

## **Chapter 2**

### **Overview of the Tribunal**

- 12 Establishment
- 12 Functions and powers
- 13 Organisation
- 15 Membership
- 15 Registrar and Assistant Registrar
- 15 Staff
- 16 Registries
- 16 Tribunal Committees
- 17 The dispute resolution process
- 19 Access to the Tribunal
- 20 Additional functions

## Chapter 2: Overview of the Tribunal

The role of the Tribunal is to provide merits review of administrative decisions. The Tribunal must pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

The Tribunal falls within the portfolio of the Attorney-General, the Honourable Philip Ruddock MP.

### Establishment

The Tribunal was established by the *Administrative Appeals Tribunal Act 1975* (the AAT Act) and commenced operations in 1976. The AAT Act and the *Administrative Appeals Tribunal Regulations 1976* (the AAT Regulations) set out the Tribunal's powers, functions and procedures.

### Functions and powers

#### Review of decisions

The Tribunal is an independent body that reviews a broad range of administrative decisions made by the Australian Government, including ministers and officials, authorities and other tribunals. The Tribunal also reviews administrative decisions made by some 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 original decision.

The Tribunal is not always the first avenue of review of an administrative decision. In some cases, it cannot review a decision until an internal review has been conducted by the agency 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 the area

of social security, an application may be made to the Tribunal 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 any decision 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 original decision was made.

The Tribunal has jurisdiction to review decisions made under more than 400 separate Acts and legislative instruments. The Tribunal's jurisdiction includes areas such as Commonwealth employees' compensation, social security, taxation, veterans' entitlements, bankruptcy, civil aviation, corporations law, customs, freedom of information, immigration and citizenship, industry assistance and 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.

#### Changes to the *Administrative Appeals Tribunal Act 1975*

In March 2005 Parliament passed the *Administrative Appeals Tribunal Amendment Act 2005* (the AAT Amendment Act) which amended the AAT Act and a number of related Acts. The amendments were proclaimed to commence on 16 May 2005.

The AAT Amendment Act introduced a range of changes to the way in which the Tribunal may deal

with applications for review. These changes will assist the Tribunal to manage its caseload flexibly and efficiently. They include the following:

- New provisions have been introduced relating to alternative dispute resolution processes that the Tribunal may use, including case appraisal and neutral evaluation.
- The President may authorise Conference Registrars to issue binding directions.
- The range of powers that Members may exercise has been expanded to include powers that could be exercised previously only by presidential members and Senior Members.
- Multi-member tribunals comprised solely of Members are permitted.

## Organisation

The Tribunal consists of a President, presidential members (including Judges and Deputy Presidents), Senior Members and Members. The President must be a judge of the Federal Court of Australia. Some presidential members are judges of the Federal Court or Family Court of Australia. All Deputy Presidents must be lawyers. Senior Members may

be lawyers or have special knowledge or skills relevant to the duties of a Senior Member.

Members have expertise in areas such as accountancy, actuarial work, administration, aviation, engineering, environment, insurance, law, medicine, military affairs, social welfare, taxation and valuation.

Appointments to the Tribunal may be full-time or part-time.

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 comprised of members and senior staff to provide advice and assistance in specific areas. District Registrars and Principal Registry managers 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.

