



Chapter 4

Our users and partners

34 Users of the Tribunal

39 Tribunal partners

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This chapter describes the Tribunal's performance in meeting the goals identified in the 2004–05 Organisational Plan in relation to its users and partners.

Users of the Tribunal

The principal users of the Tribunal are parties in Tribunal proceedings and their representatives. Parties to proceedings include individuals, corporations and government agencies. The Tribunal also makes information available about its role and functions to government agencies, organisations and members of the public.

The Tribunal's goal in relation to its users, as outlined in its Organisational Plan, is:

to provide a national high-quality merits review process that contributes to community confidence in a system of open and accountable government.

This section of the report describes the strategies and key targets which the Tribunal has adopted in relation to this goal and the Tribunal's performance in relation to those strategies and targets.

Practice and Procedure Committee

The Committee met in September 2004 and April 2005. Issues discussed by the Committee included the development of the Listing and Adjournment Practice Direction, the review of practice and procedure in the compensation jurisdiction, the conduct of a survey of Tribunal users and the use of alternative dispute resolution (ADR) processes in the Tribunal. Significant developments during the reporting period concerning matters considered by the committee are discussed in this chapter.

Listing and Adjournment Practice Direction

During the reporting year the Practice and Procedure Committee considered the issue of the adjournment of hearings and, in particular, the effect of adjournments granted shortly before a hearing date. Adjournments of hearings can impact adversely on parties, on the effective use of Tribunal resources and on the timely resolution of applications for review. The Committee took the view that a clearer statement of the Tribunal's policy and procedures in relation to adjournments would help to ensure that:

- adjournments are granted only where they are justified
- requests for adjournment are made at the earliest possible opportunity.

The Tribunal developed a draft practice direction setting out its approach to listing applications for hearing, the circumstances in which an adjournment may or may not be granted and the procedures for requesting an adjournment. The draft practice direction was sent to the Tribunal's regular users and other stakeholders for comment in November 2004. After considering the comments received, the President issued the Listing and Adjournment Practice Direction in April 2005. It took effect on 1 May 2005.

Review of practice and procedure

The Tribunal manages the majority of applications for review in accordance with the Tribunal's Practice Directions, which are referred to in Chapter 2. In 2004 the Practice and Procedure Committee decided to review the way in which the Tribunal manages applications for review in its different jurisdictions. The review will consider, in particular, how the Tribunal communicates to parties its expectations and requirements in relation to the review process, with the aim of making management of applications more consistent, orderly and timely.

The first stage of the review involves an examination of practice and procedure in the compensation jurisdiction. The Tribunal has been developing a draft Guide to the Workers' Compensation Jurisdiction that outlines the procedures that the Tribunal will adopt in managing applications for review. It is proposed that, within the framework set out in the guide, the Tribunal will tailor its procedures to each application for review so that applications are dealt with in the most efficient and effective manner possible. Directions will be issued as necessary to ensure that parties and their representatives have clear guidance as to what is required at each stage of the review process. It is proposed that the General Practice Direction will no longer apply in this jurisdiction when the guide is introduced.

The Tribunal will consult Tribunal users and other stakeholders on these proposals and proposed amendments to the Section 37 Practice Direction early in the 2005–06 year.

The second stage of the review involves an examination of practice and procedure in the social security jurisdiction. As part of this review, the Tribunal has commenced an evaluation of the particular procedures that apply to applications in this jurisdiction in the Victorian Registry of the Tribunal.

Pilots in the compensation jurisdiction

- Australian Capital Territory Reviewable Decision Protocol

This pilot was developed in consultation with the Commonwealth Compensation Liaison Committee which is comprised of both respondents (e.g. Comcare) and applicant representatives.

In May 2004 the Committee approached the Tribunal seeking support for the trialling of a 'Reviewable Decision Protocol'. The protocol applies to claims for initial liability and permanent impairment, incapacity benefits, denial of medical treatment, benefits associated with household help, attendant care and aids and appliances. It provides for the

appointment of a joint medical expert, a settlement conference and the payment of some legal fees and disbursements at the reconsideration stage.

