

Chapter // 02

Overview of the AAT

Functions and powers

The AAT's principal function is to conduct independent merits review of administrative decisions made under Commonwealth laws. We review decisions made by Australian Government ministers, departments and agencies and, in limited circumstances, decisions made by state government and non-government bodies. We also review decisions made under Norfolk Island laws.

The AAT was established by the *Administrative Appeals Tribunal Act 1975* and commenced operations on 1 July 1976. On 1 July 2015, the Migration Review Tribunal (MRT), the Refugee Review Tribunal (RRT) and the Social Security Appeals Tribunal (SSAT) were merged with the AAT.

Jurisdiction

The AAT does not have a general power to review decisions. We can only review a decision if an Act, regulation or other legislative instrument states that the decision can be reviewed by the AAT.

The AAT has jurisdiction to review decisions made under more than 400 Commonwealth Acts and legislative instruments. We review decisions in a wide range of areas, including decisions about bankruptcy, child support, citizenship, civil aviation, customs, family assistance and social security, freedom of information, immigration, the National Disability Insurance Scheme, passports, security assessments by the Australian Security Intelligence Organisation (ASIO), taxation, veterans' affairs and workers' compensation.

From 1 July 2015, the AAT's jurisdiction includes the review of decisions formerly reviewed by the MRT-RRT and SSAT.

In relation to Norfolk Island, the Tribunal has jurisdiction to review decisions made under 39 Norfolk Island enactments. Decisions subject to review include decisions about customs, planning and social services.

The AAT is not always the first step in having a decision reviewed. In some cases, we cannot review a decision until there has been an internal review of the primary decision or review by a specialist review body like the Veterans' Review Board.

Appendix 3 contains a list of the Commonwealth and Norfolk Island enactments under which decisions may be made that can be reviewed by the AAT as at 30 June 2015.

Review of decisions

Merits review of an administrative decision involves considering afresh the facts, law and policy relating to that decision. The AAT considers the material that is before it and decides what is the legally correct decision or, where there can be more than one correct decision, the preferable decision. The AAT can affirm, vary or set aside the decision under review.

In carrying out our functions in 2014–15, the AAT was required to pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick: section 2A of the *Administrative Appeals Tribunal Act 1975*. On 1 July 2015, the AAT's statutory objective was amended to provide that the review mechanism must also be accessible, proportionate to the importance and complexity of a matter and promote public trust and confidence in the decision-making of the Tribunal.

The AAT seeks to provide administrative justice for individuals and organisations whose interests are affected by decisions that the AAT can review and, more broadly, to improve the quality of government decision-making.

Organisation

The AAT consists of the President and the other members who may be appointed as Deputy Presidents, Senior Members or Members. The President is responsible for the overall management of the AAT with the assistance of the Registrar. Staff are employed to assist the AAT to carry out its functions.

Members of the AAT

The members of the AAT are appointed by the Governor-General on a full-time or part-time basis for a term of up to seven years. Members may be reappointed.

Qualification requirements for the different categories of members are set out in the *Administrative Appeals Tribunal Act 1975*. The President of the AAT must be a judge of the Federal Court of Australia. The AAT's other members may be:

- judges of the Federal Court or Family Court of Australia
- lawyers of at least five years standing, or
- persons with relevant knowledge or skills.

Members of the AAT come from a wide variety of backgrounds with expertise in areas such as accountancy, aviation, disability, engineering, law, medicine, military affairs, public administration, science and taxation.

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

As at 30 June 2015, there were 79 members of the AAT. See Table 2.1 for the breakdown of full-time and part-time members by category. See Appendix 1 for a full list of the AAT's members as at 30 June 2015.

On 1 July 2015, members of the MRT-RRT and SSAT whose terms of appointment extended beyond 30 June 2015 became members of the AAT. A list of current members of the AAT is available on the AAT website.

Table 2.1 Membership of the AAT, 30 June 2015

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	7			7 (4)
Deputy Presidents		6	7	13 (3)
Senior Members		7	12	19 (7)
Members		1	25	26 (7)
Total	21	14	44	79 (24)

Divisions

The AAT exercises its powers in divisions. During 2014–15, there were five divisions: General Administrative, National Disability Insurance Scheme, Security Appeals, Taxation Appeals and Veterans' Appeals. The Taxation Appeals Division was known as the Small Taxation Claims Tribunal for the review of certain tax decisions.

From 1 July 2015, the AAT has eight divisions: Freedom of Information, General, Migration and Refugee, National Disability Insurance Scheme, Security, Social Services and Child Support, Taxation and Commercial, and Veterans' Appeals. The Migration and Refugee Division deals with applications previously made to the MRT-RRT. The Social Services and Child Support Division deals with applications previously made to the SSAT.

