

CHAPTER

01

THE YEAR IN REVIEW



Justice Kerr

PRESIDENT'S OVERVIEW

The Administrative Appeals Tribunal's legislative charter states that 'in carrying out its functions, the Tribunal must pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick'. While those five precepts must sometimes push in different directions in the circumstances of particular matters within the Tribunal's jurisdiction, the overarching intent behind that statement of the Tribunal's objectives is not difficult to grasp.

When the Tribunal was established in 1976, it was then unique in the world. The Tribunal was created to respond to concerns that Australian government activity had greatly expanded over the decades since federation while the traditional remedies of judicial review had remained too narrow, complex and costly for most Australians to use. What was thought to be needed was an accessible, informal and relatively cheap means of obtaining review of the merits of a decision. The Tribunal was created to serve that purpose.

Many hundreds of enactments now confer merits review jurisdiction upon the Tribunal. If a decision in one of those areas falls short of what is required, and review is sought, the Tribunal has the power to set it aside and substitute the correct or preferable decision.

Parallel changes were made to expand the availability of judicial review. The *Administrative Decisions (Judicial Review) Act 1977* conferred a statutory right to seek judicial review of all but some specifically excluded administrative decisions. More recently, the right to seek judicial review of an administrative decision made by an officer of the Commonwealth, insofar as jurisdictional error is concerned, has been constitutionalised. However, judicial review corrects only errors of law—it does not, and cannot, involve merits review.

Thus, notwithstanding those other important developments, the original vision that the Tribunal should be a tribunal capable of providing an accessible, fair, informal and relatively inexpensive means of reviewing the merits of Government decisions remains as relevant today as when it was first established.

I was appointed President of the Tribunal in May 2012, the seventh person to hold that position. I wish to thank my

immediate predecessor, Justice Garry Downes, for helping to make my entry into this position as seamless as possible.

The collective strength of the Tribunal resides with its extraordinary team of skilled and independent decision makers and with the experienced staff who support them.

During the term of my appointment, I look forward to working with those decision makers and staff to ensure that the Tribunal operates so as to demonstrate the benefits of independent merits review remaining an entrenched, valued and fundamental element of the architecture of the Australian system of government. For that reason, I was pleased that the Tribunal's latest user satisfaction study has shown that parties and their representatives were largely satisfied with the Tribunal's services. That survey information contains useful feedback which will inform our ongoing commitment to improvement.

I am also greatly impressed by the data in this annual report that illustrates the success of members, Conference Registrars and staff in helping parties resolve their differences prior to hearing. The Tribunal has a long history of using appropriate formal or informal alternative dispute methods to achieve effective outcomes.

The Tribunal's commitment to professional development for its members and staff supports its work. A national conference around the theme of 'Tribunal Craft' was held in March 2012, offering an opportunity for members, Conference Registrars, District Registrars, and senior Principal Registry staff to come together to discuss Tribunal practice, share information and experiences and undertake continuing education.

The Tribunal also adopted its Strategic Plan 2011–2014 during the reporting year and has pursued a number of initiatives designed to improve services for its users and stakeholders. These include the Tribunal becoming a Recognised Mediator Accreditation Body and the finalisation of its policy and guidelines for accrediting mediators. The Tribunal introduced 'AAT Alerts'—an electronic notification service to provide information on the latest actions of the Tribunal so that users and agencies can keep informed of our activities.

The coming year will broaden my depth of understanding of the workings of the Tribunal. There will also be opportunities for me to engage closely with the other Commonwealth merits review tribunals.

The Government has accepted a recommendation of the Strategic Review of Small and Medium Agencies in the Attorney-General's Portfolio released on 8 June 2012 (the Skehill Report) that the President of the Tribunal should be

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responsible for promoting cooperation between, and the identification of best practice tribunal administration by, all Commonwealth merits review bodies.

As a first step I convened a forum involving the other major merits review tribunals and representatives of their portfolio agencies to identify initiatives for efficiencies or improvements that might be achieved by cooperative or shared efforts. The Commonwealth Tribunals Collaborative Forum had its first meeting on 30 July 2012.

