

CHAPTER

02

OVERVIEW OF THE TRIBUNAL

TRIBUNAL OVERVIEW

The role of the Tribunal is to provide independent merits review of administrative decisions. The Tribunal aims to provide a review mechanism that is fair, just, economical, informal and quick.

The Tribunal falls within the portfolio of the Attorney-General, the Hon Nicola Roxon MP.

ESTABLISHMENT

The Tribunal was established by the *Administrative Appeals Tribunal Act 1975* and commenced operations on 1 July 1976. The *Administrative Appeals Tribunal Act* and the *Administrative Appeals Tribunal Regulations 1976* set out the Tribunal's functions, powers and procedures.

FUNCTIONS AND POWERS

REVIEW OF DECISIONS

The Tribunal reviews a wide range of administrative decisions made by Australian Government ministers, departments and agencies, including some other tribunals. In limited circumstances, the Tribunal can review administrative decisions made by state government and non-government bodies. Since 1 March 2012, the Tribunal has been able to review decisions made by the Norfolk Island Government.

Merits review of an administrative decision involves considering afresh the facts, law and policy relating to that decision. The Tribunal considers the material before it and decides what is the correct — or, in a discretionary area, the preferable — decision. It will affirm, vary or set aside the decision under review.

The Tribunal is not always the first avenue of review of an administrative decision. In some cases, the Tribunal cannot review a decision until there has been an internal review of the primary decision. In other cases, review by the Tribunal is only after intermediate review by a specialist tribunal — for example, an application for review of a family assistance or social security decision may be made only after review by the Social Security Appeals Tribunal.

Section 33 of the *Administrative Appeals Tribunal Act* requires that proceedings of the Tribunal be conducted with as little formality and technicality, and with as much expedition, as the requirements of the Act and a proper consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence and can inform itself in any manner it considers appropriate.

JURISDICTION

The Tribunal does not have a general power to review decisions made under Commonwealth or Norfolk Island legislation. The Tribunal can only review a decision if an Act, regulation or other legislative instrument states that the decision is subject to review by the Tribunal.

The Tribunal has jurisdiction to review decisions made under more than 400 Commonwealth Acts and legislative instruments.

The largest part of the Tribunal's workload arises from applications about decisions in the areas of family assistance and social security, taxation, veterans' affairs and workers' compensation. The Tribunal also reviews decisions in areas such as bankruptcy, child support, civil aviation, citizenship and immigration, corporations and financial services regulation, customs, freedom of information, industry assistance, mutual recognition of occupations, passports and security assessments by the Australian Security Intelligence Organisation.

In relation to Norfolk Island, the Tribunal has jurisdiction to review decisions made under 38 enactments. The decisions subject to review are specified in the Administrative Appeals Tribunal Regulations and include decisions about customs, planning and social services.

Appendix 3 contains a list of the Commonwealth and Norfolk Island enactments under which decisions may be made that can be reviewed by the Tribunal.

DIVISIONS

The Tribunal exercises powers in divisions which include the General Administrative, Security Appeals, Taxation Appeals and Veterans' Appeals Divisions. The Taxation Appeals Division is known as the Small Taxation Claims Tribunal for the review of certain tax decisions, including where the amount of tax in dispute is less than \$5,000.

ORGANISATION

The Tribunal consists of the President, other presidential members (who may be judges or Deputy Presidents), Senior Members and Members. The President, with the assistance of the Registrar, is responsible for managing the Tribunal and its resources.

Staff are employed under the *Public Service Act 1999* to assist the Tribunal to carry out its functions.

MEMBERSHIP OF THE TRIBUNAL

Members of the Tribunal are appointed by the Governor-General. The qualification requirements for the different categories of members are set out in the Administrative Appeals Tribunal Act and are outlined below. Appointments to the Tribunal may be full-time or part-time.

Presidential members can exercise powers in any of the Tribunal's divisions. Senior Members and Members may only exercise powers in the division or divisions to which they have been assigned.

