

# CHAPTER 1

## THE YEAR IN REVIEW

## PRESIDENT'S OVERVIEW



The Tribunal has been providing independent merits review of administrative decisions for the Australian community since 1976, yet it was not until 2008 that the High Court of Australia was called upon to consider

the general nature of the Tribunal's task in carrying out this role.

On 30 July 2008, the High Court handed down its decision in *Shi v Migration Agents Registration Authority* (2008) 235 CLR 286. The High Court affirmed the approach to review developed in key decisions of the Tribunal and the Federal Court. Unless the statute governing the decision under review indicates otherwise, the Tribunal will have regard to the latest information available and determine the correct or preferable decision on the circumstances as they exist at the time it makes its decision. The Tribunal is not generally confined to considering the circumstances as they existed at the time the reviewable decision was made. Nor is the Tribunal limited to looking at the material that was before the decision-maker.

These principles flow from the powers conferred on the Tribunal under the *Administrative Appeals Tribunal Act 1975* and, in particular, the Tribunal's ability to substitute its own decision for that of the original decision-maker. This is the essence of the merits review function.

As was noted in *Shi*, one of the key characteristics of merits review is that the Tribunal can take into account new evidence when it makes its decision. In many applications before the Tribunal, additional evidence from experts assists the Tribunal to reach its decision. Given its broad jurisdiction, the Tribunal interacts with experts from a wide range of fields.

During 2008-09 the Tribunal has been working on two sets of guidelines dealing with expert evidence. The first set of guidelines will provide general guidance on evidence of this kind and will be similar in nature to guidelines promulgated by other courts and tribunals. The second set of guidelines will relate to the use of concurrent evidence, the procedure where two or more

experts give evidence at the same time in a Tribunal hearing.

The guidelines will inform experts as well as parties and their representatives about the Tribunal's expectations and procedures in relation to expert evidence. The aim is to ensure that such evidence is of the highest quality and utility in the review process. Drafts of the guidelines were released for comment during 2008-09 and the final versions will be released in 2009-10.

In relation to the Tribunal's workload, the total number of applications lodged and finalised in 2008-09 was of a similar order to the previous year. As to the timeliness of the review process, it is pleasing to note that the proportion of applications finalised within 12 months of lodgement improved in the social security and veterans' affairs jurisdictions.

In the workers' compensation jurisdiction, however, there was a decline in the proportion of applications finalised within 12 months. A range of external factors can impact on timeliness in this jurisdiction, such as the time required to obtain expert medical evidence and the need to await the determination of related claims for compensation. However, it is also essential that the Tribunal and the parties do what they can to progress each application in the most efficient and effective manner possible. The Tribunal will work with users in this jurisdiction in 2009-10 to implement ways in which timeliness can be improved.

The Tribunal has noted with interest the recent proposals to amend the *Federal Court of Australia Act 1976* to clarify and strengthen the Federal Court's powers to manage civil cases and to ensure the efficient conduct of civil litigation. The proposed changes are similar to reforms introduced in a number of other jurisdictions. The goal is to achieve the just resolution of disputes in a manner that is also timely and cost effective, not only for the parties but for the public in relation to the use of court resources.

The principles underlying these reforms are also relevant to the Tribunal, particularly in relation to those cases that may involve significant hearing

time and resources. The Tribunal is required to provide a review process that is not only fair and just but also economical, informal and quick. It has a responsibility to ensure that an appropriate balance between the objectives is achieved in each case.

One of the principal ways in which the Tribunal seeks to do this is through the use of alternative dispute resolution. At least one conference is held in most applications lodged with the Tribunal. Other types of ADR – conciliation, mediation, case appraisal and neutral evaluation – are also used in appropriate cases. In 2008-09 the Tribunal conducted some 9,500 ADR processes. As in previous years, only one-fifth of applications were finalised by way of a decision of the Tribunal following a hearing.

The use of ADR processes can have significant benefits for the parties as well as for the Tribunal. ADR processes are informal. They can lead to the resolution of a dispute or assist to narrow the issues in dispute, both of which can reduce the costs incurred by the parties and by the Tribunal. An agreed resolution is likely to be a more satisfactory outcome for both parties. The Tribunal will continue its efforts to ensure that ADR is used to best effect in the review process.

