

# Chapter 4: Our users and our partners

This chapter describes the Tribunal's performance in meeting the goals identified in the 2006–07 Organisational Plan in relation to its users and partners.

## Users of the Tribunal

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

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

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

This section of the report outlines developments during the reporting year that relate to the achievement of this goal.

### Practice and Procedure Committee

The Committee met in December 2006 and May 2007 and discussed a range of matters concerning practice and procedure in the Tribunal. Agenda items included:

- the review of practice and procedure in the social security jurisdiction;
- developments relating to the use of alternative dispute resolution (ADR) processes;
- the development of guidelines relating to opinion evidence and the use of the concurrent evidence procedure in Tribunal hearings;
- the review of the way in which the Tribunal communicates with users; and
- the organisation of work within Tribunal registries.

Significant developments in relation to practice and procedure issues that have occurred in the reporting period are described below.

### Development of jurisdiction-specific practice and procedure guides

For many years, the Tribunal has relied on the General Practice Direction to manage the majority of applications lodged with the Tribunal. It sets out the general procedure to be adopted by the Tribunal and imposes time limits on the parties for undertaking major steps in the review process.

The Tribunal has decided that the General Practice Direction is no longer the most appropriate means of managing its diverse workload. Each of the major jurisdictions has particular characteristics that impact on the way in which applications proceed towards resolution. A jurisdiction-specific approach will provide greater clarity in relation to the management of those types of applications. Greater flexibility is also required in identifying what parties must do at each stage of the review process so that cases progress in the most efficient and effective manner.

Over time, the Tribunal is undertaking a review of practice and procedure in each of its major jurisdictions. The review of each jurisdiction will result in the publication of a guide that sets out general information about the review process in that jurisdiction. The guide will provide the general framework for the review process. Specific requirements to be met in individual applications will be set by Conference Registrars or Tribunal members. This will ensure that parties and their representatives have clear guidance as to what is required at each stage of the review process.

#### ***Guide to the Workers' Compensation Jurisdiction and Practice Direction relating to Section 37 of the Administrative Appeals Tribunal Act 1975***

The first phase of the project involved an examination of practice and procedure in the workers' compensation jurisdiction as well as a review of the Practice Direction relating to Section 37 of the *Administrative Appeals Tribunal Act 1975*. Comments were sought from Tribunal users and peak bodies on the general proposal to adopt jurisdiction-specific guides as well as the proposed content of the *Guide to the Workers' Compensation Jurisdiction* and the revised practice direction.

The Tribunal received positive feedback in relation to the concept of jurisdiction-specific guides and a range of specific comments on the content of the documents.

The Tribunal published the *Guide to the Workers' Compensation Jurisdiction* and a revised Practice Direction relating to Section 37 of the *Administrative Appeals Tribunal Act 1975* in March 2007. They came into operation on 30 April 2007. Copies of the Guide and the revised practice direction are available on the Tribunal's website ([www.aat.gov.au](http://www.aat.gov.au)).

The introduction of the *Guide to the Workers' Compensation Jurisdiction* required consequential changes to other Tribunal practice directions. Firstly, the General Practice Direction was revised to make clear that it no longer applies to applications in the workers' compensation jurisdiction. Secondly, the Direction on Conciliation Conferences was revoked. The Tribunal's expectations and requirements in relation to conciliations are set out in the Guide.

### ***Guide to the Social Security Jurisdiction***

The next stage of the project involves reviewing practice and procedure in the social security jurisdiction. The review has been informed, in particular, by the findings of the evaluation undertaken by the Tribunal in 2005–06 of the modified case management procedures that have been operating in the Victorian Registry.

A first draft of the *Guide to the Social Security Jurisdiction* was circulated to members and staff of the Tribunal for comment in June 2007. A consultation draft of the guide will be released for comment in the first half of 2007–08. It will be distributed to regular users and other stakeholders in the social security jurisdiction and will also be made available on the Tribunal's website ([www.aat.gov.au](http://www.aat.gov.au)). The Tribunal anticipates that the final version of the Guide will be published in 2007–08.

### **Alternative dispute resolution**

Following the May 2005 amendments to the provisions of the *Administrative Appeals Tribunal Act 1975* dealing with alternative

dispute resolution processes, the Tribunal formed a standing ADR Committee. It was noted in the last Annual Report that the Committee had developed process models for each type of ADR identified in the Act: case appraisal, conferencing, conciliation, mediation and neutral evaluation. In addition, the Committee developed and published referral guidelines which set out a range of considerations to be taken into account in deciding whether to refer a matter to an ADR process and which ADR process may be appropriate.

