



Chapter 4:  
Our users and our partners



This chapter describes the Tribunal's performance in meeting the goals identified in the 2007–08 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 October 2007 and June 2008 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 development of a practice direction relating to taxation of costs; and
- the review of the way in which the Tribunal communicates with users.

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.

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 Social Security Jurisdiction***

The Tribunal released a draft of the Guide to the Social Security Jurisdiction for comment in September 2007. The draft guide was forwarded to peak bodies and a range of regular users in the social security jurisdiction, including government agencies, legal aid bodies and community legal centres. It was also made available on the Tribunal's website.

The final version of the Guide to the Social Security Jurisdiction was published in April 2008. It took effect on 19 May 2008.

The General Practice Direction was also varied to make clear that it no longer applies to applications in the social security jurisdiction.

### **Alternative dispute resolution**

The Tribunal undertook a range of activities during the reporting year which were directed to raising awareness about, and encouraging the use of, the full range of ADR processes available within the Tribunal. These included:

- a session at the National Conference devoted to ADR with an emphasis on case appraisal and neutral evaluation;
- information forums for legal practitioners and government agency representatives held in the New South Wales Registry as part of Law Week in April 2008;
- a presentation given to legal officers at a forum organised by the Australian Taxation Office.

The Tribunal also took its first steps towards evaluating the use of the case appraisal and neutral evaluation processes. A file review was undertaken in relation to applications finalised before March 2008 in which either process had been used. Information was gathered on a range of matters, including the nature of the issues referred to case appraisal or neutral evaluation and the nature and timing of the processes. While the size of the sample was small, the data-gathering exercise produced some useful qualitative information about the processes. It provided insights into which aspects of the existing process models are working well and which areas may need to be clarified. The evaluation should also assist with a review of the ADR referral guidelines which the ADR Committee plans to undertake in 2008–09.

### **Tribunal guidelines relating to the use of opinion evidence**

The Tribunal undertook further work during the reporting period on developing a set of guidelines which will inform persons who are retained to provide opinion evidence, as well as parties and their representatives about the Tribunal's expectations in relation to this kind of evidence. While similar in nature to

guidelines that have been developed by other courts and tribunals, the guidelines will be tailored to the Tribunal and its way of operating.

As noted in last year's Annual Report, 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.

The Tribunal will release consultation drafts of the guidelines for comment in 2008–09.

### **Taxation of costs**

In limited circumstances, the Tribunal is able to order a party to a proceeding to pay the costs incurred by another party. This occurs most commonly in the workers' compensation jurisdiction. Where the parties are unable to agree about the amount of the costs, they may be taxed by the Tribunal.

The Tribunal has been developing a practice direction which will set out the procedures that the Tribunal will adopt in regard to taxation of costs. It is anticipated that a draft practice direction will be released for comment in the first half of 2008–09.

### **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. Many 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 the large number of taxation scheme matters. This strategy involved 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 was appointed from the Registry which had the majority of applications relating

to the particular scheme. Almost all of the applications received before 1 July 2003 have now been finalised.

Applications lodged since 1 July 2003 have been managed closely to ensure that they progress in a coordinated and timely manner. The applications are now being overseen centrally by the Assistant Registrar and managed in each of the Registries by members with expertise in the taxation jurisdiction.

### **Management of applications for review of decisions by APRA and ASIC**

In early 2008, the Tribunal implemented a strategy for managing applications for review of decisions made by the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC). The majority of these applications relate to decisions disqualifying individuals from holding certain positions. In the case of APRA, the disqualifications usually prohibit participation in the insurance industry. ASIC disqualifications generally prohibit involvement in the management of companies.

APRA and ASIC applications are being overseen by a Senior Member of the Tribunal with experience in this area of law. The Senior Member manages the applications during the pre-hearing process, referring matters to a suitable ADR process or preparing them for hearing. The Senior Member hears a proportion of the applications personally. The remainder are referred to other members with relevant knowledge and experience.

### **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.

A review of the Tribunal's existing information products and methods of communicating with users was undertaken last year. As a result, the Tribunal engaged a part-time communications officer and contracted ZOO Communications to upgrade the Tribunal's information products. New designs for brochures, correspondence and other corporate material were developed during the year. Revised materials will be produced during 2008–09.

