

Chapter 2:

Overview of the Tribunal

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The role of the AAT is to provide independent merits review of administrative decisions.

The Tribunal falls within the portfolio of the Attorney-General, the Honourable Philip Ruddock MP.

Establishment

The Tribunal was established by the *Administrative Appeals Tribunal Act 1975* (the AAT Act) and commenced operations in 1976. The AAT Act and the *Administrative Appeals Tribunal Regulations 1976* (the AAT Regulations) set out the Tribunal's powers, functions and procedures.

Functions and powers

Review of decisions

The Tribunal is an independent body that reviews, on the merits, a broad range of administrative decisions made by the Australian Government, including ministers and officials, authorities and other tribunals. The Tribunal also reviews administrative decisions made by some State government and non-government bodies in limited circumstances. Merits review of an administrative decision involves its reconsideration. On the facts before it, the Tribunal decides whether the correct – or, in a discretionary area, the preferable – decision has been made in accordance with the applicable law. It will affirm, vary or set aside the original decision.

The Tribunal is not always the first avenue of review of an administrative decision. In some cases, it may not review a decision until an internal review has been conducted by the agency that made the primary decision. In other cases, review by the Tribunal is only available after intermediate review by a specialist tribunal. For example, in the area of social security, an application may be made to the Tribunal only after review by the Social Security Appeals Tribunal.

Section 33 of the AAT 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 can only review decisions in relation to which it has specifically been given jurisdiction, generally conferred by the legislation under which the original decision was made.

The Tribunal has jurisdiction to review decisions made under 395 separate Acts and statutory instruments covering areas such as Commonwealth employees' compensation, social security, taxation, veterans' entitlements, bankruptcy, civil aviation, corporations law, customs, freedom of information, immigration and citizenship, industry assistance and security assessments undertaken by the Australian Security Intelligence Organisation. Changes to the Tribunal's jurisdiction during the reporting year are set out in Appendix 5.

Organisation

The Tribunal consists of a President, presidential members (including Judges and Deputy Presidents), Senior Members and Members. The President is a judge of the Federal Court of Australia. Some presidential members are judges of the Federal Court or Family Court of Australia. All Deputy Presidents are lawyers. Senior Members may be lawyers or have special expertise in other areas.

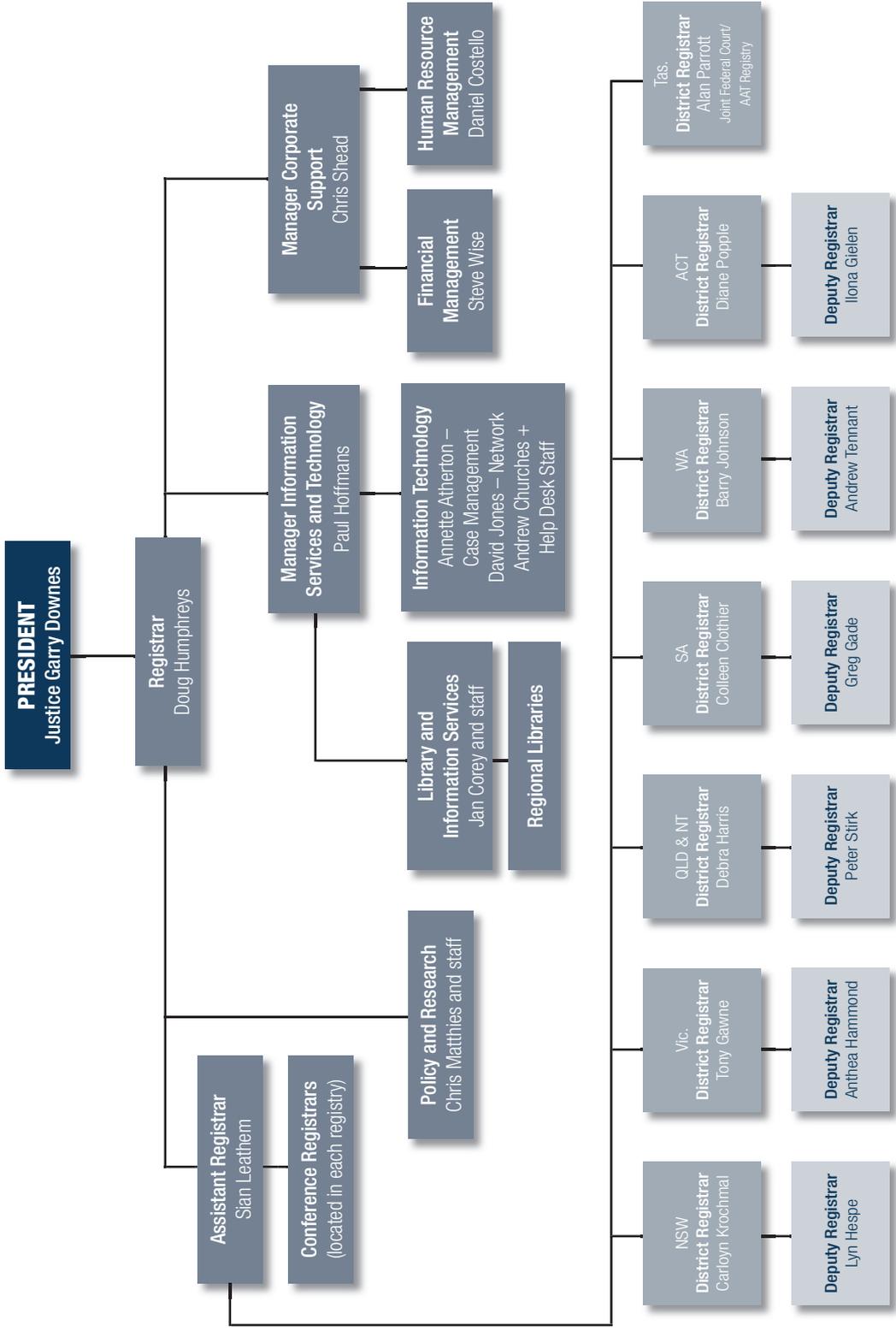
Members have expertise in areas such as accountancy, actuarial work, administration, aviation, engineering, environment, insurance, law, medicine, military affairs, social welfare, taxation and valuation.