Other aspects of the Skehill Report adopted by Government include the recognition of the Tribunal as the lead merits review tribunal for the Commonwealth and that no new separate merits review bodies be created outside of it.

A number of longstanding Tribunal members retired this financial year. Members Dr Maxwell Thorpe and Dr Barrie Morley were first appointed in 1985, while Deputy President Julian Block joined the Tribunal in 1995. Justice Nahum Mushin and Senior Member Andre Sweidan were relative newcomers, having been appointed in 2005. I would like to record my thanks to each of these members for their contribution to the Tribunal over many years.

New appointments to the Tribunal during 2011–12 included: Deputy Presidents Fiona Alpins and Professor Robert Deutsch, Senior Member Gina Lanzas and Members Dr Michael Couch, Dr William Isles, Lieutenant Colonel Robert Ormston (Rtd) and Dr Marian Sullivan. Stephen Frost was appointed as a part-time Deputy President, having served as a Member then Senior Member since 2006. The following members were re-appointed during the course of the year: Deputy President Deane Jarvis, Senior Members Bernard McCabe and Dr Ken Levy and Member Warren Evans.

I would like to thank all members and staff of the Tribunal for their continued efforts in maintaining the high quality level of service we provide our users and am looking forward to working together to further strengthen our role in providing independent review of administrative decisions.

REGISTRAR'S REPORT

In 2011–12, the Tribunal welcomed Justice Kerr as its new President, continued to improve its performance in the management and resolution of the review applications that come before it, integrated a new jurisdiction and undertook a range of initiatives to enhance its operations.

The Tribunal experienced a five per cent increase in the number of applications lodged in the reporting year, with applications for the review of tax decisions increasing by 46 per cent. While the increase in lodgements contributed to a rise in the number of current cases at 30 June 2012 compared to the same time last year, the majority of the pending cases are less than 12 months old. The Tribunal continued to make significant improvements in the time taken to resolve applications, with 78 per cent of matters finalised within 12 months of the date of lodgement compared to 72 per cent in the previous year. More information about the Tribunal's workload is set out in Chapter 3 and Appendix 4 of this report.

Valuable feedback on the Tribunal's performance was obtained through the user satisfaction study conducted with applicants and representatives in early 2012. It found generally high levels of satisfaction with the Tribunal's registry services and the manner in which it conducts conferences, other ADR processes and hearings. The Tribunal will use the findings from the study, and the comments and suggestions made by survey participants, to identify areas in which services may be improved further.

In March 2012, the Tribunal's jurisdiction was extended to include the review of decisions made under a wide range of Norfolk Island enactments. The Tribunal coordinated a series of workshops on Norfolk Island to raise awareness of the Tribunal's role and procedures, produced an information sheet for Norfolk Island residents and entered an arrangement with the Norfolk Island Administration whereby the registry of the Supreme Court of Norfolk Island will provide registry services on behalf of the Tribunal.

In August 2011, the Tribunal adopted its Strategic Plan 2011–2014 that will guide management and operational decisions in relation to priority setting, resource allocation and performance monitoring processes over the next three years. Work on implementing a range of initiatives



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Philip Kellow

identified in the Plan has commenced and is described in this report. This work includes the identification of further case management reforms, the publication of new guidelines on expert and opinion evidence and the use of concurrent evidence, the development of an online search facility for accessing certain information about Tribunal cases, a review of the Tribunal's business continuity and disaster recovery plans and the preparation of a comprehensive plan for strengthening the management of its records and information.

During the reporting year, the Tribunal restructured its Principal Registry by creating a new Information and Development Section with responsibility for policy development, business analysis, legal, library and information services, information and knowledge management, communications and media, technology services, significant matters and appeals. The section is headed by Chris Matthies who was appointed to the new Senior Executive Service position of Executive Director, Information and Development in early 2012. The former Assistant Registrar, Megan Cassidy, is the new Executive Director, Operations, and oversees (in conjunction with the Executive Deputy Presidents) the management of registries and Conference Registrars, coordinates the use of alternative dispute resolution and assists with the management of the Tribunal's caseload and its use of part-time members.

