member, the Registrar, the Executive Directors, the District Registrar of each registry and the Director, Alternative Dispute Resolution.

## Professional Development Committee

The Professional Development Committee considers matters relating to the professional development of Tribunal members and registrars. The committee is chaired by Deputy President Hotop and consists of three other members, the Director, Alternative Dispute Resolution and the Tribunal's Manager, Learning and Development.

## Warrants Committee

The Warrants Committee deals with issues relating to the functions that are carried out by members in their personal capacity under the *Surveillance Devices Act 2004*, the *Telecommunications (Interception and Access) Act 1979* and other similar legislation. The committee was chaired by Deputy President Handley and includes three other members who exercise these powers and the Executive Director, Operations.

For information about the Tribunal's Audit Committee, see page 53.

## CASE MANAGEMENT

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

### THE PROCESS

When the Tribunal receives a valid application, it notifies the decision-maker that the application has been made. 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. These are the 'Section 37 Documents' or the 'T (for Tribunal) Documents'.

In relation to most applications, the Tribunal's approach is to assist the parties to attempt to reach an agreed outcome while ensuring that steps are taken to prepare the case for hearing in the event it cannot be resolved by agreement. A Conference Registrar or Tribunal member will hold one or more conferences with the parties, either in person or by telephone, to discuss and define the issues in dispute, identify and consider additional material that may be obtained, explore whether the matter can be settled and discuss the future conduct of the review. Where appropriate, the application may be referred to another form of alternative dispute resolution – conciliation, mediation, case appraisal or neutral evaluation. The Tribunal sets timetables and issues directions for the steps the parties must take in the review.

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 usual progress of an application, from lodgement to decision.

The Tribunal modifies its case management process for particular types of cases as well as in individual cases to ensure they are dealt with in the most effective and efficient way.

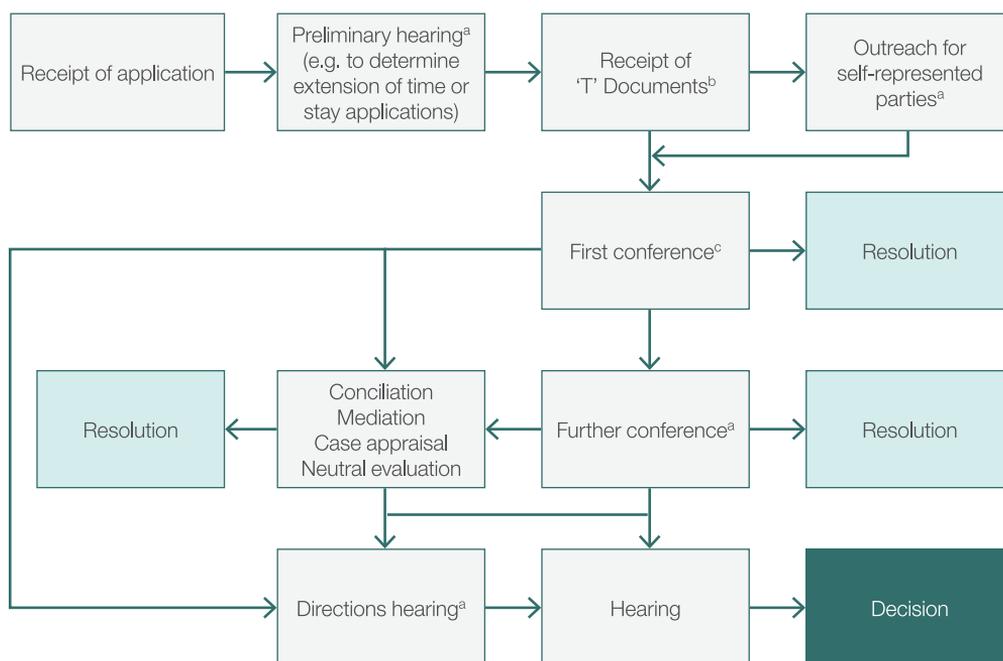
Some applications are managed by Tribunal members by way of directions hearings from the time of lodgement. These include applications that require an expedited review and applications about security assessments made by ASIO.

For the review of decisions under the National Disability Insurance Scheme, the Tribunal has tailored its process to seek to resolve applications as simply and quickly as possible. Some key aspects are:

- a staff member is allocated to be the applicant's Contact Officer throughout the review and contacts the applicant within three days of receiving the application to talk about the review

- the Tribunal generally holds no more than three case events: a conference, conciliation and a hearing, with applicants able to request a fast-track hearing if they do not want to attend conciliation
- if agreement is not reached at the conference, the Tribunal prepares a written Case Plan setting out anything that has been agreed, what the parties must do and the dates for any conciliation and the hearing, and
- the Tribunal usually gives its decision and reasons orally at, or soon after, the hearing.