As I noted in last year's annual report, the Chief Justice of the Federal Court of Australia, the Hon Michael Black AC, and I became Presidents of the International Association of Supreme Administrative Jurisdictions in November 2007. The next triennial congress of the association will be co-hosted by the Federal Court and the Tribunal and will take place in Canberra and Sydney in March 2010. Planning for the congress has continued in 2008-09. It promises to be a stimulating forum with attendees from a diverse range of countries.

The Tribunal maintained its relationship with the Administrative Court of Thailand during the reporting year. In February 2009 the Tribunal hosted a delegation comprising 38 judges and members of staff from the court, and also hosted delegations from the People's Republic of China and Vietnam. These visits provide an excellent opportunity for the exchange of information about the ways in which administrative law disputes are handled in different countries.

In relation to the Tribunal's membership, I note that Justice Robert Buchanan of the Federal Court was appointed as a presidential member of the Tribunal from 30 March 2009. He was also appointed to act as President during periods when I am absent from the Tribunal. The need to appoint a new Acting President was prompted by the retirement of the Hon Brian Tamberlin as a Judge of the Federal Court. His relationship with the Tribunal will continue, however, following his appointment as a part-time Deputy President.

A number of member positions were advertised during the course of 2008-09 and some of those appointment processes were complete at the time of writing. I am pleased to note the reappointment of Deputy President Raymond Groom, Senior Member Narelle Bell, Senior Member Bruce Pascoe, Member Dr Gordon Hughes, Member Dr Graham Maynard, Member Regina Perton, Member Anne Shanahan and Member Simon Webb. Graham Kenny has been re-appointed as a Senior Member, a well-deserved promotion. The Tribunal will also welcome a number of new members in 2009-10. Robin Handley returns to the Tribunal as a full-time Deputy President and will be joined by Anne Britton, Professor Robin Creyke and Jill Toohey who have been appointed as full-time Senior Members. Frank O'Loughlin has been appointed as a part-time Senior Member and Peter Wulf as a part-time Member.

I would like to acknowledge Rear Admiral Tony Horton who retired from the Tribunal during 2008-09. He was an active and valued member of the Tribunal over a period of almost 18 years. I would also like to thank Deputy President Geoffrey Walker, Senior Member James Constance, Senior Member Robin Hunt, Senior Member Josephine Kelly and Member Simon Fisher for their significant contribution to the Tribunal over the term of their appointments.

In 2008-09 the Tribunal received the results of the user satisfaction survey undertaken in 2008. They indicate that parties and representatives are generally satisfied with the quality of the service they receive from the Tribunal. This reflects the very high standard of the work done by all of the members and staff of the Tribunal. I would like to thank them for their efforts during 2008-09. I look forward to another productive year in 2009-10.

## REGISTRAR'S REPORT



The past year has been one of continued achievement for the Tribunal.

Overall, lodgements of new appeals to the Tribunal were at a similar level to last year. However, differences

emerged in the volume of work in the major jurisdictions. Applications for review of decisions of the Social Security Appeals Tribunal relating to family assistance and social security payments increased by 24 per cent. This increase was offset by fewer lodgements in the areas of citizenship and immigration, compensation, taxation and veterans' affairs. As in the previous reporting year, the Tribunal finalised more applications in 2008-09 than were lodged, leading to a reduction in the number of applications on hand at 30 June 2009. The Tribunal may struggle to achieve a similar result in 2009-10 should the trend for increased numbers of appeals in the social security area be maintained.

Turning to finance, notwithstanding the Tribunal's approval to run at a deficit of \$600,000 in the reporting year, it returned a surplus of \$368,000. This result was achieved through the careful implementation of a number of efficiency measures identified in external reviews carried out by PricewaterhouseCoopers and Oakton in the previous year. The capacity of the Tribunal to continue to find efficiencies without affecting service levels will become progressively more difficult in future years.

The past year has seen new arrangements put in place for the sharing of resources with the Migration Review Tribunal/Refugee Review Tribunal and the Veterans' Review Board. New

memorandums of understanding were signed with each of these bodies. The Migration Review Tribunal/Refugee Review Tribunal have increased the number of members using Tribunal premises in Adelaide, Brisbane and Perth. The Tribunal now provides hearing room facilities for the Veterans' Review Board in Adelaide, Canberra and Perth. These revised arrangements result in significant savings on a whole of government basis.

