

CHAPTER 2

// Overview of the AAT

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, Refugee Review Tribunal and Social Security Appeals Tribunal were amalgamated with the AAT in accordance with the *Tribunals Amalgamation Act 2015*.

Our role and function

The AAT conducts 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 and territory government and non-government bodies. We also review decisions made under Norfolk Island laws.

The AAT's functions, powers and procedures are set out primarily in the Administrative Appeals Tribunal Act, Parts 5 and 7 of the *Migration Act 1958* and in social services legislation that confers jurisdiction on us.

Our jurisdiction

The AAT can review decisions made under more than 400 Commonwealth Acts and legislative instruments. A person can only apply to us for a review of a decision if a law states that we can review the decision. We do not have a general power to review decisions.

The types of decisions that we most commonly review relate to:

- child support
- Commonwealth workers' compensation
- family assistance and social security
- migration and refugee visas
- taxation, and
- veterans' entitlements.

We also review a wide range of other decisions, such as decisions about Australian citizenship, bankruptcy, civil aviation, corporations and financial services regulation, customs, freedom of information (FOI), the National Disability Insurance Scheme (NDIS), paid parental leave, passports and security assessments by the Australian Security Intelligence Organisation (ASIO).

We can review decisions made under 38 Norfolk Island laws including decisions about customs, planning and social services.

The list of Commonwealth and Norfolk Island laws, under which decisions may be made that can be reviewed by the AAT is on our website.

Our powers

Merits review of an administrative decision involves taking a fresh look at the facts, law and policy relating to that decision. The AAT considers all the material before it, and decides what is the legally correct decision or, if there can be more than one correct decision, the preferable decision. We can exercise all the powers and discretions available to the original decision-maker and we have the power to:

- affirm a decision
- vary a decision
- set aside a decision and substitute a new decision, or
- remit a decision to the decision-maker for reconsideration.

Our outcome, programme and purpose

The AAT's sole outcome in the 2015–16 Portfolio Budget Statements is:

Access to a fair, just, economical, informal and quick review mechanism for applicants through reviews of government administrative decisions, including dispute resolution processes and independent formal hearings.

We are a single programme agency.

The outcome and programme reflect our statutory objective in section 2A of the Administrative Appeals Tribunal Act. In carrying out our functions, we must pursue the objective of providing a mechanism of review that:

- is accessible
- is fair, just, economical, informal and quick
- is proportionate to the importance and complexity of the matter, and
- promotes public trust and confidence in the decision-making of the AAT.

The AAT provides administrative justice for individuals and organisations seeking to challenge decisions that affect their interests and, more broadly, contributes to improving the quality of government decision-making.

Our organisation

The AAT consists of the President and other members who may be appointed as Deputy Presidents, Senior Members or Members. Their primary role is to hear and decide applications for review of decisions.

Applications made to the AAT are managed in one of eight divisions:

- Freedom of Information Division
- General Division
- Migration and Refugee Division
- National Disability Insurance Scheme Division
- Security Division
- Social Services and Child Support Division
- Taxation and Commercial Division, and
- Veterans' Appeals Division.

