

CHAPTER 02

**OVERVIEW OF
THE TRIBUNAL**

OVERVIEW OF THE TRIBUNAL

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

The Tribunal falls within the portfolio of the Attorney-General.

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, agencies and some other tribunals. In limited circumstances, the Tribunal can review administrative decisions made by state government and non-government bodies. The Tribunal can also 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 available 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, citizenship and immigration, civil aviation, 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. From 1 July 2013, the Tribunal's jurisdiction includes the review of decisions made by DisabilityCare Australia.

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: 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.

From 1 July 2013, the Tribunal also has a National Disability Insurance Scheme Division.

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 87 members of the Tribunal at 30 June 2013. 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 at 30 June 2013, and a profile of each member other than the part-time judicial members.

PRESIDENT

The Honourable 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.

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

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

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

MEMBERS

A Member 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 2013

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 (3)
Senior Members		8	15	23 (11)
Members		2	32	34 (11)
Total	17	16	54	87 (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. The Executive Director, Information and Development is Christopher Matthies. The Executive Director, Operations was Megan Cassidy until Nerrilee Cuthbertson commenced in the role on 3 June 2013. 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 2013, the Tribunal had 163 staff.

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 communications, finance, human resource management, legal and policy services, library and information services, property, security and technology services, and for overseeing the Tribunal's alternative dispute resolution processes. 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/Senior Member. The Executive Deputy President/Senior Member 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.

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
- provide administrative and other support services to members.

Table 2.2 lists the Executive Deputy Presidents/Senior Member at 30 June 2013, and Figure 2.3 shows the administrative structure of the Tribunal, including senior staff.

Table 2.2 Executive Deputy Presidents/Senior Member, 30 June 2013

State/Territory	Executive Deputy Presidents/Senior Member
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 Katherine Bean
Tasmania	Deputy President Raymond Groom AO
Victoria	Deputy President James Constance
Western Australia	Deputy President Stanley Hotop

TRIBUNAL COMMITTEES

A number of committees comprising Tribunal members and staff have been established to provide advice and assistance to the President in relation to the management of the Tribunal. Justice Kerr reviewed the role and composition of the committees during 2012–13.

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 the Tribunal's Director, Alternative Dispute Resolution and includes members and Conference Registrars.

EXECUTIVE COMMITTEE

The Executive Committee provides high level advice and assistance to the President on executive management issues, including oversight of the Tribunal's Strategic Plan. It is chaired by the President and its members include Deputy President Constance, the Registrar, the Executive Directors, the Director, Alternative Dispute Resolution and District Registrar Carolyn Krochmal.

EXECUTIVE DEPUTY PRESIDENTS COMMITTEE

The Executive Deputy Presidents Committee comprises the President and the Executive Deputy President/Senior Member for each District Registry. It provides the primary mechanism for the Executive Deputy Presidents/Senior Member to discuss issues relating to the management of the Tribunal and to provide high level input to the President on key developments.

LIBRARY COMMITTEE

The Library Committee oversees the development and improvement of the Tribunal's library collection and the delivery of training related to the use of library services. 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 identifies and oversees improvements relating to the management and resolution of applications before the Tribunal and facilitates the adoption of consistent best practice case management practices. It is chaired by the President and consists of three Executive Deputy Presidents, the Registrar, the Executive Directors, the Director, Alternative Dispute Resolution, and four District Registrars.

PRACTICE AND PROCEDURE CONSULTATIVE GROUP

The Practice and Procedure Consultative Group provides feedback to the Practice and Procedure Committee on issues and proposed improvements in relation to case management and dispute resolution. Members of the committee are the President, the Executive Deputy Presidents/Senior Member, the Registrar, the Executive Directors, the District Registrar of each registry and the Director, Alternative Dispute Resolution.

