

# CHAPTER 01

**THE YEAR IN REVIEW**

# PRESIDENT'S OVERVIEW



The Administrative Appeals Tribunal was established in 1976 following the Parliament's acceptance of the recommendations of the report of the Commonwealth Administrative Review Committee (1971) and its conclusion that 'traditional supervision by the courts of the administrative process must be supplemented by provision for review ... on the merits of administrative decisions'.

The past 12 months saw the Tribunal take stock of its past and refocus on its future. In November 2012, the Tribunal undertook a comprehensive review of its opportunities and challenges. The result of that review led to the articulation of the Tribunal's vision – to be widely recognised as an accessible, expert and innovative organisation that ensures administrative justice for individuals and organisations and improves the quality of government decision-making.

Independent merits review of a wide range of administrative decisions made by Commonwealth agencies and ministers in the Administrative Appeals Tribunal gave citizens important rights under Australian law that are still little replicated anywhere else in the world. As Peter Cane observed in *Administrative Tribunals and Adjudication*, '[R]eview by the AAT ... involve[s] the transformation of the decision-making process from a two-party to a three-party affair by the insertion of a neutral third party'. Few citizens of other countries have such rights – and every member and all staff of the Tribunal are aware of their high responsibilities to ensure that the Tribunal fulfils its mission of undertaking high quality merits review in a manner that is fair, just, economical, informal and quick.

There are now some 450 Acts or regulations which confer jurisdiction on the Tribunal. The year under report saw the passage of legislation that will significantly add to the AAT's responsibilities. The Tribunal has a new Division to review decisions made by

DisabilityCare Australia under the National Disability Insurance Scheme (NDIS).

We have designed specific procedures for the review of decisions taken under the NDIS, to ensure accessibility and to avoid unnecessary interlocutory delays. I am grateful for the assistance of those members of the NDIS Advisory Group with whom the Tribunal consulted in preparing for this new jurisdiction. I want to thank the members of the Tribunal's ad hoc NDIS Implementation Committee, including its chair, Senior Member Jill Toohey, for their invaluable work in developing those new protocols during the year.

Our November 2012 strategic review recognised that the adjudicative function of the Tribunal, while essential for ensuring administrative justice, fits within a larger mechanism in which the majority of applications are successfully resolved without a formal hearing. The appointment of Justin Toohey as Director, Alternative Dispute Resolution reflects that understanding. I want to take this opportunity to acknowledge the Tribunal's appreciation for the work of its Client Service Officers and Conference Registrars whose contribution is often otherwise invisible.

The review also acknowledged some of the significant challenges the Tribunal faces. Among the more difficult to overcome will be aligning the Tribunal's property portfolio with the needs of members, staff and users under the financial guidelines and budgetary constraints that apply to the Tribunal. Achieving that objective will be particularly challenging because the AAT needs an expanded physical footprint to support its role as a review body under the NDIS but that function is subject to review after two years.

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I regard it as essential that the Tribunal continue to have registries in every State capital and Canberra and I believe there is a good case for the Tribunal to establish a registry in Darwin. Without a solution to its property issues, the Tribunal may have to face the unpalatable choice of closing rather than opening new registries.

There is an extraordinary amount of good work going on within the Tribunal. My role as President extends to building cooperative arrangements with other Commonwealth merits review bodies. I chair the Commonwealth Tribunals Collaborative Forum that was established to report to government following the Strategic Review of Small and Medium Agencies in the Attorney-General's Portfolio (the Skehill review) and have taken steps to revive the Commonwealth Heads of Tribunals meetings to encourage the exchange of information and learning across what may be thought to be historic and artificial boundaries. Collectively as heads of merits review tribunals, we have taken action not only to improve our functional cooperative arrangements but also to reinforce to government the importance of the principles which underpin merits review decision-making.

Finally, I should express my appreciation for the work of the members of the Tribunal. This year, the Tribunal lost the services of longstanding Adelaide Executive Deputy President Deane Jarvis. To mark the high regard in which Deputy President Jarvis was held by the Tribunal, his departure was marked by a rare ceremonial sitting attended by many judges, lawyers and former colleagues.