There were 92 members of the Tribunal at 30 June 2012. See Table 2.1 for the breakdown of full-time and part-time members by category. See Appendix 1 for a list of the Tribunal's members by state and territory, the divisions to which each non-presidential member was assigned, and a profile of each member (other than judges of the Federal Court and Family Court).

PRESIDENT

The President of the Tribunal must be a judge of the Federal Court of Australia.

The Hon Justice Garry Downes AM was appointed a judge of the Federal Court and Acting President of the Tribunal on 2 April 2002, and was appointed President of the Tribunal on 16 May 2005. He retired as a Judge and President of the Tribunal on 15 May 2012.

The Hon Justice Duncan Kerr *Chev LH* was appointed a judge of the Federal Court of Australia on 10 May 2012. He was appointed President of the Tribunal on 16 May 2012, for a term of five years.

OTHER PRESIDENTIAL MEMBERS

Judges of the Federal Court and the Family Court may be appointed as part-time presidential members of the Tribunal.

To be eligible for appointment as a Deputy President, a person must have been enrolled as a legal practitioner for at least five years.

SENIOR MEMBERS

Senior Members must have been enrolled as legal practitioners for at least five years or have special knowledge or skills relevant to the duties of a Senior Member.

MEMBERS

Members must have knowledge or skills relevant to the duties of a Member. Current Members have expertise in areas including accountancy, aviation, engineering, law, medicine, pharmacology, military affairs, public administration and taxation.

TABLE 2.1 TRIBUNAL MEMBERSHIP, 30 JUNE 2012

| CATEGORY OF MEMBER | JUDGE | FULL-TIME | PART-TIME | TOTAL (WOMEN) |
|-----------------------|-----------|-----------|-----------|----------------|
| President | 1 | | | 1 (0) |
| Presidential members: | | | | |
| Federal Court judges | 13 | | | 13 (3) |
| Family Court judges | 3 | | | 3 (2) |
| Deputy Presidents | | 6 | 7 | 13 (2) |
| Senior Members | | 8 | 17 | 25 (11) |
| Members | | 2 | 35 | 37 (12) |
| Total | 17 | 16 | 59 | 92 (30) |

REGISTRAR AND EXECUTIVE DIRECTORS

The Tribunal's Registrar is Philip Kellow. He began his five-year appointment as Registrar on 22 July 2010.

The Registrar assists the President to manage the Tribunal and advises on its operations and performance. The Registrar may act on behalf of the President in the administration of the Tribunal.

The position of Registrar is a statutory office appointed by the Governor-General. The Registrar is the agency head for the purposes of the Public Service Act, responsible for the employment of the Tribunal's staff on behalf of the Commonwealth. The Registrar is also the Chief Executive for the purposes of the *Financial Management and Accountability Act 1997*.

The Registrar is assisted by two Executive Directors who hold office as senior executives in the Australian Public Service. These positions are held by Megan Cassidy – Executive Director, Operations and Christopher Matthies – Executive Director, Information and Development. For information on their areas of responsibility, see Figure 2.3 below.

STAFF

Tribunal staff are employed under the Public Service Act as ongoing, non-ongoing or intermittent employees. At 30 June 2012, 155 staff were employed by the Tribunal.

See Appendix 2 for more staffing information, including equal employment opportunity data.

REGISTRIES

PRINCIPAL REGISTRY

Principal Registry staff advise and assist the President and the Registrar, and provide a range of services for members and staff. They are responsible for communication, finance, human resource management, legal and policy services, library and information services, property, security and technology services. Principal Registry staff are in Brisbane, Hobart, Perth and Sydney.

DISTRICT REGISTRIES

There are District Registries in each of the state capital cities and in Canberra. The Brisbane Registry manages Northern Territory applications and is responsible for ensuring an effective level of service to Northern Territory residents. The registry service in Hobart is provided by the Federal Court. The Supreme Court of Norfolk Island provides basic registry services on Norfolk Island with applications managed principally by the Sydney Registry.