PROFESSIONAL DEVELOPMENT COMMITTEE

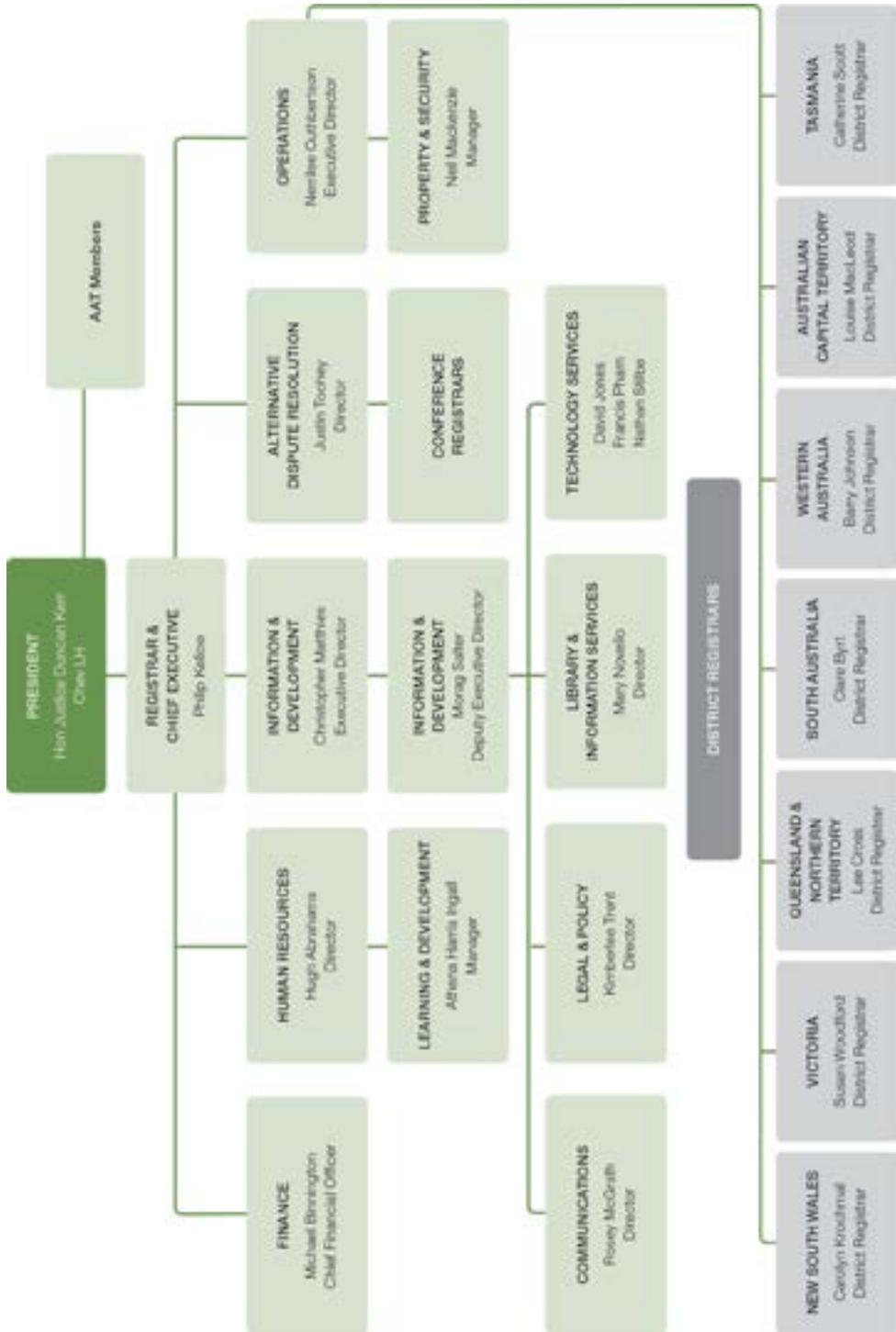
The Professional Development Committee considers matters relating to the professional development of Tribunal members and registrars. The committee is chaired by Deputy President Hotop and consists of members who have an interest in professional development, the Director, Alternative Dispute Resolution 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 page 63.