The Tribunal maintained its commitment to providing high quality training and resources to its members, officers and staff. Key activities in this area included the implementation of the Conference Registrars' Professional Development Program and the conduct of a wide range of seminars and other events including a new members' induction program and a national conference for members and registrars in March 2012 and for registry staff in June 2012.

As in previous years, there were changes in the membership and staff of the Tribunal during 2011–12. I would like to record my thanks for the contributions made by those members and staff whose time at the Tribunal came to an end during this period, and to welcome the members and staff who have joined us. The President's Overview sets out some of the membership changes. There were some significant staff movements, including the departure of the Chief Financial Officer, Steve Wise, Information Technology Manager, Paul Hoffmans, ACT District Registrar Dan McElholum and Conference Registrars Michelle East, Heidi Exner and Bernadette Rogers. There was also the appointment of Michael Binnington as the new Chief Financial Officer and Louise MacLeod as the ACT District Registrar. The Tribunal welcomed two new Conference Registrars, Suzy Dole and Brian Leaver, and appointed Mersina Stratos and Rowena Hodgson on an ongoing basis in Brisbane, Melbourne and Perth.

I look forward to working with Justice Kerr and the members and staff of the Tribunal in 2012–13 to continue the work commenced this year on a range of projects and initiatives identified in the Strategic Plan. These will help to ensure that the AAT is well-placed to deliver the highest quality services to the Australian community and to continue its role as the Commonwealth's premier merits review tribunal.

HIGHLIGHTS AND ACHIEVEMENTS

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Our users – to provide a high quality independent merits review process that is fair, just, economical, informal and quick

- Received 5,682 applications (including a 46 per cent increase in applications for review of tax decisions)
- Finalised 5,062 applications, 79 per cent other than by way of a Tribunal decision following a hearing
- Finalised 78 per cent of all applications within 12 months of lodgement and 91 per cent within 18 months (up from 72 per cent and 85 per cent respectively for 2010–11)
- Increased the proportion of applications finalised within 12 months in three of the Tribunal's four major jurisdictions - social security, tax and workers' compensation
- The Tribunal's jurisdiction was extended on 1 March 2012 to include the review of decisions under Norfolk Island legislation
- Published guidelines on expert evidence, the use of concurrent evidence and policy and practice for constituting the Tribunal
- Became a Recognised Mediator Accreditation Body and adopted guidelines for accrediting Tribunal members and staff as mediators under the National Mediator Accreditation System
- Launched the 'AAT Alerts' email notification service for the dissemination of Tribunal news and updates
- Undertook a user satisfaction study which showed users are generally satisfied with the services provided by the Tribunal

Our relationships – to engage effectively with Government, tribunals, the legal profession and other interested organisations in Australia and internationally

- Continued to be an active participant in the activities of the Council of Australasian Tribunals
- Members and staff gave presentations about the AAT at a wide range of conferences and seminars
- Conducted the Tribunal's seventh mooted competition for law students at Australian universities
- Entered into new cooperative service arrangements with the Social Security Appeals Tribunal and the Supreme Court of Norfolk Island and continued arrangements with the Independent Protection Assessment Office, Migration Review Tribunal/Refugee Review Tribunal and Veterans' Review Board

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Our organisation – to manage our resources strategically and effectively

- Restructured the Tribunal's Principal Registry to increase the Tribunal's capacity to implement a range of initiatives in such areas as eServices, information and knowledge management and case management while continuing to deliver services effectively and efficiently
- Updated the Tribunal's Fraud Control Plan and Risk Management Plan
- Reviewed business continuity and disaster recovery planning for the Tribunal's ICT systems
- Adopted an updated national Business Continuity Plan and developed local registry Business Continuity Plans
- Commissioned a review of the Tribunal's information and records management practices and commenced development of a strategy for introducing a comprehensive information and record management framework
- Commenced a security risk review as part of its implementation of the Commonwealth Protective Security Policy Framework

Our people – to maintain a professional, productive, rewarding and safe workplace

- Implemented a new agency agreement
- Held the biennial AAT National Conference for members and senior staff in March 2012
- Held a National Staff Conference in June 2012
- Commissioned a review of the Tribunal's policies and procedures to ensure compliance with the new *Work Health and Safety Act 2011*