In each District Registry, a Deputy President or Senior Member is appointed Executive Deputy President. The Executive Deputy President and the District Registrar are responsible for local registry management. District Registrars are assisted by Deputy District Registrars.

Conference Registrars are appointed by the President in each District Registry to conduct the majority of the conferences held by the Tribunal. They also conduct other alternative dispute resolution processes.

14

District Registry staff:

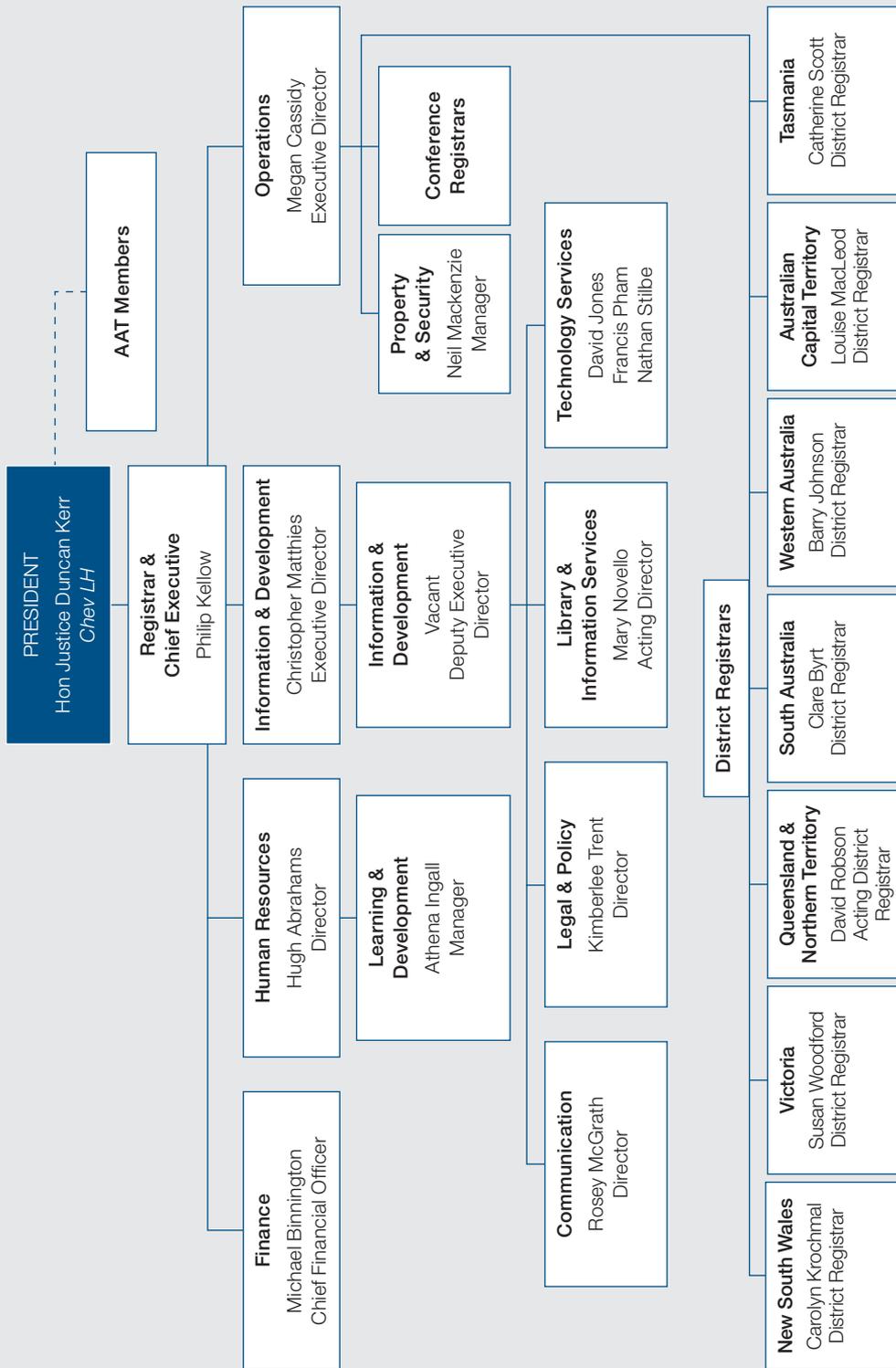
- provide information to parties and their representatives and the general public on the operation and procedures of the Tribunal,
- process applications,
- facilitate the listing and conduct of conferences, other alternative dispute resolution processes and hearings, and
- provide administrative and other support services to members.