Figure 2.4 Case management process



Notes:

- a Where necessary
- b Documents provided by the decision-maker
- c Explore possibility of using other ADR process

## PRACTICE DIRECTIONS, GUIDES, GUIDELINES AND PROCESS MODELS

The Tribunal has published a range of documents that describe its policies and procedures. They are designed to assist parties and their representatives to understand the Tribunal's processes and what is expected of them during the review process. This will help the Tribunal meet its goal of providing a fair, just, economical, informal and quick mechanism of review.

### Practice directions guides and guidelines

The Tribunal has issued the following practice directions and jurisdictional guides which outline the procedures for managing different types of applications.

- *General Practice Direction* which applies to all cases in which an applicant is represented, unless another specific legislative procedure, practice direction or jurisdictional guide applies
- *Review of National Disability Insurance Scheme Decisions Practice Direction*
- *Small Taxation Claims Tribunal Practice Direction*
- *Guide to the Social Security Jurisdiction*
- *Guide to the Workers' Compensation Jurisdiction*

The Practice Direction for the Expedited Review of Certain Decisions, issued on 1 July 2014, outlines what parties must do to request an expedited review, how the Tribunal will handle such requests and what will occur when the Tribunal is satisfied that a review is to be expedited.

The following practice directions and guidelines deal with specific aspects of the review process.

- *Practice Direction relating to section 37 of the AAT Act*
- *Freedom of Information Practice Direction*
- *Listing and Adjournment Practice Direction*
- *Practice Direction relating to Release from the Implied Undertaking*
- *Practice Direction relating to the Use of Video Surveillance Material*
- *Guidelines for Constituting the Tribunal*
- *Guidelines for Persons Giving Expert and Opinion Evidence*
- *Guidelines for the Use of Concurrent Evidence in the Administrative Appeals Tribunal*

### Alternative dispute resolution process models and guidelines

For each of the alternative dispute resolution processes that may be employed during a review, the Tribunal has a process model that gives a detailed description of what will occur. It has also developed a policy that guides the referral of applications to the different processes.

The Tribunal has also published two guidelines on aspects of alternative dispute resolution: *The Duty to Act in Good Faith in ADR Processes at the AAT* and *Confidentiality in ADR Processes*.

The practice directions, guides, guidelines and process models and are all available on the Tribunal's website.

## ACCESSING THE TRIBUNAL

The Tribunal has a range of measures designed to assist parties to access the Tribunal and participate in the review process.

### ACCESS TO INFORMATION ABOUT THE TRIBUNAL

The Tribunal offers information on its role and procedures in multiple formats and languages to ensure that potential applicants and other participants have access to the information they need.

Brochures and fact sheets for self-represented parties 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 print, including large print, on the website and in multiple languages. The Tribunal has developed a specific series of fact sheets to provide information on the Tribunal's procedures for reviewing National Disability Insurance Scheme decisions.

Comprehensive information about the Tribunal and its procedures is on the website and is regularly updated.

### OUTREACH PROGRAM

Before the first conference, Tribunal staff (Outreach officers) contact self-represented parties, usually by telephone, to explain the Tribunal's processes and give them the opportunity to ask questions about the review process. Parties are given information about organisations that may be able to provide advice and assistance. Tribunal staff also identify whether parties will require an interpreter or assistance for people with disability.

Self-represented parties who have given the Tribunal a mobile telephone number receive an SMS reminder a few days before an upcoming case event.

## LEGAL ADVICE SCHEMES AND REFERRALS

The Tribunal hosts legal advice schemes in cooperation with legal aid organisations in New South Wales, Queensland, South Australia, Victoria and Western Australia. A legal aid solicitor attends each registry on a regular basis — usually weekly or fortnightly — and provides advice and minor assistance to self-represented parties.

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 organisations that may be able to provide advice and assistance.

## INTERPRETING SERVICES

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

The Tribunal offers interpreters an information fact sheet on its procedures and terminology that is available from the Tribunal's registries and on the website.

## ACCESS BY PEOPLE WITH DISABILITY

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

- providing electronic and printed material in appropriate formats such as large print
- ensuring the website meets the World Wide Web Consortium's Web Content Accessibility Guidelines version 2.0 (WCAG 2.0) web standard to Level A
- providing portable hearing loop systems in Tribunal premises
- facilitating telephone contact for people with a hearing or speech impairment
- making all Tribunal premises wheelchair-accessible and ensuring other premises used by the Tribunal are accessible, and
- providing facilities for participation in conferences or hearings by telephone or video-link.

The Tribunal will implement ReadSpeaker, a text to speech software service, on its website early in 2014–15.

## 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 and is on the Tribunal's website and in print. The Tribunal's compliance with its commitments under the Charter is discussed in Chapter 3, along with complaints information.