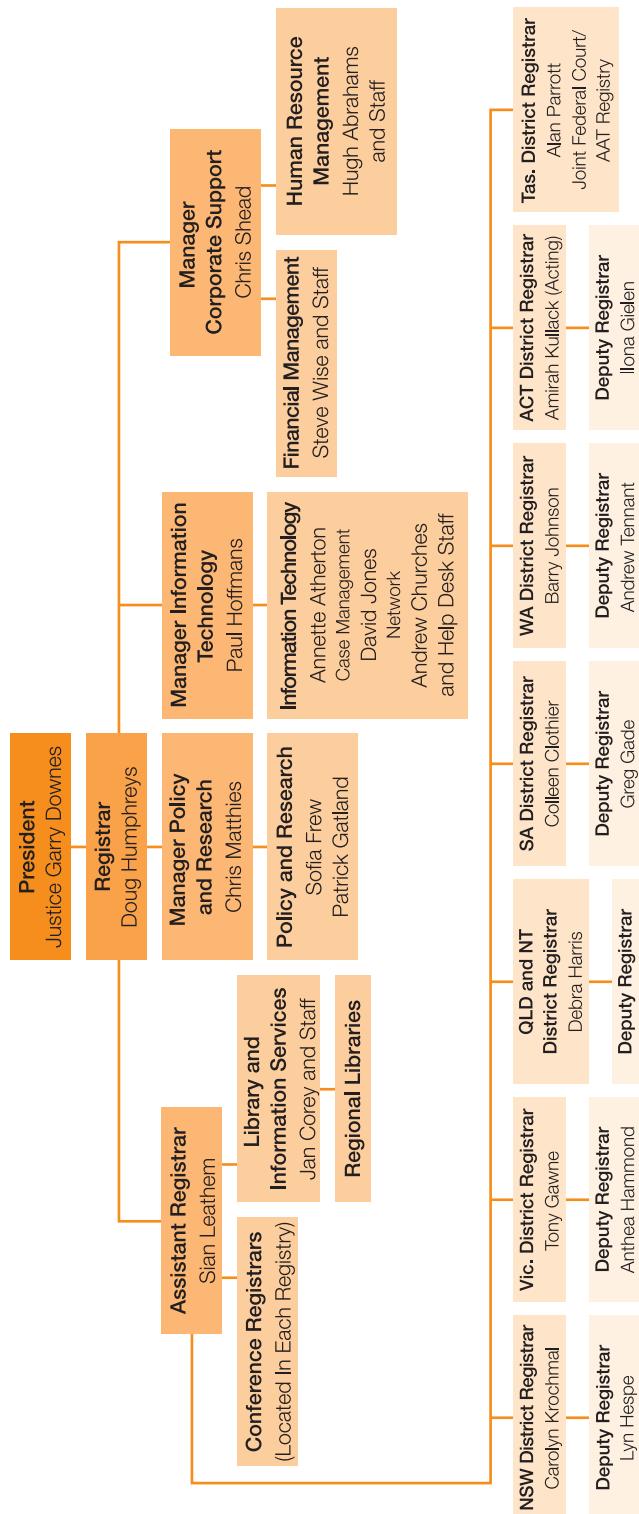


Senior Member Bell, Deputy President Walker, Justice Downes, Deputy President Groom and Senior Member Hunt at the members swearing in ceremony.



Deputy President Forgie, Bob Gotterson QC and Deputy President Muller at the members swearing in ceremony.

■ Figure 2.1 Administrative structure of the Tribunal



**Table 2.1** Tribunal membership as at 30 June 2005

Class of member	Judges	Full-time	Part-time	Total (women)
President	1			1
Presidential members:				
Federal Court Judges	5			5
Family Court Judges	2			2
Deputy Presidents		6 <sup>a</sup>	5	11 (1)
Senior Members		8	8	16 (6)
Members		3	37	40 (9)
<b>Total</b>	<b>8</b>	<b>17</b>	<b>50</b>	<b>75 (16)</b>

<sup>a</sup> One full-time Deputy President was on extended leave of absence from the Tribunal throughout the reporting period.

## Membership

### President

The Honourable 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.

### Membership of the Tribunal

As at 30 June 2005, the Tribunal's membership totalled 75.

Appendix 1 contains a list of the Tribunal's membership by State and Territory and shows the divisions to which each non-presidential member was assigned as at 30 June 2005. This appendix also contains a profile of each of the Tribunal's members.

## Registrar and Assistant Registrar

The Tribunal's Registrar is Doug Humphreys. He commenced with the Tribunal on 25 August 2003.

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, for the purposes of the *Public Service*

*Act 1999*, the agency head, and is responsible for the employment of the Tribunal's staff on behalf of the Commonwealth. The Registrar is also the chief executive officer 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.