Also leaving the Tribunal were the Honourable Justice Robert Buchanan and the Honourable Justice Peter Gray. Justice Buchanan and Justice Gray were valued judicial members of the Tribunal. When the Tribunal was first established, a considerable percentage of its hearings were undertaken by Federal Court judges – including Justice Gray. That percentage has declined over recent years and the Tribunal is currently engaged in discussions with the Federal Court to explore administrative mechanisms that might allow some greater utilisation by the Tribunal of its judicial members into the future.

Others leaving the Tribunal during the reporting year were Deputy President, the Honourable Dr Bruce McPherson CBE, Senior Members Mason Allen and Steve Karas AO, and Members Air Vice Marshal (Dr) Tony Austin AM (retired), Timothy Jenkins, Ian Laughlin and Dr Tim Hawcroft.

Balancing those departures I am happy to report that a number of new members have joined the Tribunal. We have gained the services of the Honourable Justice Dennis Cowdroy OAM and the Honourable Justice Nye Perram as judicial members of the Tribunal. Katherine Bean became our new full-time Executive Deputy President in Adelaide. Ian Molloy was appointed as a part-time Deputy President and Ronald Bartsch and Nicholas Gaudion were appointed as part-time Members.

Additionally, a number of existing members were reappointed during the year: Senior Members Ann Cunningham, Naida Isenberg and Peter Taylor SC and Members Dr Kerry Breen AM, Professor Graham Johnston AM, Professor Peter Reilly AO, Dr Saw Hooi Toh and Dr Robert Walters RFD. Dr Teresa Nicoletti's appointment was renewed and changed from part-time Member to part-time Senior Member.

The strength of the AAT lies in the independent judgment, skill and commitment of its members supported by the Tribunal's dedicated staff committed to fairness and professionalism. Section 24A of the *Administrative Appeals Tribunal Act 1975* places responsibility for managing the administrative affairs of the Tribunal in the hands of the President but effective implementation requires collective commitment to a common core of values and behaviours. I am confident that, whatever challenges lie ahead, the Tribunal will be capable of rising to meet them.

# REGISTRAR'S REPORT



During 2012–13, the Tribunal continued to achieve its objective of providing a mechanism for independent merits review of administrative decisions that is fair, just, economical, informal and quick through the use of effective alternative dispute resolution processes and hearings.

The Tribunal maintained its level of performance, notwithstanding a nine per cent increase in its workload during the reporting year. Further information about the Tribunal's workload is set out in Chapter 3 and Appendix 4. The Tribunal also developed and implemented a number of key strategic and operational projects that will help it to achieve its vision of being an accessible, expert and innovative organisation that ensures administrative justice for individuals and organisations and improves the quality of government decision-making. I acknowledge the hard work of the members and staff of the Tribunal that has led to these achievements.

In November 2012, the President, Registrar, Executive Deputy Presidents and senior staff reviewed the Tribunal's Strategic Plan 2011–2014 to ensure it is properly aligned with current and future challenges and opportunities. The review resulted in the AAT Plan on a Page 2011–2014 which provides a concise and accessible guide to the Tribunal's key strategic goals and priorities. A copy of the Plan appears in Chapter 5 of this annual report on page 61.

A central element of the Plan is the Tribunal's commitment to further develop highly effective and integrated dispute resolution processes. To this end, in May 2013 Justin Toohey commenced in the new position of Director, Alternative Dispute Resolution with responsibility for coordinating and promoting the use of high quality alternative dispute resolution as an integral part of the

Tribunal's review process. This will include strengthening the interaction between members and Conference Registrars in relation to the management and resolution of cases. The new role builds on other important initiatives the Tribunal has introduced over the last two years such as the tailored professional development program for Conference Registrars and the introduction of arrangements for accrediting mediators.

From 1 July 2013, the Tribunal has jurisdiction to review decisions made by DisabilityCare Australia during the launch phase of the NDIS. A new practice direction and fact sheets explain how an application is made and the streamlined procedures the Tribunal will use. Two important aspects of the new procedure are the assignment of a dedicated Contact Officer who will be an applicant's primary contact throughout their case, and the convening of a Case Conference involving the applicant and DisabilityCare Australia to discuss whether the case can be resolved by agreement and, if not, to prepare a Case Plan about how the application will proceed. Arrangements for dealing with the new jurisdiction have been identified and implemented, and training sessions on assisting people with disability were held for registrars and staff in mid-2013. The Tribunal will hold its inaugural NDIS Seminar for members, registrars and key staff in September 2013.