The objectives of the pilot include:

- increased positive outcomes for claimants
- a reduction in disputed claims being lodged with the AAT
- reduced costs to the rehabilitation and compensation scheme overall.

The pilot was initially intended to operate in the Australian Capital Territory Registry from 1 October 2004 to 31 March 2005. To date there have been only a few protocol applications lodged with the Tribunal. The pilot will be extended for a further six months and an evaluation will be conducted at the conclusion of the trial period.

- Victorian/Western Australian Early Dispute Resolution pilot

This pilot is operating in the Victorian and Western Australian Registries from 1 September 2004 until a finish date to be agreed. It provides for the Tribunal to conduct an early settlement conference in applications that meet the criteria for the pilot.

An application falls within the pilot criteria if:

- the applicant is employed by the Australian Taxation Office, Centrelink or the Department of Defence
- the claim comes within one or more of the following categories:
 - initial liability for psychological injuries
 - rejected claim for medical treatment e.g. physiotherapy
 - rejected claim for aids and appliances
 - ceased pre-premium claims
 - rejected periods of incapacity
 - permanent impairment where the percentage is in dispute.

The applicant must also be represented by a law firm that is participating in the pilot.

The objectives of the pilot include:

- an examination of early intervention opportunities
- a reduction in the number of disputed claims proceeding to hearing
- a reduction in the duration of applications.

The pilot involves some variations to the Tribunal's procedures contained in the General Practice Direction. To date there have been few applications meeting all of the criteria. The Tribunal will conduct an evaluation of the pilot at the conclusion of the trial period.

Alternative Dispute Resolution Subcommittee

As was noted in Chapter 2, the *Administrative Appeals Tribunal Amendment Act 2005* introduced new provisions into the AAT Act relating to alternative dispute resolution (ADR) processes.

Prior to the commencement of those provisions, the AAT Act provided for the Tribunal to conduct conferences and mediations. ADR processes are now defined in the AAT Act to mean procedures and services for the resolution of disputes including conferencing, mediation, conciliation, neutral evaluation, case appraisal and other procedures or services specified in the regulations. No additional procedures or services were specified in the regulations at the end of the reporting period. The Tribunal may refer a proceeding or any part of a proceeding to any of these ADR processes.

The Tribunal has commenced an examination of its use of ADR in light of the amendments. A subcommittee comprising members and staff has been established to consider the broad range of issues that arise in relation to the implementation of the new provisions. One of the committee's principal tasks will be to develop a referral policy which will assist the Tribunal to identify when the different ADR processes may be suitable for use. The subcommittee will continue its deliberations and make recommendations to the Practice and Procedure Committee in the next reporting period.

Regular user forums and meetings with users

The Tribunal continued hosting regular user group forums to provide an opportunity for information exchange with key respondents, legal practitioners and other people with an interest in particular areas of the Tribunal's jurisdiction. In Sydney, separate biannual meetings were held in relation to the Tribunal's compensation, social security, veterans' affairs, migration and taxation jurisdictions. Other Tribunal registries held a single annual meeting or biannual meetings for all regular users, while others met on an ad hoc basis with representatives from particular user groups.

While the format of the user forums may vary from registry to registry, they all provide an excellent opportunity for the Tribunal to explain any changes to practice and procedure affecting parties. In addition, the Tribunal receives valuable feedback on areas where we are performing well and those where we might be able to make improvements. The Tribunal remains committed to being a user-friendly organisation that takes account of the needs of the people and organisations that use its services.

During the reporting year, the AAT formed a liaison committee with the Law Council of Australia. The first meeting was held in December 2004. Issues discussed included the AAT Amendment Bill and the Listing and Adjournment Practice Direction. The liaison committee plans to meet on a regular basis in the future.

