



CHAPTER 4

OUR USERS AND  
OUR PARTNERS

This chapter outlines the Tribunal's performance in meeting the goals for its users and partners identified in the 2008-09 Organisational Plan.

## OUR USERS

The principal users of the Tribunal are parties to Tribunal proceedings — individuals, organisations and government departments and agencies — and their representatives. This section addresses how the Tribunal worked during the reporting year to meet its goal in relation to its users:

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

### Practice and procedure

The Tribunal's Practice and Procedure Committee met in December 2008 and June 2009 to consider ways in which practice and procedure can be improved to better meet the goal. Significant developments in practice and procedure issues during the reporting period follow.

### Guidelines relating to expert evidence

The Tribunal continued work in 2008-09 on two sets of guidelines relating to expert evidence in Tribunal proceedings.

The first set of guidelines will apply generally to evidence provided by experts. They will inform experts, parties and their representatives of the Tribunal's expectations for expert evidence, and will cover the nature of an expert's duty to the Tribunal and the expected content of expert reports.

The second set of guidelines will relate to the use of concurrent evidence — two or more experts giving evidence at the same time in a hearing. The guidelines will cover how the concurrent evidence procedure usually operates, factors that may be taken into account in deciding whether the procedure will be used and the process for making this decision.

Drafts of the guidelines were released for comment in October 2008 and the Tribunal is considering submissions from a wide range of organisations. The Tribunal expects to finalise and issue the guidelines in 2009-10.

### Taxation of costs

In limited circumstances, but most commonly in the workers' compensation jurisdiction, the Tribunal may order a party to a proceeding to pay the costs incurred by another party. If the parties are unable to agree about the amount of the costs, the Tribunal may tax them.

The Tribunal has been reviewing how it taxes costs to enhance both the flexibility of the process and its ability to assist the parties to reach an agreement. A draft practice direction with revised procedures was circulated for comment in April 2009. The Tribunal expects to finalise and introduce the practice direction in 2009-10.

### Review of summons procedures

The Tribunal is working to streamline its procedures for the production of documents under a summons. Summonses are issued most frequently in the workers' compensation jurisdiction. One of the Tribunal's aims is to establish a nationally consistent process so that appearances before a Tribunal member will generally be limited to circumstances in which there is a dispute in relation to the documents.

Work on the project, including the development of a practice direction relating to summonses, will continue in 2009-10.

### Review of regulations

The Tribunal has been reviewing the *Administrative Appeals Tribunal Regulations 1976* and has identified a number of areas in which it considers changes or improvements could be made.

The Tribunal released a consultation paper in January 2009 seeking comments on a range of proposals, including changing the name of the Veterans' Appeals Division to the Veterans' and Military Compensation Division, specifying more clearly the requirements for lodging documents electronically, revising

the provisions relating to amounts that are payable for complying with a summons, and prescribing fees for issuing summonses to produce documents and for taxing costs.

The Tribunal is liaising with the Attorney-General's Department in relation to its suggestions for changes.

### Alternative dispute resolution

The Alternative Dispute Resolution Committee met four times in 2008-09 to consider the use of ADR in the Tribunal and how it can be improved.

The Tribunal undertook a range of activities during the reporting year aimed at raising awareness of the ADR processes available in the Tribunal and encouraging their use. Tribunal members and staff spoke at a number of external conferences and seminars about ADR in the Tribunal. An internal conference was held with the Tribunal's Conference Registrars which focused on best practice in ADR and referral to ADR processes.

The Tribunal participated in the inquiry being undertaken by the National Alternative Dispute Resolution Advisory Council (NADRAC) into ADR in the civil justice system. The Tribunal provided submissions and took part in consultations conducted by NADRAC.

The Tribunal was also an active member of the ADR Inter-Agency Group, a forum for Australian Government agencies which encourages the sharing of information and training resources in relation to ADR.

### Tax scheme matters

Since 1999, the Tribunal has received more than 12,000 applications for review of decisions relating to some 120 different tax schemes or types of tax arrangements. The Tribunal developed specific processes to manage this large volume of applications, as detailed in last year's annual report.