Assistant Registrar  
Sian Leathem

The Assistant Registrar is Sian Leathem, who holds office as a senior executive in the Australian Public Service (APS). Ms Leathem commenced with the Tribunal in January 2004.

## Staff

Tribunal staff are employed under the *Public Service Act 1999* as ongoing, non-ongoing or intermittent employees. As at 30 June 2005, a total of 153 staff was employed by the Tribunal.

Appendix 2 lists:

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

## Registries

### Principal Registry

Principal Registry staff are located in Brisbane and Sydney, with outposted technical specialists in library and information technology services in other capitals. Frequent and regular communication between the staff is maintained via email, telephone conferences and periodic face-to-face meetings.

Principal Registry staff advise and assist the President and Registrar in relation to legal and policy issues and case management as well as providing human resource management, payroll, finance, property and information and technology services to members and staff.

### District Registries

District Registries are located in each capital city. In Hobart, the registry service is provided by the Federal Court of Australia. The Queensland Registry has responsibility for Northern Territory applications and for ensuring an effective level of service to Northern Territory residents. Each registry is headed by a District Registrar who is responsible for local case management and registry management.



Senior Member Beddoe, Conference Registrar Michelle Howard, Conference Registrar Bernadette Rogers and Senior Member McCabe from the QLD Registry.

Conference Registrars conduct the bulk of the pre-hearing processes in all District Registries with the exception of Tasmania, where the District Registrar performs that role. Tribunal members also conduct conferences in some matters.

District Registries are also responsible for:

- providing information to the public, agencies, and parties to proceedings and their representatives on the operation and procedures of the Tribunal, including outreach to self-represented parties
- processing of documents
- facilitating the listing and conduct of conferences, other alternative dispute resolution processes such as conciliations and mediations, and hearings
- providing administrative and other support services to members.

## Tribunal Committees

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

The **Constitution Committee** deals with issues relating to the constitution of tribunals and, in particular, the appropriate and consistent constitution of multi-member tribunals. It comprises the President, a diverse group of members from different Tribunal registries and the Registrar.

The **Information Technology Steering Committee** is an advisory group that considers the Tribunal's information technology strategies. It comprises the President, members of the Tribunal, the Registrar, the Assistant Registrar, the Manager, Corporate Support, the Manager, Information Technology and the District Registrars from New South Wales and Western Australia.

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 and the Assistant Registrar.

The **Listing Coordinators' Committee** comprises the President and the members who are the Listing Coordinators for each Tribunal registry. It provides a forum for Listing Coordinators to discuss issues relating to case management and other matters of common interest.

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 Listing Coordinators, the Registrar, 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.

Some of the highlights of the work undertaken by the committees are discussed in Chapters 4 and 5. Appendix 1 identifies the members of each committee.

## The dispute resolution process

The Tribunal has a case management system aimed at dealing with applications in a timely and flexible manner. The purpose of the case management system is to promote:

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

The Tribunal has developed a number of Practice Directions which set out the procedures that will generally be adopted by the Tribunal in applications lodged with the Tribunal. These include:

- the General Practice Direction which applies to the majority of applications lodged with the Tribunal where the applicant is represented
- the Small Taxation Claims Tribunal Practice Direction which applies to all applications to be dealt with by the Small Taxation Claims Tribunal.

These documents are complemented by further Practice Directions on specific issues. They include the Practice Direction on Procedures relating to Section 37 of the AAT Act, the Direction on Conciliation Conferences which applies in the workers' compensation jurisdiction and the Freedom of Information Practice Direction. The Tribunal also has a Listing and Adjournment Practice Direction which sets out the Tribunal's approach to fixing hearings and dealing with requests for adjournments. This is a new practice direction which applies to all parties to applications lodged in the Tribunal throughout Australia. It took effect on 1 May 2005.

Parties are expected to play an active part 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. The Tribunal provides assistance to self-represented parties.

