

Chapter 2: Overview of the Tribunal

The role of the Tribunal is to provide independent 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 Hon Philip Ruddock, 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, officials, 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, it cannot review a decision until an internal review has been conducted by the 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 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 *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 approximately 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, 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.

Organisation

The Tribunal consists of the President, other presidential members (comprising judges and Deputy Presidents), Senior Members and Members. It exercises 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, environmental science, 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 2007, the Tribunal's membership totalled 92. 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 2007. Appendix 1 also contains a profile of each of the Tribunal's members other than judges of the Federal Court and Family Court.

Table 2.1 Tribunal membership as at 30 June 2007

Category of member	Judges	Full-time	Part-time	Total (Women)
President	1			1 (0)
Presidential members:				
Federal Court judges	12			12 (1)
Family Court judges	5			5 (2)
Deputy Presidents		6 ^a	5	11 (1)
Senior Members		9	12	21 (8)
Members		3	39	42 (7)
Total	18	18	56	92 (19)

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

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 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 Assistant Registrar during 2006–07 was Sian Leatham, who held office as a senior executive in the Australian Public Service. Ms Leatham commenced with the Tribunal in January 2004.

Staff

Tribunal staff members are employed under the *Public Service Act 1999* as ongoing, non-ongoing or intermittent employees. As at 30 June 2007, 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. Principal Registry staff members are responsible for finance, human resource management, information technology, legal and policy issues affecting the Tribunal, 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. In Hobart, the registry service is provided by the Federal Court. The Queensland Registry has responsibility for Northern Territory applications and for ensuring an effective level of service to Northern Territory residents.

Each registry has a State or Territory Coordinator (the senior Deputy President or Senior Member in the registry) and a District Registrar who 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 2007.

Information on the administrative structure of the Tribunal, including the names of senior staff as at 30 June 2007, 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 extensive expertise and 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.

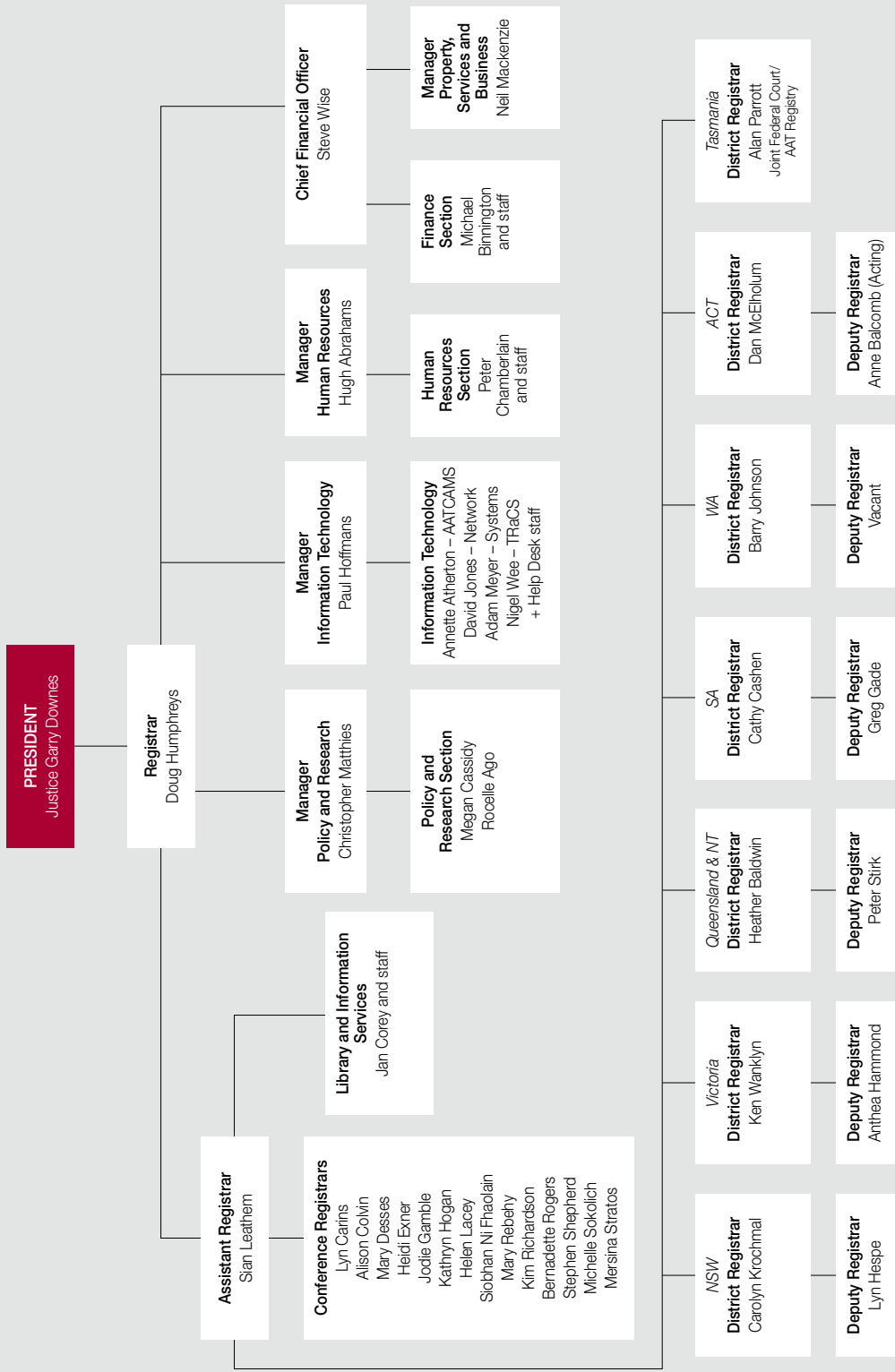
The **Tax Scheme Managing Members Committee** considers issues relating to the management of the large number of applications relating to taxation schemes that the Tribunal has received since 1999. It comprises the President, members who have been appointed to manage particular schemes and the Assistant Registrar.