In Adelaide, the refurbishment of the registry has been completed. The work involved modifications to the registry area, new carpet and painting throughout. I thank the Adelaide staff for their patience and good humour during the refurbishment process.

In late August 2008, the Tribunal received the results of the user survey conducted in June and July. Applicants, officers of decision-making agencies and private legal practitioners were asked for their views on their experience with the Tribunal. The Tribunal received positive feedback both in relation to the service provided by members and staff and its facilities. The results are discussed further in Chapter 4.

This year saw the departure of our Adelaide District Registrar Catherine Cashen. We wish her well in her new position with Fair Work Australia. By the time this report is tabled, our new District Registrar, Clare Byrt, will have commenced. Clare rejoins the Tribunal having previously held a position as a Conference Registrar in Sydney.

Finally, I would like to acknowledge and thank members and staff for their efforts during the year.

Chart 1.1 Organisational plan, and achievements for 2008-09

Our Vision	Our Mission	Our Values	Key Result Areas
To improve the quality of administrative decision-making through the provision of a review mechanism that is fair, just, economical, informal and quick.	To deliver high-quality independent merits review of administrative decisions in a timely fashion using alternative dispute resolution processes where appropriate.	Integrity Professionalism Efficiency Accessibility Independence	Our Users Our Partners Our People Our Organisation
Goals	Strategies	Key Targets 2008-09	Achievements to 30 June 2009
<b>OUR USERS</b> To provide a high-quality national merits review process that contributes to community confidence in a system of open and accountable government.	Continue to improve case management practices and procedures. Improve the way the AAT communicates with its users and the public. Respond appropriately to feedback from users.	1. Issue guidelines relating to expert evidence in the Tribunal. 2. Issue a practice direction on taxation of costs. 3. Commence a review of practice and procedure in the veterans' jurisdiction. 4. Continue implementation of communication strategy by: <ul style="list-style-type: none"> <li>introducing a consistent look for all communication products</li> <li>issuing revised brochures and new information products.</li> </ul> 5. Commence a review of standard orders and directions. 6. Analyse and develop responses to feedback received from the user survey. 7. Conduct regular liaison meetings.	1. Draft guidelines released for comment in 2008-09. Final guidelines to be issued in 2009-10. 2. Draft practice direction released for comment in 2008-09. Final practice direction to be issued in 2009-10. 3. Review deferred to 2009-10. 4. Consistent look developed for communication products - to be implemented in 2009-10. Brochures revised and will be made available in 2009-10. 5. Review deferred to 2009-10. 6. User survey results analysed. Areas for improvement identified and changes implemented. 7. Liaison meetings conducted.

Chart 1.1 Organisational plan, and achievements for 2008–09

Goals	Outcomes	Strategies	Key Targets 2008–09	Achievements to 30 June 2009
<b>OUR PARTNERS</b>				
To cooperate with government, other tribunals, the legal profession and other interested groups and to continue to forge links with international counterparts.	Legislators and policy makers value the Tribunal's expertise on matters of administrative review. Better understanding of the AAT and its role in the administrative decision-making process. Government and other tribunals view the AAT as a centre of excellence in administrative review. Improved links with overseas bodies that have similar functions to the AAT. All necessary preparations in place for the IASAJ Conference in 2010.	Develop and enhance our links with government, other tribunals and our partners in administrative review. Develop links with universities and law education providers.	<ol style="list-style-type: none"> <li>1. Participate fully and provide expert advice to government and legal forums relevant to the work of the AAT.</li> <li>2. Continue resource sharing arrangements with courts and tribunals.</li> <li>3. Seek out further opportunities to share resources, particularly in relation to government-ordered inquiries and other government departments.</li> <li>4. Begin preparation to host IASAJ Conference in 2010.</li> <li>5. Continue to undertake AAT moot competition.</li> <li>6. Participate in conferences and training relevant to the work of the AAT.</li> <li>7. Continue cooperative work with overseas bodies.</li> </ol>	<ol style="list-style-type: none"> <li>1. Submissions made and information provided on a range of issues relating to the Tribunal and its role.</li> <li>2. New MoUs agreed with MRT/RRT and VRB. Agreement reached to provide additional space for four MRT/RRT members.</li> <li>3. Use of Tribunal facilities by HMAS Sydney II Inquiry. Defence Honours and Awards Tribunal using Canberra hearing rooms.</li> <li>4. Planning for IASAJ Conference well underway.</li> <li>5. Moot competition took place between August and October 2008. Registrations open for 2009 competition.</li> <li>6. AAT arranged and participated in a range of conferences and seminars and training activities.</li> <li>7. Delegations from China, Thailand, the United Kingdom and Vietnam visited the Tribunal.</li> </ol>