Principal Registry staff in Sydney also met with representatives from the Australian Taxation Office and the Commonwealth Director of Public Prosecutions to discuss issues arising in the jurisdictions servicing those agencies and other operational matters.

User survey

One of the key targets contained in the 2004–05 Organisational Plan was to conduct a user survey. A tender process was conducted in January 2005 and Profmark Consulting was retained to

undertake the survey on behalf of the Tribunal. Profmark is a Sydney based firm that has done similar work for the Federal Magistrates Court, the Australian Government Solicitor, the Australian Securities and Investments Commission and other state and federal government bodies.

Survey instruments were finalised in April 2005 following consultation with members and staff. In the first two weeks of May, written surveys were sent out to individual applicants whose applications were finalised in 2004 for return by the end of May. Respondent agencies and legal practitioners were surveyed by telephone during the same period.

Preliminary results of the survey were provided in July 2005 with a full report expected to be released in August 2005.

Addressing non-compliance

Delay by the parties in meeting statutory deadlines, submitting documents or proceeding with conferences or hearings contributes towards delay in the finalisation of reviews, increases costs to both the parties and the Tribunal, and frustrates the non-offending parties.

Since March 2004, each registry has been required to submit a quarterly report, outlining instances of repeated delay, inaction or non-appearances by parties. Through a combination of local and national strategies, such as the holding of non-compliance directions hearings and the sending of notices to non-complying agencies and law firms, the Tribunal has managed to reduce problems such as non-appearance and failure to submit documents on time.

The Tribunal has further strengthened its strategies to combat non-compliance through the introduction of the Listing and Adjournment Practice Direction and through the issuing of standard directions by Conference Registrars since 16 May 2005.

Legal Advice Scheme

This project was commenced in Sydney in early 2004 and was later extended to Melbourne and Brisbane during 2004. The scheme also commenced in Perth in May 2005. Legal Aid solicitors are provided on a one day or half-day per week or fortnight basis and interview clients at AAT premises. The scheme has proved to be an outstanding success with well over 100 interviews taking place in Sydney to date. Attendance rates at interview have been in the order of 90% or higher compared to regular Legal Aid office interviews which have a usual 50% turn up rate. Feedback from clients who have accessed the scheme indicates that it is a valuable service, with some applicants successfully going on to receive a grant of legal aid.

It would appear there is no current need for a legal advice scheme in either Tasmania or the Australian Capital Territory due to the high level of advice and representation provided by community legal centres based in those regions.

In April 2005, the New South Wales Registry entered into an agreement with the Consumer Credit Legal Centre to provide advice and possible representation to applicants in matters relating to the release of a person from a tax debt. This is an area in which self-represented applicants are likely to benefit from assistance in the preparation and presentation of their matters.

Concurrent expert evidence study continued

In late 2002 the Tribunal's New South Wales Registry commenced a study of the use of concurrent evidence in hearings. The concurrent evidence procedure, sometimes colloquially referred to as 'hot tubs', involves taking sworn evidence from more than one expert at the same time. It provides a forum in which, in addition to providing their own evidence, expert witnesses can listen to, question and critically evaluate other

experts' evidence. The potential benefits of the use of concurrent evidence include:

- enabling the expert evidence to be better understood and tested, enhancing the Tribunal's capacity to make the correct or preferable decision
- assisting experts to fulfil their role as independent advisers assisting the Tribunal
- enhancing the efficient resolution of Tribunal proceedings by narrowing the issues in dispute and reducing hearing time.

Concurrent evidence procedures have been used in a number of cases before the Tribunal over recent years, as well as in some other courts and tribunals. However, to the best of the Tribunal's knowledge, no empirical studies have been conducted as to its effectiveness. The Tribunal decided to set up a study to assess the criteria for selecting cases as suitable for concurrent evidence, to refine procedures for the taking of concurrent evidence, and to assess the effectiveness of concurrent evidence procedures within the Tribunal.