During the year, the President approved the initiation of the Tribunal's Electronic Services and Information Management Program. The program provides a framework, including overarching governance arrangements, for undertaking a series of projects that will

ultimately result in a set of integrated technology systems that provide online services to the public, stakeholders, members and staff and tools for improving the management of the Tribunal's information and records.

In March 2013, the Tribunal launched AAT Online on its website. AAT Online is the platform for a suite of services to be made available over time that will use technology to enable better engagement between the Tribunal and its users. The first service is eCase Search which provides online access to select information about most applications lodged with the Tribunal from 18 March 2013.

Significant progress was made during the year towards developing a more comprehensive information and records management framework for the Tribunal that will be a critical element in its transition to digital recordkeeping. The Tribunal, in conjunction with the National Archives of Australia, also substantially completed a review of its records authority. The new authority is expected to be approved and implemented during the coming year.

The Tribunal considers the end of the leases for several of its registries over the next few years to be an important opportunity to ensure its accommodation is economically sustainable and more closely aligns with and supports the operational needs of its members, staff and users. In February 2013, the Tribunal adopted a property master plan that sets out the broad principles that it will use to select and manage its future accommodation. The master plan deals with preferred location, standard of fit-out, nature and size of rooms and work areas, accessibility, energy and environmental factors, and related matters. It will be complemented

by the findings of a review conducted in early 2013 that examined the accessibility and usability of Tribunal facilities for people with disability.

In January 2013, the Tribunal entered into a contract with Merrill Corporation for the provision of recording and transcription services in relation to Tribunal proceedings (other than in Tasmania, where the Federal Court's provider delivers these services) following a comprehensive tender process. The move to a new contract provided an opportunity for the Tribunal to upgrade the recording equipment in each registry to improve performance and achieve uniformity between registries.

The Tribunal continued to enhance its external and internal communications during 2012–13. In October 2012, the Tribunal started publishing the AAT Bulletin on its website. The Bulletin is a weekly publication containing a list of recent Tribunal decisions, information relating to appeals against Tribunal decisions and, from time to time, information on legislative changes that affect the Tribunal and other important developments. Internal communications were strengthened through the launch of a monthly digital newsletter for members and staff and changes to the look and functionality of the Tribunal's intranet.

During the reporting year, the Tribunal worked closely with the Attorney-General's Department on amendments to the Administrative Appeals Tribunal Act, including the creation of the new NDIS Division, and on changes to the *Administrative Appeals Tribunal Regulations 1976*. The Act and Regulations were amended in June 2013 to clarify the rules relating to when an application fee must be paid and what happens when a

fee is not paid. It is hoped that amendments to the Act designed to enhance its operations, and a rewrite of the Regulations, will be implemented during 2013–14.

The Tribunal recorded a small operating surplus for 2012–13, before taking depreciation into account, primarily as a result of increased revenue from services provided to other tribunals. The government's tight fiscal position means the Tribunal must continue to meet the challenges of operating in an environment of limited funding increases while costs escalate and funds must be found for important (and inevitable) initiatives relating to the new DisabilityCare Australia jurisdiction, accommodation, technology and information management.

During the year there were various changes in the membership and staff of the Tribunal. 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 the membership changes. There were also some important staff changes, including the appointment of Nerrilee Cuthbertson as Executive Director, Operations, Mary Novello as the Director, Library and Information Services and Peter Chang to the new role of Policy and Business Reporting Officer. I also record my thanks to Clare Byrt, Carolyn Krochmal and Susan Woodford who acted in the role of Executive Director, Operations pending the departure of Megan Cassidy on maternity leave and the subsequent appointment of Nerrilee Cuthbertson.