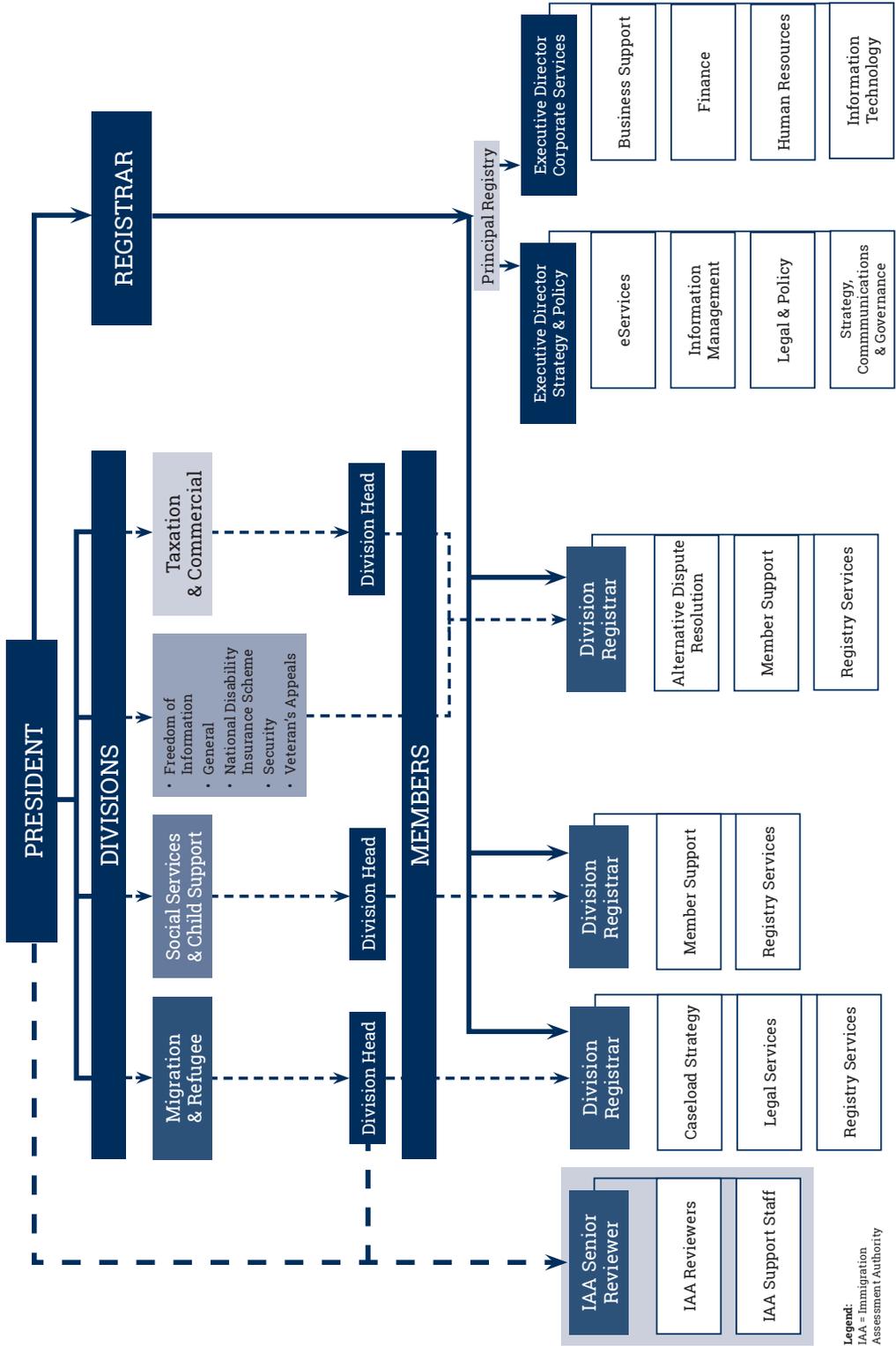
A Deputy President may be assigned as the Head of one or more divisions. A Deputy President or Senior Member may be assigned as the Deputy Head of one or more divisions.

The President is responsible for the overall management of the Tribunal with the assistance of the Division Heads and the Registrar, and staff assist the AAT to carry out our functions.

The AAT also hosts the Immigration Assessment Authority, a separate office within the Migration and Refugee Division. More information about the Immigration Assessment Authority is in Chapter 5.

Figure 2.1 shows our organisational structure.

Figure 2.1 Organisational structure, 30 June 2016



Members of the AAT

AAT members 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 various member categories are in the Administrative Appeals Tribunal Act. The President of the AAT must be a judge of the Federal Court of Australia. The 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 variety of backgrounds with expertise in areas such as accountancy, aviation, disability, engineering, law, medicine, migration, military affairs, public administration, science, social welfare and taxation.

The President and Deputy Presidents can exercise powers in any of the AAT's divisions. Senior Members and Members may only exercise powers in the division or divisions to which they are assigned.

At 30 June 2016, there were 331 members of the AAT. Table 2.2 shows the breakdown of the membership by category. Appendix 1 lists all AAT members at 30 June 2016, including the divisions to which each Senior Member and Member was assigned.

Table 2.2 Tribunal membership, 30 June 2016^a

CATEGORY OF MEMBER	JUDGE (WOMEN)	FULL-TIME (WOMEN)	PART-TIME (WOMEN)	TOTAL (WOMEN)
President	1 (0)			1 (0)
Deputy Presidents:				
Federal Court judges	13 (4)			13 (4)
Family Court judges	6 (3)			6 (3)
Non-judicial		9 (3)	6 (1)	15 (4)
Senior Members		24 (12)	16 (5)	40 (17)
Members		61 (28)	195 (111)	256 (139)
TOTAL	20 (7)	94 (43)	217 (117)	331 (167)

^a These figures include 20 members whose terms of appointment expired on 30 June 2016.

President, Division Heads and Deputy Division Heads

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

Table 2.3 lists the AAT's Division Heads and Deputy Division Heads at 30 June 2016.

Table 2.3 Division Heads and Deputy Division Heads, 30 June 2016

DIVISION	NAME
Division Heads	
Migration and Refugee Division	Deputy President Jan Redfern PSM
Social Services and Child Support Division	Deputy President Jim Walsh
Taxation and Commercial Division	Deputy President Bernard McCabe
Deputy Division Heads	
Migration and Refugee Division	Senior Member Dr Irene O'Connell ^a
Social Services and Child Support Division	Senior Member Suellen Bullock
Social Services and Child Support Division	Senior Member Irene Tsiakas

^a Dr O'Connell was the acting Division Head of the Migration and Refugee Division before the appointment of Deputy President Redfern.