During 2006–07, the Tribunal delivered a series of information sessions to external users explaining the process models and the referral guidelines. The last of these was conducted in Canberra in June 2007.

The ADR Committee is now in the process of finalising the parameters for an evaluation of the case appraisals and neutral evaluations conducted by the Tribunal. The objective of the evaluation will be to provide some insights into which elements of the existing process models are working effectively and which areas could be improved. The evaluation will also assist in identifying the types of material and documentation that are useful in conducting case appraisals and neutral evaluations.

### **Tribunal guidelines relating to opinion evidence**

During the reporting period, the Practice and Procedure Committee decided that the Tribunal should develop its own set of guidelines relating to opinion evidence given by experts and other persons. The Committee has been considering the scope and content of the guidelines and their format.

The Tribunal is also developing a set of guidelines relating to the use of the concurrent evidence procedure which involves two or more experts giving evidence at the same time in a Tribunal hearing. The guidelines are being developed in response to, and are informed by, the findings of the Tribunal's pilot study on the concurrent evidence procedure which was finalised in 2005–06.

The Tribunal will release consultation drafts of the guidelines for comment in the next reporting period.

### **Management of taxation scheme matters**

Since 1999, the Tribunal has received in excess of 12,000 applications for review of decisions relating to taxation schemes. Approximately 7,400 applications were lodged prior to 1 July 2003 and many of these were subject to orders deferring further action pending the outcome of test cases in the Federal Court and the High Court.

In December 2003, the Tribunal devised a case management strategy to deal with all matters not awaiting the outcome of an appeal. This strategy involves appointing a member with experience in the taxation jurisdiction to coordinate the management of all applications relating to the same taxation scheme. Where possible, the Managing Member has been appointed from the registry which has the majority of applications relating to the particular scheme.

More than 97 per cent of the applications received before 1 July 2003 have now been finalised. Those that remain outstanding have been awaiting the outcome of cases before the courts or are in the process of being finalised. Applications lodged since 1 July 2003 have been managed closely to ensure that they progress in a coordinated and timely manner.

The Tax Scheme Managing Members Committee met to discuss progress on managing these applications in December 2006 and May 2007. The Tribunal also held liaison meetings with representatives of taxpayers and the Australian Taxation Office to discuss the management of these applications.

### **Review of communication with Tribunal users**

The Tribunal communicates with its users in a variety of ways and using a number of different media. These have developed in a relatively ad hoc manner over time. Parties and their representatives are provided with a range of written materials, including practice directions, guides, leaflets and letters. Information is provided by members and staff in person and by telephone during Outreach, conferences and other contacts with the Tribunal. The Tribunal has a DVD that demonstrates how the Tribunal operates, which is made available to self-represented parties. Practice directions, leaflets and other written materials on the Tribunal are also available on the Tribunal's website.

In 2006, the Tribunal decided to undertake a comprehensive review of the ways in which it communicates with the diverse range of people who use the Tribunal. In early 2007, the Tribunal conducted an open tender process and engaged Kathy Jones and Associates to undertake an assessment of the Tribunal's existing information products and methods of communicating with users. The consultant's final report was received in late May 2007. The Tribunal is currently considering the range of recommendations contained in the report and will commence implementation in 2007–08.

### **Work Organisation Review**

The report on the review of staffing in the Tribunal, which was finalised in March 2006, included the recommendation that: "The Tribunal develop and adopt a national case management approach based on best practice with the assistance of a working group". In July 2006, the Work Organisation Group, comprising staff at different levels and from different registries, was selected following



*Members of the Work Organisation Group: Nigel Wee, Rita Riberi, Megan Findlay, Jean Scobie, Johanna White, Megan Cassidy, Sue Gourlay.*

a call for expressions of interest. The group was asked to identify areas of best practice, recommend the elimination of unnecessary tasks and make appropriate recommendations for change.