Figure 2.3 Administrative structure of the Tribunal, 30 June 2013



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 usually holds one or more conferences in person or by telephone with the parties 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 decision.

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:

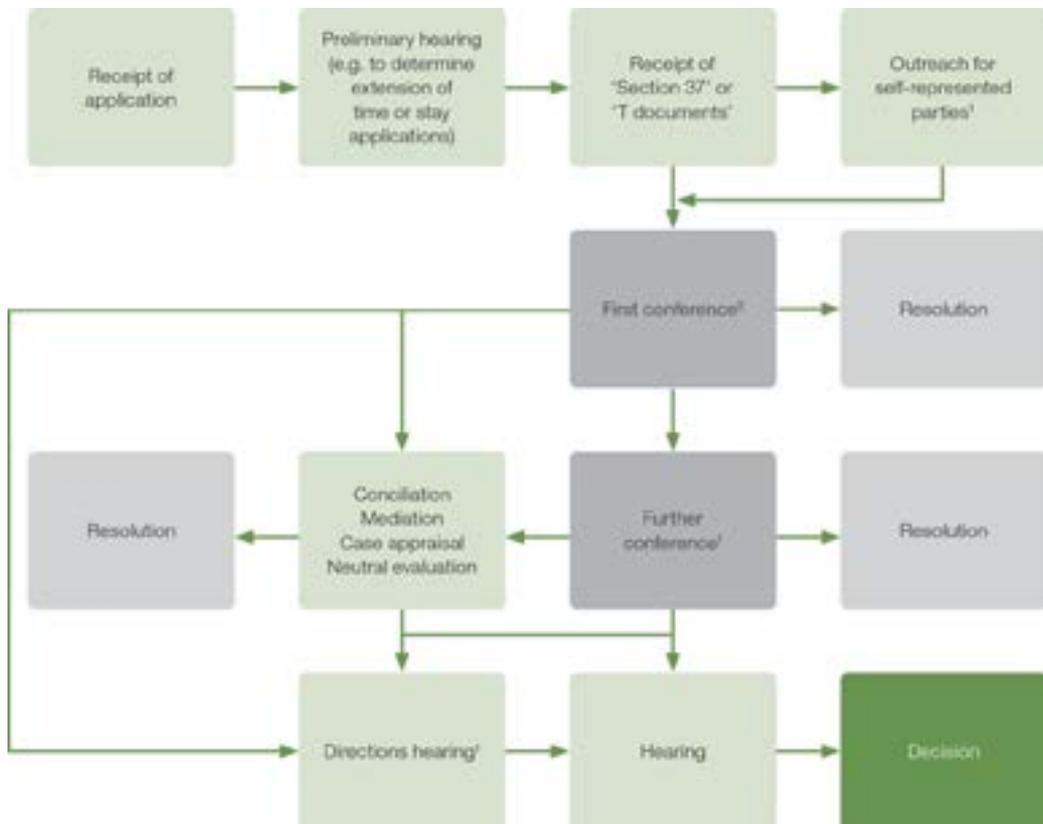
- a Small Taxation Claims Tribunal Practice Direction
- a Review of DisabilityCare Australia Decisions Practice Direction which applies from 1 July 2013
- two jurisdictional guides: the *Guide to the Social Security Jurisdiction* and the *Guide to the Workers' Compensation Jurisdiction*.

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 to 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. The Tribunal has developed a specific series of fact sheets to provide information on the Tribunal's procedures for reviewing decisions of DisabilityCare Australia, examples of which are shown on page 24.

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 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 cooperation 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 organisations that may be able to provide advice and assistance.

INTERPRETING 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 as Professional Interpreters. 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 on the Tribunal's website.

ACCESS BY PERSONS WITH DISABILITY

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

- making electronic and printed material available in appropriate formats such as large print, and 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
- 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.



The Tribunal provides a range of information for DisabilityCare Australia applicants. Shown are two examples – *Applying for Review* and *What Happens at a Case Conference?*