Table 2.2 lists the Executive Deputy Presidents, at 30 June 2012, and Figure 2.3 shows the administrative structure of the Tribunal, including senior staff.

TABLE 2.2 EXECUTIVE DEPUTY PRESIDENTS, 30 JUNE 2012

| STATE/TERRITORY | EXECUTIVE DEPUTY PRESIDENTS |
|-------------------------------|--------------------------------------|
| Australian Capital Territory | Senior Member Professor Robin Creyke |
| New South Wales | Deputy President Robin Handley |
| Queensland/Northern Territory | Deputy President Philip Hack SC |
| South Australia | Deputy President Deane Jarvis |
| Tasmania | Deputy President Raymond Groom AO |
| Victoria | Deputy President James Constance |
| Western Australia | Deputy President Stanley Hotop |

FIGURE 2.3 ADMINISTRATIVE STRUCTURE OF THE TRIBUNAL AT 30 JUNE 2012



TRIBUNAL COMMITTEES

A number of committees operated during the reporting year to provide advice and assistance to the President in the management of the Tribunal.

ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

The Alternative Dispute Resolution Committee considers issues relating to alternative dispute resolution processes in the Tribunal, including the development of policies and guidelines for their use. The committee is chaired by Deputy President Hack and consists of members and senior staff with experience in alternative dispute resolution.

EXECUTIVE COMMITTEE

During the reporting year, the Executive Committee provided advice and assistance to the President on executive management issues. Its members were the President, Deputy President Constance, Member Webb, the Registrar, the Executive Director, Information and Development and the Chief Financial Officer. The role and composition of the Executive Committee is being reviewed in light of the appointment of Justice Kerr as the Tribunal's President.

EXECUTIVE DEPUTY PRESIDENTS COMMITTEE

The Executive Deputy Presidents Committee comprises the President and the Executive Deputy President for each District Registry. It provides a forum for discussion of case management and other matters of common interest.

LIBRARY COMMITTEE

The Library Committee oversees the development and improvement of the Tribunal's library collection. It is chaired by Deputy President Hotop and consists of members from different registries, the Executive Director, Information and Development and the Director, Library and Information Services.

PRACTICE AND PROCEDURE COMMITTEE

The Practice and Procedure Committee deals with issues relating to the Tribunal's management of applications. Members of the committee are the President, the Executive Deputy Presidents, the Registrar, the Executive Directors, the District Registrar of each registry and a representative of the Conference Registrars.

PROFESSIONAL DEVELOPMENT COMMITTEE

The Professional Development Committee considers matters relating to the professional development of Tribunal members. The committee is chaired by Deputy President Jarvis and its members are the Registrar, members who have an interest in professional development, and the Tribunal's Manager, Learning and Development.

WARRANTS COMMITTEE

The Warrants Committee deals with issues relating to the functions that are carried out by members in their personal capacity under the *Surveillance Devices Act 2004*, the *Telecommunications (Interception and Access) Act 1979* and other similar legislation. The committee is chaired by Deputy President Handley and includes a number of members who exercise these powers and the Executive Director, Operations.

For information about the Tribunal's Audit Committee, see pages 51 and 52.