# 2012–13 HIGHLIGHTS AND ACHIEVEMENTS

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

- 6,176 applications were lodged with the Tribunal – a nine per cent increase over the previous year.
- There was a 29 per cent increase in the number of applications received for review of social security decisions in the reporting year, due largely to an increase in applications for review of decisions about disability support pension.
- 6,042 applications were finalised by the Tribunal with 79 per cent finalised other than by way of a Tribunal decision on the merits following a hearing.
- 76 per cent of all applications were finalised within 12 months of lodgement and 88 per cent within 18 months.
- A new practice direction and set of fact sheets was developed setting out how the Tribunal will review decisions made by DisabilityCare Australia.
- Twenty-three members and Conference Registrars were accredited by the Tribunal under the National Mediator Accreditation Standards.
- eCase Search, the first AAT Online service, was launched, allowing parties, their representatives and the public to search for, and access, select information about most Tribunal applications 24 hours a day, seven days a week.
- A set of protocols and system changes enabling the Tribunal to increase the use of email as a primary means of communicating with parties and their representatives was implemented.
- The AAT Bulletin, a weekly publication with information about recent Tribunal decisions, was made available to external users.
- The Tribunal's first Agency Multicultural Plan was developed in accordance with the Australian Government's strengthened Multicultural Access and Equity Policy to ensure the Tribunal is responding to the needs of persons from culturally and linguistically diverse backgrounds.
- The Tribunal's Indigenous Access Working Group continued work on a pilot program in the Adelaide Registry to promote communication and consultation with legal centres who deal with Indigenous clients in relation to family assistance and social security issues.
- Consultation was undertaken with users in a variety of forums at the national and local levels.



applications lodged with the Tribunal – a 9% increase over the previous year



applications finalised other than by way of a Tribunal decision on the merits following a hearing



applications finalised within 12 months of lodgement

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

- The Tribunal made submissions to a number of reviews and inquiries, including the review of the *Safety, Rehabilitation and Compensation Act 1988* and the review of the *Freedom of Information Act 1982* and the *Australian Information Commissioner Act 2010*.
- The Tribunal participated in the Commonwealth Tribunals Collaborative Forum which, among other things, oversaw the preparation and adoption of a new Memorandum of Understanding on Learning and Development.
- Cooperative service arrangements continued with the Federal Court, Migration Review Tribunal/Refugee Review Tribunal, Social Security Appeals Tribunal and the Veterans' Review Board.
- Tribunal members and staff continued to be active participants in the activities of the Council of Australasian Tribunals and other forums.
- Tribunal members and staff gave presentations at a wide range of conferences and seminars.
- Following a Commercial Case Management Workshop and a Court-Annexed Mediation Workshop conducted by the Federal Court in 2012 as part of the Pacific Judicial Capacity Building Program, two Tribunal staff travelled to the Federated States of Micronesia and Samoa to provide follow-up support.
- The Tribunal conducted its eighth mooting competition for law students at Australian universities.
- Work experience placements were offered to students from a number of universities. The Tribunal also hosted two candidates from the Indigenous Cadetship program run by the South Australian Legal Services Commission and a representative from the Ombudsman's Office of Papua New Guinea.

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

- A monthly internal newsletter @ The AAT was launched to improve information sharing amongst members and staff.
- The intranet home page was redesigned to improve the accessibility of key information.
- A range of learning and development opportunities were made available for members, including a seminar on case appraisal and neutral evaluation and decision writing workshops.
- Conference Registrars attended a national seminar with sessions on case management, disability awareness and developments in the law.
- Work health and safety and risk management workshops were held with staff in all registries.
- The Tribunal commissioned an independent review of its health and safety risk arrangements.

**Our organisation – to manage our resources strategically and effectively**

- The Tribunal reviewed its Strategic Plan 2011–2014 which led to the development of the AAT Plan on a Page 2011–2014.
- A review was undertaken of the structure, membership and operation of the Tribunal's main committees.
- A tender process was conducted to select a provider for recording and transcription services in all Tribunal registries other than Hobart.
- Work continued on strengthening the Tribunal's framework for managing its information and records, including the development of a new records authority under the *Archives Act 1983*.
- The Tribunal commissioned a strategic review of its future property requirements and a report to assist the Tribunal improve the accessibility and usability of its premises.
- A security risk review was completed as part of the Tribunal's implementation of the Protective Security Policy Framework.