The data collection phase of the study concluded at the end of March 2005. A total of 44 cases used concurrent evidence procedures at hearing, involving experts from fields including orthopaedics, psychiatry, rheumatology and neurology. A further 82 cases were selected as being suitable to use concurrent evidence but did not use the procedure as the matters were settled or otherwise finalised before hearing.

The evaluation process for the study has now commenced. Information has been gathered from members involved in the hearings, as well as parties' representatives and the experts themselves. This information will form the basis of the report on the study.

It is anticipated that the outcomes of the study will be discussed at the Tribunal's National Conference in October 2005. Any recommendations arising from the study will be considered by the Practice and Procedure Committee.

Management of taxation scheme matters

A taxpayer has the option of challenging an objection decision of the Commissioner of Taxation in either the AAT or the Federal Court.

Between January 1999 and June 2003, the AAT received in excess of 7400 applications regarding objection decisions relating to taxation schemes and employee benefit arrangements. The majority of these were subject to orders postponing the matters pending the outcome of test cases in the Federal Court on the various schemes and arrangements.

In December 2003 the AAT devised a case management strategy to deal with all matters not awaiting the outcome of an appeal. This strategy centred around the appointment of a Managing Member to coordinate applications relating to the same taxation scheme or type of arrangement. Managing Members have been appointed on the basis of their experience in the taxation jurisdiction. Where possible, they are attached to the Registry where the majority of applications reside.

Of the 7440 applications received before July 2003, some 6385 or 86 per cent have been finalised. Those that remain outstanding (1055) are the subject of ongoing appeals or are complex matters which have failed to settle and will require a full hearing before the AAT.

Since July 2003, the AAT has received an additional 1830 applications relating to taxation schemes and employee benefit arrangements, of which 1636 are yet to be finalised.

Recent reports from AAT registries and the Australian Taxation Office (ATO), indicate that there will continue to be a steady influx of lodgements relating to taxation schemes during the next financial year. These matters will require further intense case management by the AAT.

Constitution Committee

The Committee met in September 2004 and April 2005. During the reporting year the Committee

focused on the development of Tribunal guidelines on constitution. The Committee considered a range of issues relating to the scope and content of such guidelines and the impact of the amendments to the AAT Act and related legislation. It is anticipated the guidelines will be finalised in the next reporting period.

Tribunal partners

The Tribunal considers its partners to be government agencies, tribunals, courts, the legal profession and other individuals and organisations with whom it may develop a relationship that is not related to specific applications for review or other specific functions undertaken by the Tribunal. Partners may be other organisations involved in administrative review or interested in tribunal-related issues, or organisations with which the Tribunal develops cooperative arrangements for the sharing of resources.

The Tribunal's goal in relation to its partners, as outlined in its Organisational Plan 2004–05, is:

to work cooperatively with government, other tribunals, the legal profession and other interested groups.

This section of the report describes the activities undertaken by the Tribunal during the reporting period that are directed to meeting this goal.

Developing and enhancing links with government, other tribunals and other relevant individuals and organisations

Liaison with the Attorney-General's Department and other departments and agencies

During the reporting year the Tribunal liaised with the Attorney-General's Department on a wide range of matters relevant to the Tribunal and its operations. In particular, the Tribunal provided comments and information in relation to the proposed amendments to the AAT Act that were passed by Parliament in March 2005.

The Tribunal has continued to work with the Department to ensure that the appointment and re-appointment of members to the Tribunal takes place in a timely fashion.

The Tribunal has also liaised with a number of other departments and agencies including the Department of Veterans' Affairs, the Australian Taxation Office and Centrelink in relation to issues and proposals that would impact on the Tribunal and its operations.

Council of Australasian Tribunals

The Council of Australasian Tribunals (COAT) was established in 2002 as a peak body for Commonwealth, State, Territory and New Zealand tribunals. It aims to:

- facilitate liaison and discussion between tribunals, tribunal members and staff, and others interested in tribunals
- undertake projects and activities of relevance and assistance to tribunals.