THE CASE MANAGEMENT PROCESS

The Tribunal's case management process is designed to deal with applications in a flexible and timely manner. It aims to promote orderly and controlled passage of matters from lodgement to resolution, equitable treatment of parties, achievement of case management targets, effective use and allocation of Tribunal resources, and public confidence in the Tribunal.

THE PROCESS

When the Tribunal receives an application that is within its jurisdiction, it notifies the decision maker of the application. The decision maker then has 28 days to provide the Tribunal and the applicant with a statement of reasons for the decision and all documents relevant to the review: the 'Section 37 Documents' or the 'T Documents'.

A Conference Registrar or Tribunal member holds one or more conferences with the parties – in person or by telephone – to discuss the issues in dispute, identify and consider additional material that may be obtained and explore whether the matter can be settled. The future conduct of the review will also be discussed, including whether another form of alternative dispute resolution – conciliation, mediation, case appraisal or neutral evaluation – may be appropriate. The Tribunal assists the parties to attempt to reach an agreed resolution.

If agreement cannot be reached, the Tribunal – constituted by one, two or three members – conducts a hearing and makes a decision. Figure 2.4 illustrates the progress of an application, from lodgement to finalisation.

PRACTICE DIRECTIONS, GUIDES, PROCESS MODELS AND GUIDELINES

The Tribunal has developed a number of practice directions and jurisdictional guides that outline the general procedures for managing applications. These are supplemented by practice directions on specific issues.

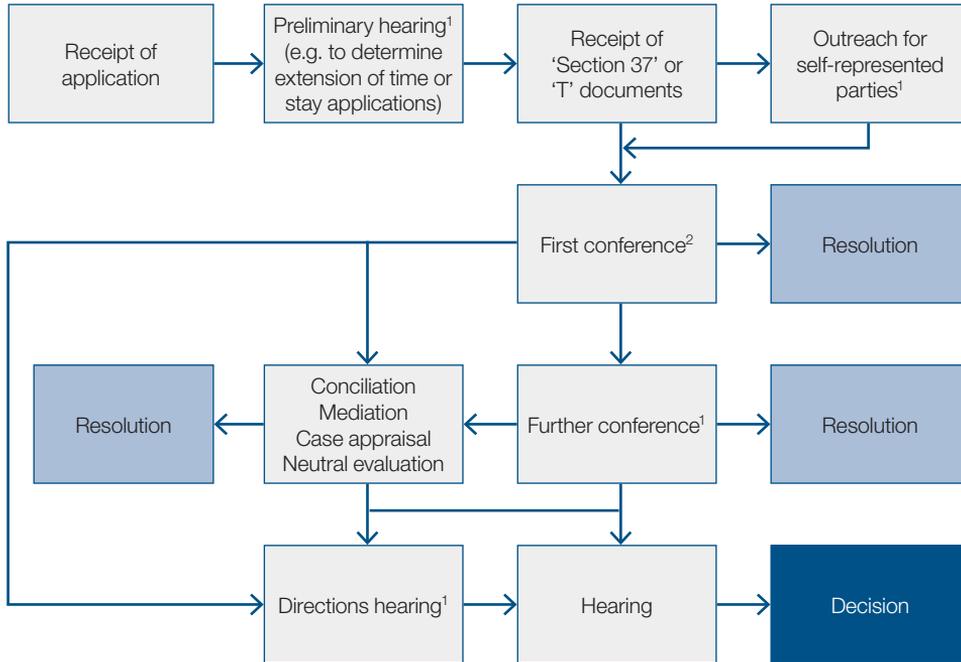
The General Practice Direction applies to all cases in which the applicant is represented, unless another specific legislative procedure, practice direction or jurisdictional guide applies. The Tribunal has a Small Taxation Claims Tribunal Practice Direction and two jurisdictional guides: the *Guide to the Social Security Jurisdiction* and the *Guide to the Workers' Compensation Jurisdiction*.