A flow chart outlining the progress of an application through the Tribunal, from receipt of application to resolution, appears in Figure 2.2. In applications in the workers' compensation jurisdiction where the applicant is represented, the Tribunal will usually conduct a conciliation prior to the hearing.

## Case management responsibilities

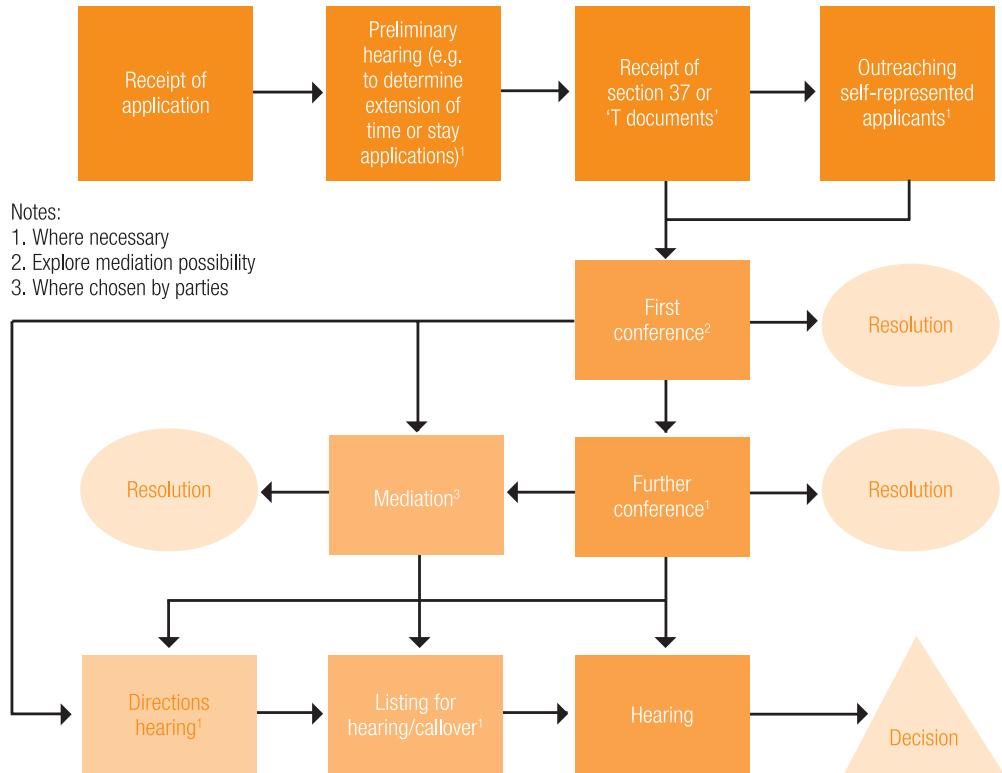
As part of its case management system, the Tribunal has Listing Coordinators in each registry. These members are responsible for ensuring that appropriate systems are in place and that matters progress as quickly as possible. Listing Coordinators control listings generally and give instructions to the registry. National standards for consistency of procedures have been adopted.

The following table identifies the Listing Coordinators as at 30 June 2005. Northern Territory matters are the responsibility of the Queensland Listing Coordinator.

**Table 2.2 Listing Coordinators**

Registry	Listing Coordinator
New South Wales	Deputy President Walker
Victoria	Deputy President Forgie
Queensland	Deputy President Muller
South Australia	Deputy President Jarvis
Western Australia	Deputy President Hotop
Australian Capital Territory	Senior Member Constance
Tasmania	Deputy President Groom

**Figure 2.2 Dispute resolution flow chart**



## Access to the Tribunal

### Website, pamphlets, information sheets and video

Comprehensive information about the Tribunal and its procedures is available on the Tribunal's Internet website ([www.aat.gov.au](http://www.aat.gov.au)). Material included on the site includes information about when the Tribunal can be of assistance, how to make an application, the pre-hearing process, mediation, what happens at a hearing and what to do once a Tribunal decision is made. This information is also available in pamphlet form in a range of languages and in large print. A video entitled 'Getting Decisions Right', which is available to applicants, provides information about the Tribunal's practice and procedure.