COAT operates with a federal structure consisting of a National Council and Executive, together with State, Territory and New Zealand chapters.

On 5 June 2003 Justice Downes was elected Chair of COAT, a position that he has held since that time. He was elected as Chair for a third term at the annual general meeting of COAT held on 10 June 2005. The Tribunal's Registrar, Doug Humphreys, became the Secretary of COAT shortly after his appointment to the Tribunal in August 2003.

The Tribunal supported the work of COAT in a variety of ways during the reporting period. The Tribunal performed secretariat functions for COAT, including managing its finances, as well as arranging and providing administrative support for meetings of the National Council and the Executive. The Tribunal continued to host the COAT website and added a range of new material to the website including, in particular, information relating to State and Territory chapters and their activities.

During the reporting year, work has continued on COAT's first major project, the development of a practice manual for tribunal members. The manual is intended to be a readily accessible, generic 'how-to-do-it' guide that will assist tribunal members to undertake their duties, including hearings, effectively. It is anticipated that the manual will be published in the next reporting period. Tribunal staff have continued to provide project management assistance in relation to the project.

Tribunal members and staff have also been active in COAT's State and Territory chapters. Deputy President Stephanie Forgie and Member Regina Pertou are members of the committee of the Victorian chapter of COAT. Deputy President Deane Jarvis is a member of the committee of the South Australian chapter and Senior Member Geri Ettinger is a member of the committee of the New South Wales chapter.

Participation in heads of tribunals meeting

The President of the Tribunal and the presiding members of the other Commonwealth merits review tribunals met in June 2005 to discuss matters of common interest. The registrars of the tribunals also met in June and have communicated on a regular basis to discuss areas of common interest and to explore potential efficiencies through cooperative action between tribunals. At the meeting in June, a memorandum of understanding was signed dealing with opportunities for staff exchanges and shared training for members and staff.

Involvement in the Administrative Review Council

The President of the Tribunal is an ex-officio member of the Administrative Review Council (ARC), a body responsible for advising the Attorney-General on the operation of the Commonwealth administrative law system and recommending possible reforms. The President attended meetings and participated in the activities of the ARC during the reporting year. For further information relating to the ARC and its operations, please refer to the ARC's *Annual Report* (www.arc.law.gov.au).

Information Technology strategic alliances evaluation

The Tribunal has embarked on an information technology (IT) strategy to replace its existing case management system with a new system that will be the platform for its workflow and e-business practices into the future. The Tribunal recognises that other tribunals and courts have also commenced similar strategies and, therefore, it is prudent to evaluate possible alliances where business requirements are similar. To this extent, the Tribunal's IT Manager has become a member of the Chief Information Officer (CIO) panel of the Attorney-General's portfolio, a member of the Australian Government Information Management Office CIO Forum and a member of the Federal Court e-court strategy. These memberships will enable evaluation of opportunities for strategic alliances in IT systems.

Further, the Tribunal is currently assessing responses to its tender for a new case management system and will be selecting a system already installed in several other tribunals.

Cooperative arrangements with courts and other tribunals

The Tribunal has entered into a number of memorandums of understanding to provide facilities and services to other Australian Government agencies. These include:

- *Migration Review Tribunal* (MRT)—the MRT has registries in Melbourne and Sydney. In Adelaide, Brisbane and Perth, under a Memorandum of Understanding, Tribunal staff receive applications and handle enquiries on behalf of the MRT. The Tribunal also provides accommodation and hearing room facilities for MRT members, including hearing room assistance and video-conferencing facilities. The MRT pays an agreed amount to the Tribunal to provide these services.
- *National Native Title Tribunal* (NNTT)—during the reporting year the Tribunal provided additional accommodation to the NNTT from within its Adelaide premises on a cost reimbursement basis.