Practice directions on specific issues include the Practice Direction relating to section 37 of the Administrative Appeals Tribunal Act, the Freedom of Information Practice Direction and the Listing and Adjournment Practice Direction.

The Tribunal has developed process models for each form of alternative dispute resolution that is available in the Tribunal, and a policy for guiding referral of applications to the different ADR processes. The Tribunal has also developed a number of guidelines relating to aspects of the review process, including the Guidelines for Constituting the Tribunal, Guidelines for Persons Giving Expert and Opinion Evidence and Guidelines for the Use of Concurrent Evidence in the Administrative Appeals Tribunal.

The practice directions, guides, process models and guidelines are all available on the Tribunal's website, www.aat.gov.au.

FIGURE 2.4 CASE MANAGEMENT PROCESS



Notes:

1 Where necessary

2 Explore possibility of using other ADR process

ACCESSIBILITY

The Tribunal has in place a range of measures designed to assist parties access the Tribunal and participate in the review process.

INFORMATION ABOUT THE TRIBUNAL

The Tribunal offers information on its role and procedures in multiple formats and languages.

Brochures and fact sheets for self-represented applicants explain the Tribunal's role, when it can assist and the stages in a review. They are designed to be clear and easy to understand, and are available in print, including large print, on the website and in multiple languages.

A DVD, *Getting Decisions Right*, illustrates the Tribunal's practices and procedures for applicants.

Comprehensive information about the Tribunal and its procedures is on the website and is regularly updated.

OUTREACH PROGRAM AND SMS REMINDERS

Before the first conference, Tribunal staff contact self-represented parties, usually by telephone, to explain the Tribunal's processes and give them the opportunity to ask questions about the review process. Parties are given information about organisations that may be able to provide legal advice and assistance. As part of the Outreach

program, Tribunal staff can also identify whether a party will require an interpreter or other assistance, such as for a disability or in the form of more information.

Self-represented parties who have given the Tribunal a mobile telephone number receive an SMS reminder a few days in advance of any upcoming case event.

LEGAL ADVICE SCHEMES AND REFERRALS

The Tribunal hosts legal advice schemes in co-operation with legal aid organisations in New South Wales, Queensland, South Australia, Victoria and Western Australia. A legal aid solicitor attends each registry on a regular basis – usually weekly or fortnightly – and provides advice and minor assistance to self-represented parties.

Further assistance, such as representation, may be provided if a person makes a successful application for legal aid.

The Tribunal advises self-represented parties of the service and makes appointments for them. The majority of these appointments are for self-represented parties in the social security jurisdiction.

The Tribunal also refers self-represented parties to community legal centres and other legal service providers.

INTERPRETER SERVICES

If a party requires an interpreter, the Tribunal engages one and meets the cost. The Tribunal arranges interpreters who are accredited by the National Accreditation Authority for Translators and Interpreters at the 'professional' level. A 'paraprofessional' interpreter may only be used for languages without an accredited professional-level interpreter.

The Tribunal has information for interpreters on its procedures and terminology. The information sheet is available from the Tribunal's registries and the Tribunal's website.

ACCESS BY PERSONS WITH DISABILITIES

The Tribunal strives to make access easier for people with a disability by:

- making electronic and printed material available in appropriate formats such as large print, and ensuring the website meets the World Wide Web Consortium's Web Content Accessibility Guidelines version 2.0 (WCAG 2.0) web standard to Level A,
- providing portable hearing loop systems in Tribunal premises,
- facilitating telephone contact for those with a hearing or speech impairment,
- making all premises wheelchair accessible, and
- providing facilities for participation in conferences or hearings by telephone or video-link.

SERVICE CHARTER AND COMPLAINTS

The Service Charter sets out the standards of service that people can expect when they deal with the Tribunal. The Charter also includes information on how to make a complaint about the Tribunal and its complaint-handling procedures.