See Appendix 1 for profiles of the President, Division Heads and Deputy Division Heads.

Staff of the AAT

The Registrar is a statutory office holder 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 undertakes functions relating to the management of applications conferred by the Administrative Appeals Tribunal Act and other enactments. The Registrar is Sian Leathem who began a five-year appointment on 7 April 2015.

During 2015–16, the President, the Division Heads and the Registrar were assisted by five officers in Senior Executive Service (SES) positions. Table 2.4 lists the SES employees at 30 June 2016. For information on their areas of responsibility, see Figure 2.1.

Table 2.4 Senior Executive Service employees, 30 June 2016

POSITION	NAME
Division Registrar, FOI, General, NDIS, Security, Taxation and Commercial and Veterans' Appeals Divisions	Elizabeth Connolly (A/g)
Division Registrar, Migration and Refugee Division	Carolyn Krochmal (A/g)
Division Registrar, Social Services and Child Support Division	Jacqueline Fredman
Executive Director, Corporate Services	Dobe Temelkovski (A/g) ^a
Executive Director, Strategy and Policy	Christopher Matthies

^a Rhys Jones held this position before he left the Tribunal in May 2016.

Other staff are employed under the *Public Service Act 1999* as ongoing, non-ongoing or intermittent employees. At 30 June 2016, there were 530 staff. See Chapter 4 and Appendix 2 for more detailed staffing information.

Registries

District Registries

Applicants and other users of the Tribunal are able to access the AAT through registries in each state capital city, in the Australian Capital Territory, and through arrangements for the provision of registry services on Norfolk Island. We provide services to users in the Northern Territory from our registries.

Staff in AAT registries:

- process applications and facilitate the listing and conduct of alternative dispute resolution processes and hearings
- liaise with parties and representatives about their cases and give them information about the AAT's operation and procedures, and
- provide administrative and other support services to conference registrars and members.

Conference registrars conduct the majority of the alternative dispute resolution processes which are held by the AAT in certain divisions. At 30 June 2016, dedicated national teams provided caseload support and legal services for the Migration and Refugee Division and member support services for the Social Services and Child Support Division.

Principal Registry

Principal Registry staff advise and assist the President and the Registrar in managing the AAT's administrative affairs, and provide services to members and staff. They are responsible for business support, corporate legal and policy support, financial and human resource management, library and information services, strategy, communications and governance support and technology services.

Our processes

In general, the procedures that applied to the conduct of reviews in the AAT, MRT, RRT and SSAT were preserved in the Administrative Appeals Tribunal Act, the Migration Act and relevant social services legislation from 1 July 2015. Our review processes vary according to the type of decision we are reviewing, and the differences reflect particular legislative requirements as well as particular strategies we use to manage the broad range of decisions we can review.

The core elements of our processes are outlined below.

Our procedures are designed to give an applicant and any other party to a review a reasonable opportunity to present their case. While parties may elect to be represented or assisted by a representative, a significant proportion of parties represent themselves and we have designed our procedures to facilitate their participation in the review. Details of the accessibility measures we employ, including the use of interpreters, are in Chapter 3.

Our review process

When a valid application is lodged with us, we notify the decision-maker of the application. The decision-maker must then give us a statement of reasons for the decision and all of the documents they hold that are relevant to the review. In divisions other than the Migration and Refugee Division, the decision-maker must give a copy of the documents to the applicant and any other party at the same time. In the Migration and Refugee Division, the applicant may request a copy of the documents we hold.

A key feature of merits review is the opportunity for the applicant and any other party to give us new information to consider in the review. We may invite or direct a party to give us information that will be relevant to the case at different stages of the review process. The AAT also has the power to require non-parties to give us documents that are relevant to a review.

In most cases in the Migration and Refugee Division and the Social Services and Child Support Division, the applicant and any other party is invited to attend a hearing. The decision-maker is not represented.

In our other divisions, the decision-maker is an active participant in the review. When possible, we help the parties try to reach an agreed outcome while ensuring cases are prepared for a hearing if they cannot be resolved by agreement. We use alternative dispute resolution processes in many of these cases, mainly conferences and conciliation but also mediation, case appraisal and neutral evaluation. Members hold directions hearings to manage some types of cases in these divisions in which the decision-maker participates in the review. We also use directions hearings to manage child support cases in the Social Services and Child Support Division.