- *Professional Services Review Tribunal (PSRT)*—by arrangement with the Department of Health and Ageing, the Tribunal has provided an administrative and registry service to the PSRT, which reviews determinations of the Professional Services Review Committees regarding inappropriate practices in the provision of services under the *Health Insurance Act 1973*. The District Registrar of the Tribunal's Australian Capital Territory Registry is also Registrar of the PSRT. The PSRT arrangement will cease when its final matter is closed during 2005–06.
- *Australian Institute of Criminology*—the Tribunal provides personnel and payroll services to the Australian Institute of Criminology on a fee-for-service basis.
- *Federal Court of Australia*—the Tribunal shares a joint registry with the Federal Court in Hobart. The Tribunal reimburses the court for the staff and management costs required to service the needs of the Tribunal in that registry.
- *Federal Magistrates Court*—the Tribunal shares its Brisbane Commonwealth Law Courts premises with several magistrates and staff from the Federal Magistrates Court. The Court operates independently of the Tribunal, with its tenancy having been formally transferred to the Court in 2003–04. Further space was made available to the Federal Magistrates Court in the reporting year.

Raising awareness of the Tribunal and its role in administrative law

Tribunal participation in education, training and other activities

Members and senior staff of the Tribunal were actively involved in organising and participating in a variety of conferences, seminars and workshops relating to the Tribunal and its work during the reporting year. These activities enhanced community awareness of the Tribunal, and increased knowledge of the Tribunal and its

procedures amongst advocates and other persons appearing before the Tribunal.

Members gave presentations at conferences and seminars, served on a number of committees and were involved in training and education programs. Members also contributed material on the Tribunal and its operations for a range of publications. The profiles of the Tribunal's members included in Appendix 1 provide specific information about activities of this kind undertaken by members.

Activities in which staff were involved included:

- a presentation, 'Alternative dispute resolution process in the AAT in the light of recent amendments to the Administrative Appeals Tribunal Act 1975', at the 30th Anniversary Conference, Institute of Arbitrators and Mediators, Australia, in May 2005
- a presentation, 'Rules and practices for accommodating self-represented litigants at the registry and pre-hearing', at the Australian Institute of Judicial Administration and the Federal Court of Australia's Forum on Self-represented Litigants in Sydney in September 2004
- a presentation, 'Future directions', at the Practice and Procedure session, Legalwise seminar, in October 2004
- an information session, 'Access to Justice: The role of State and Commonwealth Ombudsmen and Commonwealth Merits Review Tribunals', for community representatives at Law Week in Mount Gambier in May 2005
- chairing Law Society of SA continuing legal education session, 'Impact of awards of damages on social security legislation', in Adelaide in August 2004.

Inaugural Administrative Appeals Tribunal Mooting Competition

During the reporting period, the Tribunal organised a mooting competition for teams of law students from universities in New South Wales and the Australian

Capital Territory. A total of 38 students participated in the competition that was held over four knockout rounds. The aims of the organising committee were to raise the Tribunal's profile among students and to give future practitioners experience in presenting a matter to a tribunal conducting merits review of administrative decisions.

Teams—consisting of Senior and Junior counsel and an optional research assistant—were issued with detailed factual scenarios each round from which they were required to prepare submissions and formulate oral arguments to present to Tribunal members who adjudicated the moots. The areas of administrative law covered included freedom of information, civil aviation and immigration.

A team from the University of Sydney was the winner of the 2005 competition. The Grand Final was conducted before a panel of adjudicators comprising two Tribunal members and an administrative law academic.

The Tribunal intends to build on the success of the inaugural AAT Mooting Competition by repeating the competition in 2006.

Sponsoring work experience placements

The Tribunal's registries hosted a number of work experience placements for school-age and university students during the year. The Tribunal recognises that it can provide these opportunities to students and does so to the extent that staff availability and accommodation will allow. Work experience placements comprised school children undertaking their first days in a working office, graduate and near-graduate law students gaining required credits to complete their degrees, and a German law student completing post-graduate studies in alternative dispute resolution. Work placements generally range from two weeks for school-age students to three months for law graduates.