The Charter is written in clear, simple language and is on the Tribunal's website and in print. The Tribunal's compliance with its commitments under the Charter is discussed in Chapter 3, along with complaints information.



AAT – 独立复审机制

AAT 的仲裁决定

理解仲裁决定以及接下来会发生什么

AAT — 独立复审机制

行政上诉审裁处 (Administrative Appeals Tribunal – AAT) 在聆讯了你的案件并考虑之后会作出仲裁决定。AAT 会宣布是否维持或改变上诉要求复审的行政决定，并解释理由。

负责审理案件的 AAT 仲裁委员 (一人或多人) 将告诉你裁决以及理由，他们可以：

- 向你当面口头宣布裁决；或
- 以书面方式宣布。

当面听取仲裁决定和理由

AAT 仲裁委员有时候会向你当面口头宣布仲裁决定以及理由，而不是采用书面方式。如果是这样，你在聆讯结束后立即就能得知上诉结果。

你和作出行政决定的部门将会分别收到一份裁决书，其中不再详细解释裁决理由。

如果需要书面的裁决理由，你通常需要提出要求索取。你可以在收到裁决书后 28 天内致电或以书信方式联络 AAT。

如果另一方当事人索取书面裁决理由，AAT 也会同时向你寄出一份。

书面仲裁决定和理由

如果 AAT 仲裁委员在聆讯案件后需要更多时间考虑如何裁决，你通常都会收到书面的仲裁决定和理由。AAT 通常会在案件聆讯完后二个月内作出裁决。

我们会在仲裁委员作出决定之后通知你或你的代表人以及相关部门。如果你或你的代表人无法前来我们的办事处领取裁决书，我们可以为你们寄出。

如何理解 AAT 的仲裁决定？

AAT 有权维持、更改或推翻你上诉要求复审的行政决定。

- 如果 AAT 维持原有的决定，这意味着有关部门无须改变已经作出的行政决定。
- 如果 AAT 更改原有的决定，这意味着有关部门必须修改已经作出的行政决定或其中的一些方面。
- 如果 AAT 推翻原有的决定，并以一项新决定取而代之，这意味着审裁处不同意已经作出的行政决定，或确认这项行政决定存在某些错误，因此需要推翻或作部分修改。

Simplified Chinese



دیوان داورى استیناف ادارى

دیوان داورى چیست، در چه مواقعی می‌تواند

دیوان داورى استیناف ادارى (Administrative Appeals Tribunal)

دیوان داورى استیناف ادارى سازمانى است که انبوا بعضى نتيجه انبواى داورى ديگر دولت استرالیا گرفتار و تصحيح می‌کند که بايد به وقت خود باقى بماند. AAT مستقل از شخص يا سازمانى است که تصحيح

آيا AAT می‌تواند به من کمک آنچه که AAT می‌تواند انجام دهد

- AAT می‌تواند خطبى از تصحيحى را که نه مربوط به موارد زير را بزيمنى کند:
- شهروندى استرالیا
- جبران خسارت کارکنان دولت
- بر راجحى‌هاى نامان اجتماعى و
- ساقيات و
- مستورى‌هاى نظاميان قديمى.

انواع زياد ديگرى از تصحيحات هستند که صلاحيت ناميده می‌شود در وب سايت

چه کارهائى را AAT نمی‌تواند

- AAT نمی‌تواند:
- هر تصحيحى را که دولت يا
- تصحيحى را که تحت قوه
- تصحيحى را که شهردار

ما فقط در صورتى می‌توانيم تصحيح درخواست داد.

چگونه می‌توانم بفهمم

- تصحيح مربوط به شما بايد فقط با AAT قادر به بازبينى آن هست
- اگر مطمئن نيستيد از ما بپرس

چگونه می‌توانم در

شما می‌توانيد با يك فرم

The Tribunal provides information in a range of languages other than English. Shown are two examples – the main AAT brochure (translated into Farsi) and the Decisions brochure (translated into Chinese).