Chart 1.1 Organisational plan, and achievements for 2008–09

Goals	Outcomes	Strategies	Key Targets 2008–09	Achievements to 30 June 2009
<b>OUR PEOPLE</b>				
To maintain professional standards and a positive, safe and productive workplace that values diversity.	Appropriate workplace policies in all areas. We have a healthy and safe working environment. Increase in Indigenous employee numbers. Members and staff have the skills, knowledge and commitment to deliver high-quality services. New staff participate in a high-quality induction. Obtain organisational feedback from members and staff.	Maintain occupational health and safety practices. Maintain and promote employment diversity strategies. Provide and support enhanced learning and development opportunities for members and staff. Seek, and respond appropriately to, feedback from members and staff.	<ol style="list-style-type: none"> <li>1. Strive to eliminate our already low level of workplace injuries. Implement new health and safety management arrangements.</li> <li>2. Continue the Indigenous employment program.</li> <li>3. Negotiate a new workplace agreement.</li> <li>4. Hold biennial staff conference.</li> <li>5. Respond to the March 2008 staff survey.</li> <li>6. Review member and staff development/training programs to identify possible efficiencies.</li> <li>7. Develop and finalise the Tribunal's Practice Manual.</li> </ol>	<ol style="list-style-type: none"> <li>1. Injuries rate maintained at a low level. New health and safety management arrangements implemented.</li> <li>2. Current program completed — will look to recommence in 2009–10.</li> <li>3. New workplace agreement approved by staff.</li> <li>4. Staff conference cancelled as savings measure. Registry-based seminars planned for 2009–10.</li> <li>5. Regular telephone hookups with Case Service Officers commenced. Training sessions on giving and receiving feedback sessions planned for 2009–10.</li> <li>6. Review conducted. Relevant policies updated. E-learning and blended learning solutions in development.</li> <li>7. Significant work undertaken on drafting manual content.</li> </ol>

**Chart 1.1** Organisational plan, and achievements for 2008–09

Goals	Outcomes	Strategies	Key Targets 2008–09	Achievements to 30 June 2009
<b>OUR ORGANISATION</b>				
To be an organisation with systems and processes that maximise effective and efficient use of Tribunal resources.	<p>Accommodation and facilities meet user needs.</p> <p>Planning and organisational decisions are based on timely, accurate and relevant information.</p> <p>IT and other systems and processes allow staff to work more efficiently and provide high-quality service.</p> <p>Continue improvement in meeting ACSI 33 compliance and improved physical security for AAT premises, members and staff.</p>	<p>Improve accommodation in order to meet AAT current and future needs.</p> <p>Improve IT systems.</p> <p>Improve resources management.</p> <p>Minimise exposure to system or other risks, fire or natural disaster.</p>	<ol style="list-style-type: none"> <li>Undertake refurbishment of Adelaide Registry.</li> <li>Implement ACSI 33 and physical security improvements as funding allows.</li> <li>Review business continuity plan.</li> <li>Begin implementation of new finance and HR information technology systems.</li> <li>Continue improvements to TRACS.</li> <li>Enhancement to Tribunal IT systems.</li> <li>Implement agreed recommendations of PricewaterhouseCoopers and Oakton reviews</li> <li>Prepare a 3–5 year Strategic Plan covering organisational outcomes and systems changes necessary.</li> </ol>	<ol style="list-style-type: none"> <li>Adelaide refurbishment complete.</li> <li>Modifications to secure stores underway. New backup power sources installed in Adelaide and Brisbane. New programs purchased to improve technical management.</li> <li>Business continuity plan issued and available on intranet.</li> <li>Tender process for HR system underway and shared service options being considered.</li> <li>Twenty sets of functional enhancements implemented, improving productivity and reporting functionality.</li> <li>Project to install new servers underway.</li> <li>Agreed recommendations of reviews implemented.</li> <li>Planning meeting to take place in 2009–10.</li> </ol>