A hearing gives an applicant, and any other party, an opportunity to provide evidence and present arguments about the decision under review. It also allows the Tribunal to ensure that the issues arising in the review are addressed. A hearing is conducted by the member or members who are directed by the President to constitute the Tribunal for the purposes of the review. The Tribunal may be constituted by one, two or three members but most reviews are conducted by a single member. The Tribunal is not bound by the rules of evidence and aims to conduct hearings with as little formality and technicality as is appropriate in the circumstances.

Hearings are held in person, by telephone and by video. They are conducted in public, unless the Tribunal directs that a hearing be held in private or legislation requires a private hearing. Hearings must be held in private in refugee cases in the Migration and Refugee Division, in applications for review of ASIO security assessments, and in all cases in the Social Services and Child Support Division.

Following the hearing, the Tribunal makes a decision on the review and must give reasons for that decision. The decision and reasons may be given orally on the day or they may be sent in writing at a later date.

The AAT publishes a selection of decisions made in the Migration and Refugee Division and the Social Services and Child Support Division. Most decisions made in other divisions are published.

Directions, guides and guidelines

We prepare and publish a range of documents detailing our policies and procedures which are designed to help parties and their representatives understand our processes and what is expected of them during a review.

The President issues practice directions and jurisdictional guides which explain the procedures that apply for particular types of applications. Other presidential directions and guidelines deal with particular aspects of our operations such as the allocation of cases to divisions, how the Tribunal is constituted for a review and the use of expert evidence. We have also developed process models that describe each stage of our alternative dispute resolution processes, and a policy that guides the referral of applications to those processes.

A revised set of practice and procedure documents was developed for the amalgamated AAT. We released an updated General Practice Direction which explains procedures that apply across divisions. We issued new practice directions for applications in the Migration and Refugee Division, child support cases in the Social Services and Child Support Division, and applications for review of taxation and commercial decisions. We also developed a combined guide which covers the two levels of review of Centrelink decisions that are available in the AAT: first review in the Social Services and Child Support Division and second review in the General Division.

The full suite of practice documents is on the AAT website.

Additional functions conferred on AAT members

As well as performing their role under the Administrative Appeals Tribunal Act, AAT members may, in their personal capacity, exercise powers under a range of other Acts.

Warrants, controlled operations and other functions

Members of the AAT who meet the qualification requirements set out in the relevant legislation may be nominated by the responsible Minister to:

- issue delayed notification search warrants and vary controlled operations authorities under the *Crimes Act 1914*
- make continued preventative detention orders under the *Criminal Code Act 1995*
- issue examination notices under the *Fair Work (Building Industry) Act 2012*
- make orders allowing information given to the Inspector of Transport Security to be disclosed to another government agency under the *Inspector of Transport Security Act 2006*
- issue warrants and exercise related powers under the *Surveillance Devices Act 2004*
- issue telecommunications interception warrants, stored communications warrants and journalist information warrants under the *Telecommunications (Interception and Access) Act 1979*, and
- issue search warrants and exercise related powers under the *Tobacco Plain Packaging Act 2011*.

For some of these functions, only the President and Deputy Presidents may be nominated to exercise the power. For other functions, only Senior Members and Members enrolled as a legal practitioner for at least five years may be nominated.

All AAT members are authorised to exercise a range of powers relating to monitoring overseas students' compliance with visa conditions under the *Education Services for Overseas Students Act 2000* and the Migration Act.

Table 2.5 shows the number of occasions on which AAT members considered applications under any of the above Acts over the past three years. There was a further small increase in 2015–16.

Table 2.5 Applications relating to warrants, controlled operations and other functions, 2013–14 to 2015–16

	2013–14	2014–15	2015–16
Number of occasions on which applications considered	2,715	2,786	2,849

The AAT is flexible in performing these functions and members are available outside standard business hours. In the reporting period, 157 out-of-hours appointments were held.

In a proportion of applications, the issue of a warrant or other authorisation is only granted after further information is provided at the request of the authorised member. A small number of warrant applications are refused, and some are only granted after conditions are imposed, including conditions in relation to privacy. In some instances, the warrant is issued for a shorter period of time than that sought by the law enforcement agency.

Proceeds of crime examinations

The President, any Deputy President, and any Senior Member or Member enrolled as a legal practitioner for at least five years, may be appointed by the responsible Minister as an approved examiner under the *Proceeds of Crime Act 2002* or the *Proceeds of Crime Regulations 2002*. Approved examiners are authorised to issue examination notices at the request of the Australian Federal Police and to oversee compulsory examinations in connection with confiscation proceedings.

Table 2.6 shows the number of examination sessions conducted by AAT members in the last three years.

Table 2.6 Examinations held under the *Proceeds of Crime Act 2002*, 2013–14 to 2015–16

	2013–14	2014–15	2015–16
Number of examination sessions held	28	57	49