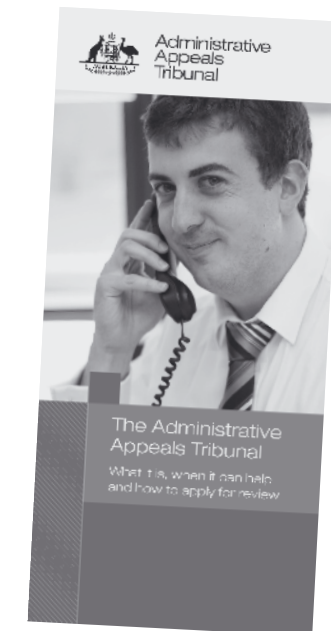
The Tribunal expects that the bulk of the applications outstanding at 30 June 2009 will be finalised by 30 June 2010. Nearly 80 per cent of these applications relate to two particular schemes.

## Communication with Tribunal users

### Publications and website

The Tribunal seeks to communicate with its users in a variety of ways that contribute to their understanding of its role, procedures and processes and how it can help them. The Tribunal's range of written documents and other information materials have been developed to suit a variety of needs.

Following a review of its communications, the Tribunal is upgrading its information products. A new logo and new designs for stationery and other corporate material are largely complete. Brochures have been rewritten and redesigned, and illustrated to show the self-represented applicant the types of rooms and situations they can expect to encounter during a review. The new materials will be launched in 2009-10.



### Regular user forums and meetings with users

As part of its commitment to being an approachable and transparent organisation, the Tribunal met with regular users and other stakeholders in a range of settings during 2008-09.

District registries arrange user group meetings with departments, agencies, private legal practitioners and other decision-makers who appear regularly before the Tribunal in that location. Some registries hold meetings with users from all jurisdictions while others arrange jurisdiction-specific meetings. The meetings are a forum in which the Tribunal can inform users of impending and proposed changes to practice and procedure, and users can give feedback on the service the Tribunal is providing.

In May 2009, the Tribunal convened a meeting with authorities, agencies and corporations who hold licences under the *Safety, Rehabilitation and Compensation Act 1988*. The meeting offered an opportunity for Tribunal members and staff to explain, particularly to newer licensees, the Tribunal's role, procedures and the role of decision-makers before the Tribunal.

During the year, the President, members and senior staff attended meetings with representatives of other agencies and authorities to discuss operational issues arising in the review process. Meetings were held with Comcare, the Safety, Rehabilitation and Compensation Commission and the Seafarers Safety, Rehabilitation and Compensation Authority.

**User survey**

As was noted in last year's annual report, the Tribunal engaged Profmark Consulting to conduct a survey of Tribunal users. The survey was conducted in June and July 2008 to establish the level of satisfaction of Tribunal users with aspects of the service provided by the Tribunal. A similar survey was conducted in 2005.

Written surveys were sent to all individuals whose applications were finalised in 2007. Telephone surveys were conducted with private legal practitioners and employees of government departments, agencies and other decision-makers who appear regularly in the Tribunal. The Tribunal received the final report on the survey in August 2008.

A total of 981 responses (22 per cent) were received from individuals who had participated in the review process. Key findings of the survey responses from individuals were as follows.

- Individuals were generally satisfied with all aspects of the service provided by the Tribunal. The courtesy of staff received the highest rating among general service attributes.
- Individuals rated all aspects of conferences positively. Individuals were most satisfied that the Conference Registrar provided a clear explanation of the proceedings.
- Individuals were generally satisfied with all aspects of hearings, including that the level of formality of the hearing was appropriate.
- A majority of individuals felt that the Tribunal had dealt with their review fairly.

In general, the results of the 2008 survey were consistent with or slightly better than the results of the survey conducted in 2005.

Employees of decision-makers and private legal practitioners also rated all aspects of the Tribunal's service positively. One of the most highly rated attributes of conferences was that they were conducted fairly. In relation to hearings, the opportunity for parties to explain their case was rated highest most frequently. A very high proportion considered that the Tribunal deals with reviews fairly.

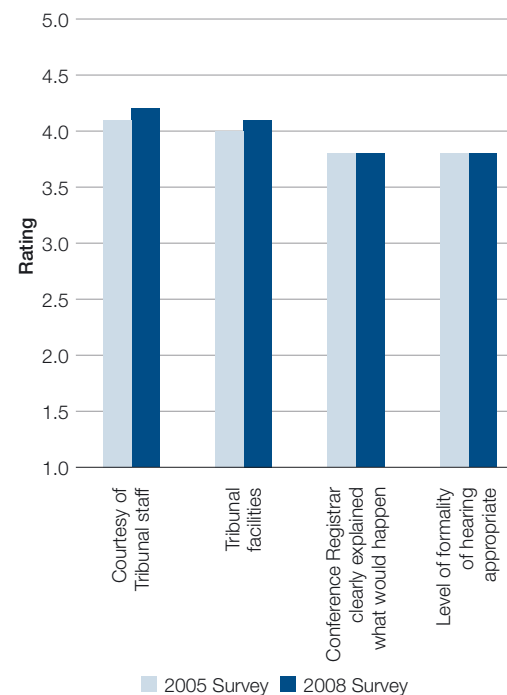
Charts 4.1, 4.2 and 4.3 illustrate the user survey results for aspects of satisfaction and perception of fairness.