Some of the highlights of the work undertaken by the committees are discussed in Chapters 4 and 5. The members' profiles in Appendix 1 identify the committees on which members serve.

Table 2.2 State and Territory Coordinators

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 Stephanie Forgie
Western Australia	Deputy President Stanley Hotop

Figure 2.3: Administrative structure of the Tribunal



The case management process

The Tribunal has a case management process that aims to deal with applications in a timely and flexible 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.

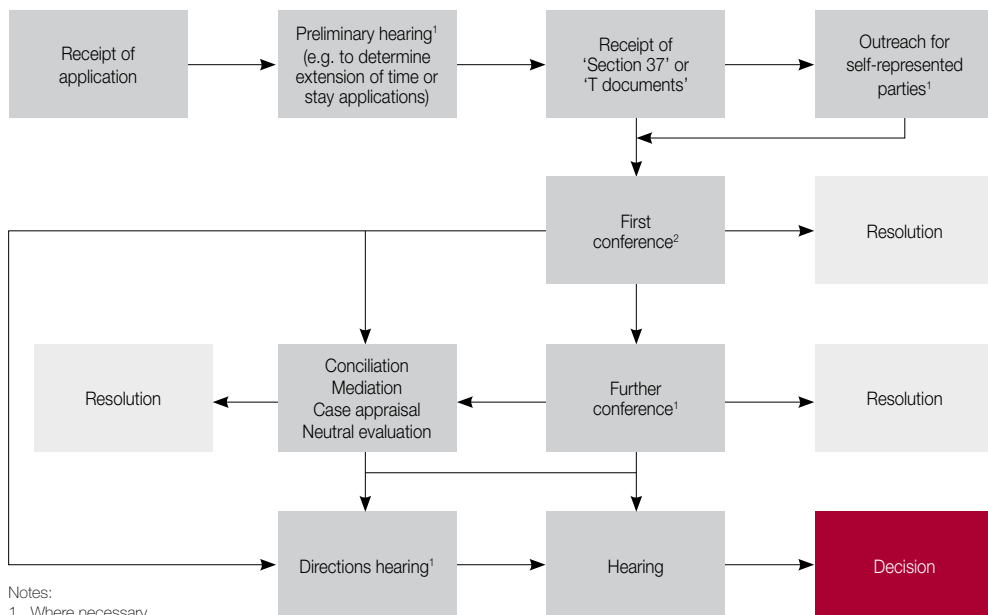
On receipt of an application in relation to which the Tribunal has jurisdiction, the Tribunal notifies the decision-maker that the application has been made. Within 28 days of receiving notice of an application, the decision-maker must provide to the Tribunal and to the applicant a statement of reasons 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, will be 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. Where an agreed resolution cannot be reached, the Tribunal will conduct a hearing and make a formal decision.

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 assists the parties to reach an agreed resolution where possible while ensuring that appropriate steps are taken to prepare for hearing those matters that do not settle. 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.

Figure 2.4 Case management process flow chart



Notes:

1. Where necessary
2. Explore possibility of using other ADR process

The Tribunal provides assistance to self-represented parties through its Outreach Program and facilitates access to the legal advice schemes operating in most registries.

The Tribunal has developed a number of practice directions and other documents which set out the procedures that will generally be adopted by the Tribunal in managing applications lodged with the Tribunal.

The Tribunal's practice directions include:

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

Over time, the Tribunal will be publishing a guide for each of the major jurisdictions which will set out general information about the review process in that jurisdiction. The General Practice Direction will no longer apply to applications in that jurisdiction once the guide has been published. Specific requirements to be met in individual applications will be set by Tribunal members and Conference Registrars.

The Tribunal published the *Guide to the Workers' Compensation Jurisdiction* in March 2007. It took effect on 30 April 2007. The Tribunal is currently developing the *Guide to the Social Security Jurisdiction*.

The practice directions and guide are complemented by practice directions on specific issues. They include:

- the Practice Direction on Procedures 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.

Five ADR processes are specified in the *Administrative Appeals Tribunal Act 1975*:

- conferencing;
- conciliation;
- mediation;
- case appraisal; and
- neutral evaluation.

The Tribunal has developed process models for each of the different forms of ADR and a policy that guides referral of applications to the different ADR processes. The ADR Committee is currently reviewing the process models in light of Tribunal experience to date.

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 entitled '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;
- information sheets on applications subject to expedited review procedures in the immigration jurisdiction.

The Tribunal recently commenced a comprehensive 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 internet website (www.aat.gov.au).

Outreach Program

The Tribunal has an Outreach Program to provide self-represented parties 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 party may have and what is necessary to meet those needs.

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 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 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. Further assistance, including representation, may be provided if the 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 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. A 'paraprofessional' interpreter 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.

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).

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;
- providing a telephone typewriter machine with national toll-free access for those with a hearing 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 performance against the Commonwealth's 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).

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 any 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, 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.