### **Review of standard correspondence**

One of the areas for improvement identified in the national Work Organisation Review conducted in 2006–07 was the standardisation across the Tribunal of correspondence relating to the review process. A review of correspondence was undertaken during 2007–08 and standard correspondence relating to the application stage of the review process has been updated on the Tribunal's computer systems. The remainder of the correspondence will be updated in 2008–09.

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

The Tribunal met with regular users and other stakeholders in a range of settings during 2007–08. The Tribunal is committed to being an approachable and transparent organisation that takes into account 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 it is performing well and areas where it might be able to make improvements.

Members and senior staff also met with representatives of the Australian Taxation Office, the then Department of Employment and Workplace Relations and Seacare during the year to discuss operational issues arising in the jurisdictions relevant to those agencies.

### User survey

In February 2008, the Tribunal engaged Profmark Consulting to undertake a survey of Tribunal users. Profmark Consulting undertook the last user satisfaction survey on behalf of the Tribunal in 2005.

In June 2008, written surveys were sent to more than 4,000 individuals whose applications had been finalised in 2007. Profmark Consulting also conducted telephone surveys with employees of government departments and agencies and legal practitioners who appear regularly in the Tribunal. The Tribunal expects to receive a report on the results of the survey in August 2008.

## 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, other 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, 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, individuals and organisations

The Tribunal maintained and developed its relationships with a range of agencies, organisations and individuals during 2007–08.

#### *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, including the Tribunal's jurisdiction, workload and budget and potential amendments to the *Administrative Appeals Tribunal Regulations 1976*. The Tribunal also had contact with a number of other departments and agencies in relation to issues and proposals that concern the Tribunal. These include the Australian Law Reform Commission, the Australian Taxation Office, Comcare, the Department of Education, Employment and Workplace Relations, the Department of Human Services, the Department of Prime Minister and Cabinet and the Productivity Commission.

#### *Administrative Review Council*

As President of the Tribunal, Justice Downes is an ex officio member of the Administrative Review Council. The ARC's role is to monitor and provide advice to Government, through the Attorney-General, on the operation of the Commonwealth system of administrative law. The President attended meetings and

participated in the activities of the ARC during the reporting year. The Tribunal hosted the meeting of the ARC held in February 2008 and also provided facilities for consultation forums conducted during the year.

For further information relating to the ARC and its operations, please refer to the ARC's Annual Report.

### **Council of Australasian Tribunals**

The Council of Australasian Tribunals (COAT) is an association for tribunals and those who work in, or have an interest in, tribunals in Australia and New Zealand. It consists of a National Council and local chapters and is designed to facilitate discussion and collaboration on matters that are relevant to tribunals.

Tribunal members and staff were active contributors to the work of the Council during the reporting year.

The Tribunal's Registrar, Doug Humphreys, was the Executive Officer and Public Officer of the Council at the national level during 2007–08. Tribunal staff managed the Council's website and undertook work on a number of projects during the reporting year, including the development of an electronic version of the COAT Practice Manual for Tribunals.

Tribunal members and staff have also been active in the Council's State and Territory Chapters. Deputy President Deane Jarvis was the Convenor of the South Australian Chapter. Member Regina Perton was the Convenor and District Registrar Ken Wanklyn the Secretary/Treasurer of the Victorian Chapter. Deputy President Philip Hack SC, Senior Member Narelle Bell and Senior Member Lesley Hastwell served on the committee of their local chapter during 2007–08. Other Tribunal members and staff were members of local chapters and participated in a range of chapter activities.

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

#### *Commonwealth tribunals and courts*

The Commonwealth merits review tribunals – the AAT, the Migration Review Tribunal (MRT), the Refugee Review Tribunal (RRT), the Social Security Appeals Tribunal and the Veterans' Review Board (VRB) – maintained their cooperative relationship during 2007–08. The heads and registrars of the tribunals met in October 2007 and June 2008 to discuss issues of mutual concern. Liaison occurred throughout the year in relation to various matters, including pursuing opportunities for efficiencies through cooperative action. There was also ongoing communication between officers of the tribunals in relation to matters such as advertising of staff vacancies, learning and development activities and policy issues affecting the tribunals generally.