The Tribunal has examined the results of the survey, including the many ad hoc comments made by individuals who responded to the survey. They have assisted the Tribunal to identify areas in which changes could be made to improve the service provided. The Tribunal plans to conduct another user survey in 2011.

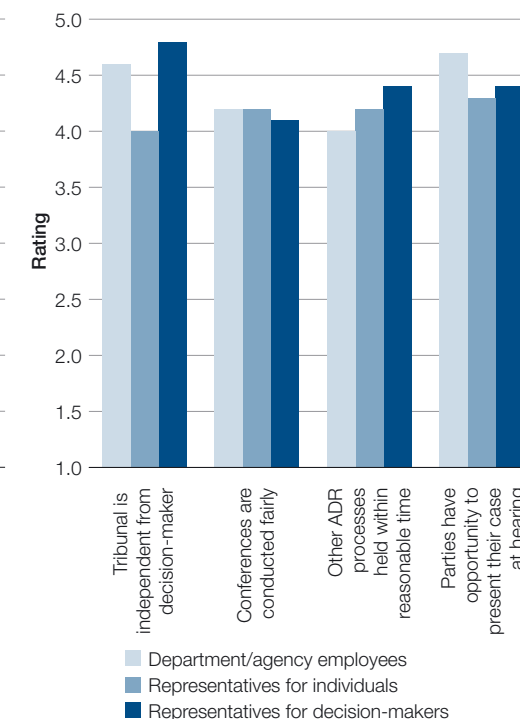


The Tribunal uses the results of user surveys to inform the development and implementation of improved procedures for its users.

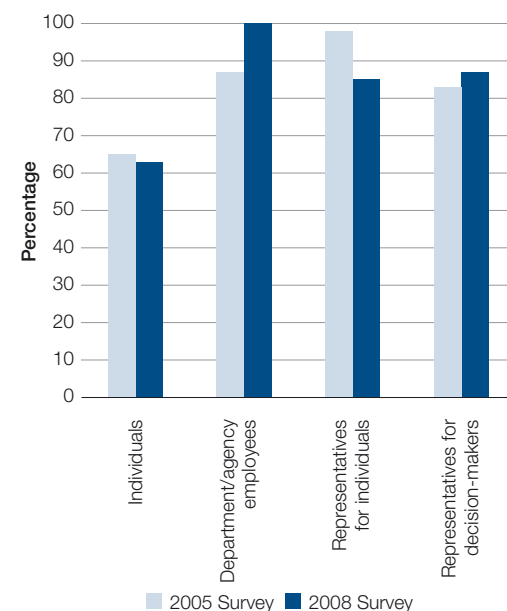
**Chart 4.1** Satisfaction of individuals with Tribunal service, in 2005 and 2008. Rating: 1= not at all satisfied; 5= extremely satisfied.



**Chart 4.3** Satisfaction of regular users with Tribunal service, in 2005 and 2008. Rating: 1= not at all satisfied; 5= extremely satisfied.



**Chart 4.2** Perception of fairness of the review process, in 2005 and 2008.



**TRIBUNAL PARTNERS**

Tribunal partners are organisations or individuals with whom the Tribunal has a relationship beyond participation in Tribunal proceedings. Partners may be organisations or individuals that are involved in administrative review or that have an interest in tribunals generally. 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 departments and agencies, organisations and individuals during 2008–09.

### 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 Department of Agriculture, Fisheries and Forestry, the Department of Education, Employment and Workplace Relations, 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 (ARC). The ARC's role is to monitor, and provide advice to government 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.

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 until June 2009. 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 throughout 2008–09. Member Regina Perton was Convenor of the Victorian Chapter until March 2009 and has continued as a member of the committee after that time. Deputy President Philip Hack SC, Senior Member Narelle Bell and Senior Member Lesley Hastwell also served on the committee of their local chapter during 2008–09. District Registrar Ken Wanklyn was the Secretary/Treasurer of the Victorian Chapter until March 2009. Other Tribunal members and staff were members of local chapters and participated in 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 2008–09. The heads and the registrars of the tribunals met twice during the reporting year 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 and learning and development activities.