Over a period of several months, the group visited each of the Tribunal's registries and collected information about processes and procedures. The final report of the group, delivered in late 2006, was the culmination of the observations made and documents gathered by the group during its visits. The report made a series of recommendations in relation to registry processes, including:

- the adoption of standard procedures for a range of tasks where there were differences between registries;
- parties should generally have one point of contact at a registry in relation to their application; and
- workflow should be streamlined so that tasks on a file are done to the greatest extent possible by the same person and file movements are minimised.

Many of the recommendations made by the Work Organisation Group have been implemented. The Tribunal now has a case management model in place that is broadly consistent across the registries with some variations that take account of differences in size.

### **Review of standard correspondence**

One of the areas for improvement identified in the Work Organisation Review was the standardisation of correspondence across the Tribunal. Over several years, different registries have modified and customised letters to their users. A working group was formed in May 2007 to commence the task of reviewing all standard correspondence issued by the Tribunal. It is anticipated that the working group will conclude the review during 2007–08.

### **Regular user forums and meetings with users**

The Tribunal met with regular users and other stakeholders in a range of forums during the reporting year. The Tribunal remains committed to being an approachable and transparent organisation that takes account of the needs of the people and organisations that use its services.

Individual Tribunal registries arrange user group meetings with departments and agencies, legal practitioners and others who appear regularly before the Tribunal in that location. Some registries hold meetings with users from all jurisdictions while others arrange jurisdiction-specific meetings.

While the format of the user forums may vary between registries, they 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 areas where we might be able to make improvements.

Members and Principal Registry staff met with representatives of the Australian Taxation Office and the Department of Employment and Workplace Relations at different times during the year to discuss operational issues arising in the jurisdictions involving those agencies.

### **Tribunal partners**

Tribunal partners are organisations or individuals with whom the Tribunal has a relationship beyond the context of participation in Tribunal proceedings. Partners may be organisations or individuals involved in administrative review or with an interest in issues relating to tribunals. They may also be organisations with which the Tribunal develops cooperative arrangements for the sharing of resources. Tribunal partners include government departments and agencies, tribunals, courts, the legal profession, individuals and other national and international organisations.

The Tribunal's goal in relation to its partners, as outlined in its Organisational Plan 2006–07, is:

*To cooperate 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**

The Tribunal worked with a range of other agencies, organisations and individuals during the reporting period.

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

The Tribunal worked closely with the Attorney-General's Department during the reporting year on a wide range of issues relating to the Tribunal and its operations. This included significant liaison in relation to workload and budget issues as well as possible amendments to the *Administrative Appeals Tribunal Regulations 1976*.

The Tribunal also liaised with a number of other departments and agencies in relation to issues and proposals that affect the Tribunal, including the Australian Taxation Office, Centrelink, Comcare, the Department of Employment and Workplace Relations, the Department of Health and Ageing and the Department of Human Services.

#### ***Council of Australasian Tribunals***

The Tribunal continued to make a significant contribution to the work of the Council of Australasian Tribunals during the reporting year.

Justice Downes was Chair of the Council until June 2007. The Tribunal's Registrar, Doug Humphreys, was the Executive Officer of the Council during the reporting period.

The Tribunal performed secretariat functions for the Council at the national level. This included managing the Council's finances as well as arranging and providing administrative

support for meetings of the Council and the Executive. The Tribunal continued to host and maintain the content on the Council's website and undertook work on a number of Council projects during the reporting year.

Tribunal members and staff have also been active in the Council's State and Territory Chapters. Member Regina Pertou is the Convenor of the Victorian Chapter. Other members have served on the committee of their local chapter. These include Deputy President Philip Hack SC, Deputy President Deane Jarvis, Senior Member Narelle Bell and Senior Member Lesley Hastwell.

#### ***Administrative Review Council***

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

#### ***Cooperation with other tribunals, courts and agencies***

In June 2007, Justice Downes met with the presiding members of the Migration Review Tribunal (MRT) and Refugee Review Tribunal (RRT), the Social Security Appeals Tribunal and the Veterans' Review Board to discuss issues of common interest. The registrars of the tribunals also met in June and have communicated on a regular basis in relation to areas of common interest and opportunities for efficiencies through cooperative action between tribunals. These include joint training activities, use of facilities and advertising of staff vacancies within tribunals.

The Tribunal had arrangements with a number of courts, tribunals and other agencies in relation to the provision of facilities and services during 2006–07. These included:

– *Australian Institute of Criminology*

The Tribunal provided personnel and payroll services to the Australian Institute of Criminology.