The Tribunal has developed information sheets for overseas applicants, outlining the general practice and procedure of the Tribunal. The Tribunal has also developed information sheets specific to certain matters in the immigration jurisdiction. Where appropriate, the sheets have been translated into community languages.

### Outreach Program

The Tribunal has an Outreach Program to provide self-represented applicants with information about the Tribunal's processes and answers to questions that they may have about procedural issues. Outreach is usually conducted over the telephone by trained officers who identify any further information needs the self-represented applicant may have and what is necessary to meet those needs.

### Interpreter services

Where a party requires an interpreter for a conference, conciliation, mediation or hearing, the Tribunal engages the interpreter and will meet 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

(formerly Level 3). A 'paraprofessional' interpreter (formerly Level 2) may only be used in languages where no professional-level interpreter is accredited. In languages where there is no NAATI accreditation, a NAATI certificate of recognition is provided.

Information to assist interpreters, such as the Tribunal procedures for attendance, is available in an Information sheet for interpreters, which can be accessed via registries or the Tribunal website.

### 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 most registry counters
- providing a telephone typewriter machine with national toll-free access for those with a hearing impairment
- making all premises wheelchair accessible
- providing facilities for participation in conferences or hearings by telephone or video link.

Further information about the Tribunal's Disability Action Plan and performance against the Commonwealth's Disability Strategy is outlined in Chapter 5 and Appendix 8 of this report.

### Legal Advice Schemes

Since 2004, the Tribunal has been hosting legal advice schemes in cooperation with the legal aid commissions of New South Wales, Victoria and Queensland. In May 2005, a legal advice scheme commenced in the Western Australia Registry with the assistance of the Legal Aid Commission of Western Australia.

The scheme operates in a similar way in each of the Registries. A solicitor from the legal aid commission attends the Tribunal Registry for

a full-day or half-day on either a weekly or fortnightly basis. During Outreach the Tribunal advises self-represented parties that they can make an appointment to speak with the solicitor. If the person expresses interest, an appointment is made. The solicitor is able to provide the person with advice and minor assistance and, in appropriate cases, may invite the person to apply for legal aid for further assistance including representation. The majority of appointments are conducted with self-represented parties seeking review of decisions relating to family assistance or social security entitlements.

Further details about the schemes are set out in Chapter 4.

#### **Service Charter and complaints**

The Tribunal's Service Charter provides information to users about the Tribunal's service standards, our commitments to clients, responsibilities of the parties, contact information and how to make complaints to the Tribunal. Information on the Tribunal's performance against the Service Charter and on complaints is set out in Chapter 3.

#### **Additional functions relating to warrants, controlled operations and examinations under the Proceeds of Crime Act 2002**

In addition to carrying out their functions under the AAT Act, members of the Tribunal may be nominated to exercise powers under a number of other Acts.

Nominated members are authorised to issue telecommunications interception warrants under the *Telecommunications (Interception) Act 1979*. Since 15 December 2004 nominated members have also been authorised to issue warrants and exercise related powers under the *Surveillance Devices Act 2004*. Prior to 15 December 2004 nominated members were authorised to issue warrants for the use of listening devices under the *Australian Federal Police Act 1979* and the *Customs Act 1901*.

Only Deputy Presidents, full-time Senior Members of the Tribunal and other members who have been enrolled as legal practitioners for at least 5 years may be nominated for the purposes of these Acts.

Nominated members may also review certificates that authorise controlled operations under the *Crimes Act 1914*. Certificates expire after three months unless a nominated member has decided that the certificate should be in force for six months.

Presidential members of the Tribunal and non-presidential members who have been enrolled as legal practitioners for at least five years may be appointed as approved examiners 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 conduct compulsory examinations in connection with confiscation proceedings.