The Tribunal had arrangements with a number of courts and tribunals in relation to the provision of facilities and services during 2008–09. A description of a number of these arrangements follows.

- 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/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.

In June 2009, the Tribunal concluded an agreement with the MRT and RRT to provide additional member accommodation and services in Adelaide, Brisbane and Perth. The provision of this additional accommodation will provide considerable savings on a whole of government basis.

- National Native Title Tribunal

The Tribunal provided additional accommodation to the National Native Title Tribunal at its Adelaide premises.

- Veterans' Review Board

The Tribunal made facilities available in its registries in Adelaide, Canberra and Perth for the Veterans' Review Board to conduct hearings.

#### *Other tribunals*

In June 2009, the Tribunal attended a meeting of the Workers' Compensation Dispute Resolution Organisations. This group comprises the Australian and New Zealand bodies charged with resolving workers' compensation disputes. It meets annually to exchange information and ideas and discuss emerging issues.

## International relationships and delegations

### *International Association of Supreme Administrative Jurisdictions*

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

The Hon Michael Black AC, Chief Justice of the Federal Court of Australia, and Justice Downes became Co-Presidents of the association in 2007. Australia will host the association's 10th congress in March 2010. The congress will be co-hosted by the Tribunal and the Federal Court of Australia.

### *Administrative Court of Thailand*

The Tribunal maintained its relationship with the Administrative Court of Thailand during the reporting year.

In February 2009, a delegation of 38 judges and staff visited Australia. The delegation spent time at the Tribunal, the Federal Court of Australia and the NSW Workers Compensation Commission. The delegation also travelled to Canberra where they visited Parliament House and were greeted by the Attorney-General, the Hon Robert McClelland MP.

### *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:

- Professor John Angel, Chairman of the United Kingdom Information Tribunal
- Mr Dinh Trung Tung, Vice-Minister for Justice, with officials from the Vietnamese Ministry of Justice, and
- Mr Jiang Huiling, Senior Judge, with five fellow judges from the Supreme People's Court of China.



Justice Garry Downes (centre left) and Registrar Doug Humphreys (centre right) with Mr Jiang Huiling, Senior Judge of the Supreme People's Court and leader of the delegation, with Senior Judge Mr Jin Kesheng and Judges Mr Wang Xiaodong, Ms Bao Jianping, Ms He Ti and Ms Long Fei, and Ms Zhao Xin Official, Supreme People's Court.

### Better understanding of the Tribunal and its role

The Tribunal was involved in a range of activities during the reporting period that help to promote a better understanding of the Tribunal and its role in administrative law.

#### Joint AAT and Law Council Seminar on the AAT

On 25 June 2009, the Tribunal and the Law Council of Australia conducted a joint seminar on the Administrative Appeals Tribunal. The seminar was attended by some 50 Tribunal members and staff, legal practitioners with an interest in the Tribunal and representatives of government departments and agencies involved in the Tribunal's major jurisdictions.

A keynote address was delivered by the Hon Michael Black AC, Chief Justice of the Federal Court. This was followed by a series of papers and discussion on three major themes: the nature of proceedings in the Tribunal, alternative dispute resolution in the Tribunal, and expert evidence and expert members. The seminar offered a unique forum in which to explore aspects of the Tribunal's operations.

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

Members and staff gave presentations on the Tribunal and its operations at a number of external conferences, seminars and forums during the reporting period. More information on these activities is in Appendix 9.

#### Administrative Appeals Tribunal Mooting Competition

The fourth AAT Mooting Competition was held between August and October 2008, with 21 teams from 14 universities. Teams each comprised two students acting in the roles of senior and junior counsel, and a third student could participate as a researcher and designated scribe.

In each round, teams were issued with detailed factual scenarios. They 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 freedom of information, immigration, social security and veterans' affairs.



The AAT's Mooting Competition winners (l-r) Gerowyn Lyons, Dominique Mayo and Stewart Webster, with the runners-up Dan O'Neill and Ben Martin.

The final was held in Sydney on 8 October 2008. The competition was won by Stewart Webster, Dominique Mayo and Gerowyn Lyons from the University of Queensland. Mr Webster was also awarded the Registrar's Best Oralist prize. Dan O'Neill and Ben Martin from the University of Notre Dame 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 undergraduate and graduate law students from the College of Law in New South Wales, Queensland University of Technology, Macquarie University, the University of New South Wales and Wollongong University.