The President, other judges and Deputy Presidents can exercise powers in any of the divisions. Senior Members and Members may only exercise powers in the division or divisions to which they have been assigned.

Since 1 July 2015, a Deputy President may be assigned as the Head of one or more divisions to assist the President by directing the business in a division. A Deputy President or Senior Member may be assigned as the Deputy Head of one or more divisions to assist the Division Head.

Staff of the AAT

The position of Registrar is a statutory office appointed by the Governor-General on the nomination of the President. In addition to assisting the President in managing the AAT's administrative affairs, the Registrar also undertakes functions relating to the management of applications conferred by the *Administrative Appeals Tribunal Act 1975* and other enactments.

The AAT's Registrar at 30 June 2015 is Sian Leathem. She began her five-year appointment on 7 April 2015. Her predecessor was Philip Kellow. Following his departure in January 2015, Ms Nerrilee Cuthbertson was appointed Acting Registrar until Ms Leathem was appointed.

Other staff of the AAT are employed under the *Public Service Act 1999* as ongoing, non-ongoing or intermittent employees. At 30 June 2015, the Tribunal had 157 staff. See Appendix 2 for more staffing information and a figure showing the administrative structure of the AAT at 30 June 2015, including the names of senior staff.

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 business support services, communications, financial and human resource management, corporate legal and policy services, library and information management services and technology services.

District Registries

There are District Registries in each of the state capital cities and in Canberra. The registry service in Hobart is co-located with the Federal Court. Applications in the Northern Territory are managed primarily from Brisbane. The Supreme Court of Norfolk Island provides basic registry services on Norfolk Island with applications managed principally by the registry in Sydney.

Conference Registrars conduct the majority of the alternative dispute resolution processes held by the AAT. Other District Registry staff:

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

Case management

The AAT's case management processes are designed to promote the orderly passage of applications from lodgement to resolution, equitable treatment of parties, achievement of case management targets and effective use of Tribunal resources.

The case management processes described here and illustrated in Figure 2.2 are those that were used in the AAT during 2014–15. In general, they continue to apply from 1 July 2015 for applications dealt with in divisions other than the Migration and Refugee Division and the Social Services and Child Support Division.

When the AAT receives a valid application, we notify the decision-maker that the application has been made. The decision-maker then has 28 days to provide the AAT and the applicant with a statement of reasons for the decision and all documents relevant to the review.

In relation to most applications, the AAT's approach is to assist the parties to attempt to reach an agreed outcome while ensuring that steps are taken to prepare the case for hearing in the event it cannot be resolved by agreement. A Conference Registrar will hold one or more conferences with the parties, either in person or by telephone, to discuss and define the issues in dispute, identify and consider additional material that may be obtained, explore whether the matter can be settled and discuss the future conduct of the review. Where appropriate, the application may be referred to another form of alternative dispute resolution – conciliation, mediation, case appraisal or neutral evaluation. We set timetables and issue directions for the steps the parties must take in the review.

We modify our case management process for particular types of cases as well as in individual cases to ensure they are dealt with in the most effective and efficient way. For example, some types of applications are managed from lodgement by Tribunal members holding directions hearings. These include applications that require an expedited review, applications about security assessments made by ASIO and, from 1 July 2015, most applications in the Taxation and Commercial Division. Where appropriate, applications may still be referred to an alternative dispute resolution process to attempt to reach an agreed outcome or narrow the issues in dispute.

If agreement cannot be reached in a case, the Tribunal – constituted by one, two or three members – conducts a hearing and makes a decision.

Distinct processes apply from 1 July 2015 in relation to applications in the AAT's Migration and Refugee Division and Social Services and Child Support Division, formerly dealt with in the MRT-RRT and SSAT. More information about those processes is available on the AAT website.