The Tribunal had arrangements with a number of courts and tribunals in relation to the provision of facilities and services during 2007–08. These included:

- 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 videoconferencing facilities.

- National Native Title Tribunal (NNTT)

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

- Veterans' Review Board

The Tribunal made facilities available in its Registry in Canberra for the VRB to conduct hearings.

### *Other tribunals*

In June 2008, the Tribunal attended a meeting of the Workers Compensation Dispute Resolution Organisations. This group comprises the State and Territory and New Zealand bodies charged with resolving workers' compensation disputes. It meets annually to exchange information and ideas and discuss emerging issues. The Tribunal was accepted as an ongoing member of the group at the meeting.

### ***International relationships and delegations***

#### *International Association of Supreme Administrative Jurisdictions*

The International Association of Supreme Administrative Jurisdictions (IASAJ) consists of bodies that are empowered to adjudicate disputes arising from the action of public administrations. The association's purpose is to promote the exchange of ideas and experiences between jurisdictions. The IASAJ was founded in 1983. The Tribunal has been a member since 2004.

The IASAJ held its ninth triennial congress in Thailand in November 2007. The principal theme of the congress was the recruitment, training and independence of administrative judges. The Tribunal's President and the Registrar attended the congress.

Australia has been chosen as the host nation for the tenth congress to be held in March 2010. The Hon Michael Black AC, Chief Justice of the Federal Court of Australia, and Justice Downes have become the Presidents of the association. The congress will be co-hosted by the Tribunal and the Federal Court of Australia.

#### *Relationship with the Administrative Court of Thailand*

The Tribunal continued to develop and strengthen its relationship with the Administrative Court of Thailand during the reporting year.

Two IT staff from the Office of the Administrative Courts undertook a three-month placement with the Tribunal in 2008.

The placement was funded by AusAID under the Australian Leadership Awards — Fellowships program. The participants gained an in-depth knowledge of the Tribunal's electronic case management system and studied the Tribunal's IT systems and practices more generally. This knowledge will assist the Thai Court to develop its IT capability.

Mr Thirayuth Lorlertratna, Vice President of the Supreme Administrative Court of Thailand and Mrs Kanchanaratt Leevirojana, Deputy Secretary General of the Office of the Administrative Courts attended the Tribunal's National Conference.



**Tribunal's National Conference: Registrar Doug Humphreys; Mr Thirayouth Lorlertratna - Vice President, Supreme Administrative Court of Thailand; The Hon Justice Gary Downes; Mrs Kanchanaratt Leevirojana - Deputy Secretary General, Office of the Administrative Courts, Thailand; The Hon Justice Brian Tamberlin.**

#### *Visiting Delegations*

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:

- Judge Kim, Jung-wook of the Seoul Administrative Court;
- Justice David Wong of the High Court of Sabah and Sarawak;
- officials from the Cabinet Office of Japan; and
- officials from the Legislative Affairs Office of the People's Republic of China.



### **Raising awareness of the Tribunal and its role**

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 in administrative law.

#### ***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 appearing before the Tribunal. Specific information about these activities is set out in Appendixes 1 and 8.

#### ***Administrative Appeals Tribunal Mooting Competition***

The third AAT Mooting Competition was held in August and September 2007. It involved 19 teams from 13 universities across Australia. Teams comprised two students acting in the roles of senior and junior counsel. A third student could participate as a researcher and designated scribe.

In each round, teams were issued with detailed factual scenarios and were required to prepare written submissions and present oral arguments to the Tribunal member or members who adjudicated the moots. The factual scenarios were drawn from a variety of administrative law areas, including immigration, freedom of information, social security and veterans' affairs.

The final was held in Sydney on 20 September 2007. The competition was won by Tomas Fitzgerald and Laura Coffey from Notre Dame University. Tomas was also awarded the Registrar's Best Oralist prize. Tom Smyth, Matt Sherman and Claudia Newman-Martin from the Australian National University were the runners-up.

#### ***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, the University of New South Wales and Wollongong University.



AAT Mooting Competition: Tomas Fitzgerald and Laura Coffey from Notre Dame University; Tom Smyth, Matt Sherman and Claudia Newman-Martin from the Australian National University.