– *Federal Court of Australia*

The Tribunal shares a joint registry with the Federal Court in Hobart. The court provides staff to meet the needs of the Tribunal in that registry.

– *Migration Review Tribunal and Refugee Review Tribunal*

The MRT and RRT have registries in Melbourne and Sydney. In Adelaide, Brisbane and Perth, AAT staff receive applications and handle enquiries on behalf of the tribunals. The Tribunal also provided accommodation and hearing room facilities for MRT and RRT members, including hearing room assistance and video conferencing facilities.

– *National Native Title Tribunal (NNTT)*

The Tribunal provided additional accommodation to the NNTT from within its Adelaide premises.

**Information technology strategic alliances**

The Tribunal has replaced its existing electronic case management system with a system that will be the platform for improved workflow and electronic business practices into the future. The Tribunal recognises the value of liaising with other tribunals, courts and other organisations to evaluate possible alliances where business requirements are

similar. The Tribunal's Manager of Information Technology is a member of the Australian Government Information Management Office's Chief Information Officer Forum. The Tribunal also maintains a cooperative relationship with other tribunals and courts in order to exchange knowledge, experience and ideas.

The electronic case management system selected by the Tribunal is already in use in several state tribunals and courts. This provides opportunities to work with other users to enhance the system on a cost-share basis.

**International delegations and relationships**

During the reporting year, the Tribunal was involved in a significant capacity-building project with the Administrative Courts of Thailand. The project was funded by AusAID under the Public Sector Linkages Program with the following objectives:

- improved management by the Administrative Courts of Thailand of their case load; and
- improved quality of decision-making by both the Administrative Courts of Thailand and the Administrative Appeals Tribunal.

A delegation from the Administrative Courts of Thailand visited Australia in February 2007. The delegation comprised the President, one of the two Vice-Presidents and another



*Delegation from the Administrative Courts of Thailand and members and staff of the AAT (left to right): Dr Vishnu Varunyou, Registrar Doug Humphreys, Mrs Kirana Sumawong, Assistant Registrar Sian Leathern, Mr Akarawit Sumawong, The Hon Justice Gary Downes AM, Professor Dr Ackaratorn Chularat, Mrs Somchit Chularat, The Hon Justice Brian Tamberlin, Mrs Kanchanaratt Leevirojana, Deputy President Geoffrey Walker, Dr Charnchai Sawangsagdi, Mr Paithoon Klaiyuanthong, Mr Christopher Matthies, Mr Chatchavan Chanchai, Senior Member Geri Ettinger.*

Judge of the Supreme Administrative Court of Thailand, a Judge of the Central Administrative Court of Thailand, the Deputy Secretary General of the Office of the Administrative Courts of Thailand and two other members of staff.

In April 2007, a delegation from the Tribunal and the Federal Court visited Thailand. The delegation comprised Justice Downes, Justice Brian Tamberlin, Senior Member Geri Ettinger, the Registrar, the Assistant Registrar and the Manager, Policy and Research.

The visits to Australia and Thailand involved a series of workshops covering a range of issues, including the systems of administrative law operating in each country, the case management processes employed by the participating institutions, the information technology systems used to manage their workload and the professional development programs that are in place for judges, members and staff. The workshops enabled the participants to understand how the different institutions operate and to explore ways in which existing processes and systems could be improved.

The Tribunal also hosted a number of visitors from other overseas courts and organisations interested in gathering information on the Tribunal and its operations. These included:

- The Rt Hon the Lord Newton of Braintree OBE DL, Chairman of the United Kingdom Council on Tribunals; and
- two registrars from the Supreme Court of Singapore.

### **Raising awareness of the Tribunal and its role in administrative law**

The Tribunal was involved in a range of activities during the reporting period which were directed to raising awareness of the Tribunal and its role.

#### ***Tribunal participation in conferences, seminars and other activities***

Members and staff gave presentations on the Tribunal and its operations at a variety of conferences, seminars and other forums during the reporting period. Members and staff were also involved in training and education activities, including programs for advocates and other persons appearing before the Tribunal. Specific information about these activities is set out in Appendices 1 and 8.

#### ***Sponsoring work experience placements***

The Tribunal's registries provided a number of work experience placements for university students during the year. Work experience placements included near-graduate and graduate law students from the College of Law in New South Wales, Queensland University of Technology, University of Western Australia and Wollongong University.