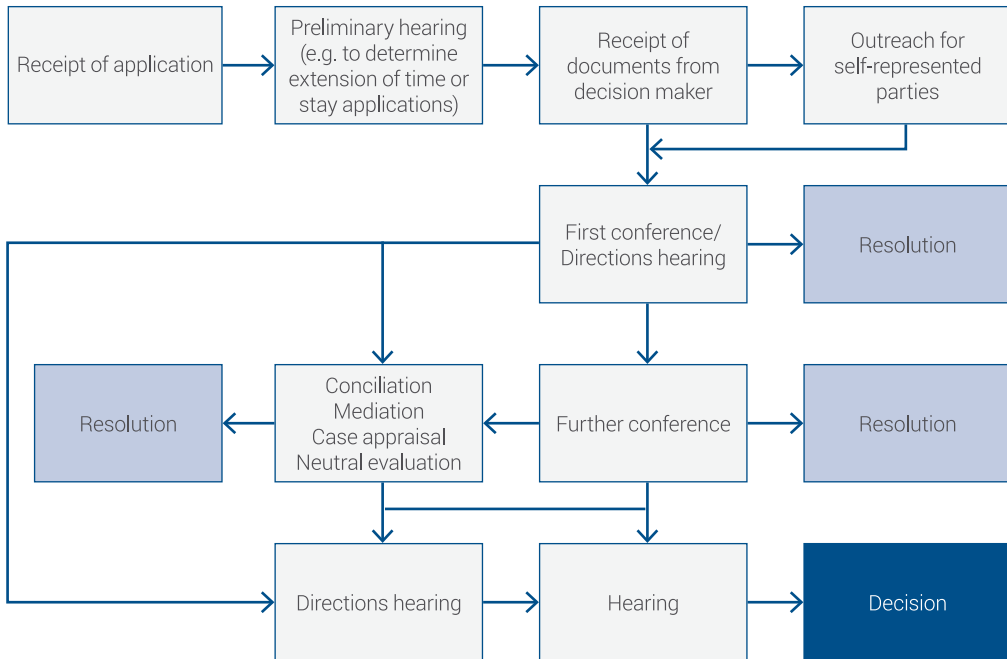
Directions, guides, guidelines and process models

The AAT publishes a range of documents that set out our policies and procedures. They are designed to assist parties and their representatives to understand the AAT’s processes and what is expected of them during the review process.

Practice directions and jurisdictional guides issued by the President set out procedures for managing particular types of applications. Other presidential directions and guidelines deal with specific aspects of the review process such as constituting the Tribunal and the use of expert evidence. We have also developed process models describing each stage of the alternative dispute resolution processes used by the AAT and a policy that guides the referral of applications to those processes.

Our practice and procedure documents were reviewed and updated in anticipation of the commencement of the amalgamated AAT on 1 July 2015. They are available on the AAT website.

Figure 2.2 Case management process



Accessing the AAT

The AAT employs a range of measures to assist potential applicants, parties and other people to access the Tribunal and participate in the review process.

Information about the AAT and assistance in relation to the review process

We offer written information about our role and procedures in plain language in a variety of formats. Some information is also made available in community languages. AAT staff respond to enquiries from parties and representatives about the review process and also proactively contact self-represented parties in certain types of cases to explain our processes, answer any questions and identify whether the party will require an interpreter or assistance because of a disability.

Self-represented parties who have given the AAT a mobile telephone number receive an SMS reminder a few days before an upcoming case event.

Where relevant, the AAT makes information available to parties about legal aid services, community legal centres or other persons or organisations that may be able to provide advice and assistance in relation to the review process or how to find such assistance.

In New South Wales, Queensland, South Australia, Victoria and Western Australia, legal advice schemes have been established with the legal aid commissions. A legal aid solicitor attends the AAT on a weekly or fortnightly basis and provides advice and minor assistance to self-represented parties in certain types of cases. Further assistance, such as representation, may be provided if a person makes a successful application for legal aid. The AAT advises self-represented parties of the service and makes appointments for them.

Interpreting services

If a party or witness requires an interpreter, the AAT engages one and meets the cost. We generally use interpreters accredited by the National Accreditation Authority for Translators and Interpreters (NAATI) at the 'Professional Interpreter' level. If an interpreter is not available in a language at that level, we may use an interpreter accredited as a 'Paraprofessional Interpreter' or, if NAATI does not offer accreditation testing in the language, an interpreter recognised by NAATI.

We have developed information for interpreters in relation to our procedures and terminology as well as guidelines relating to the role of the interpreter.

Access by people with disability

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

- ensuring the website meets the World Wide Web Consortium's Web Content Accessibility Guidelines version 2.0 (WCAG 2.0) web standard to Level AA
- making ReadSpeaker, a text-to-speech software service, available on the website
- providing portable hearing loop systems in Tribunal premises
- facilitating telephone contact for people with a hearing or speech impairment
- making all AAT premises wheelchair accessible and ensuring other premises used by the AAT are accessible, and
- providing for participation in alternative dispute resolution processes or hearings by telephone or video-link.

Service Charter and complaints

The AAT's 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 AAT and our complaint-handling procedures. It is written in clear, simple language.

The Service Charter was reviewed during 2014–15 in advance of the amalgamation of the AAT, MRT-RRT and SSAT. The revised Service Charter is on the AAT's website.

The AAT's compliance with its commitments under the Charter as it was in 2014–15 is discussed in Chapter 3, along with complaints information.