Appointments to the Tribunal may be full-time or part-time.

The President, with the assistance of the Registrar, is responsible for the management of the Tribunal and its resources. The President has established committees comprising members and senior staff to provide advice and assistance in particular areas: the Constitution Committee, the Information Technology Steering Committee, the Library Committee, the Professional Development Committee and the Practice and Procedure Committee. District Registrars and Principal Registry managers also provide policy advice and operational assistance.

The Tribunal's Principal Registry is located in Brisbane and Sydney. The Tribunal has registry facilities in all capital cities, although the Northern Territory is currently managed from Brisbane. The President and Registrar are located in Sydney.

Figure 2.1 Administrative structure of the Tribunal



Membership

President

The Honourable Justice Garry Downes AM was appointed as a judge of the Federal Court of Australia on 2 April 2002. On that day, Justice Downes was also appointed President of the Tribunal. His current appointment expires on 12 April 2005.

Membership of the Tribunal

As at 30 June 2004 the Tribunal's membership totalled 71.

Appendix 1 contains a list of the Tribunal's membership by State and Territory and shows the divisions to which each non-presidential member was assigned as at 30 June 2004. This appendix also contains a profile of each of the Tribunal's members.

Registrar

The Tribunal's Registrar is Doug Humphreys. He commenced with the Tribunal on 25 August 2003. Jill Toohey was the Acting Registrar during the period before Mr Humphreys commenced with the Tribunal.

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 relation to the administrative affairs of the Tribunal. The position of Registrar is a statutory office appointed by the Governor-General. The Registrar is, for the purposes of the *Public Service Act 1999*, the agency head, and is responsible for the employment of the Tribunal's staff on behalf of the Commonwealth. The Registrar is also the chief executive officer for the purposes of the *Financial Management and Accountability Act 1997*.

The Registrar is assisted by the Assistant Registrar and senior officers in the Principal Registry and District Registries.

Table 2.1 Tribunal membership as at 30 June 2004

Class of member	Judges	Full-time	Part-time	Total (women)
President	1			1
Presidential members:				
Federal Court Judges	6			6
Family Court Judges	2			2
Deputy Presidents		5 ^a	5	10 (1)
Senior Members		7	4	11 (5)
Members		5	36	41 (10)
Total	9	17	45	71 (16)

a One full-time Deputy President was on extended leave of absence from the Tribunal throughout the reporting period.

The Assistant Registrar is Sian Leathem, who holds office as a senior executive in the Australian Public Service (APS). Ms Leathem commenced in the Tribunal in January 2004.



Ms Leathem replaced Janet Cooper, who served as the Tribunal's Assistant Registrar for seven years. Ms Cooper passed away during the reporting period.

Assistant Registrar, Sian Leathem

Staff

Tribunal staff are employed under the *Public Service Act 1999* as ongoing, non-ongoing or intermittent employees. As at 30 June 2004, a total of 143 staff were employed by the Tribunal.

Appendix 2 lists:

- numbers of ongoing, non-ongoing or intermittent staff of each classification in each registry
- numbers of ongoing employees who fall into each equal employment opportunity category, where staff have provided this information.

Registries

Principal Registry

Principal Registry staff are located in Brisbane and Sydney, with outposted technical specialists in library and information technology services in other capitals. Frequent and regular communication between the staff is maintained via email, telephone conferences, video conferences and periodic face-to-face meetings.

Principal Registry staff advise and assist the President and Registrar in relation to legal and policy issues and case management, and provide human resource management, payroll, finance, property, and information and technology services to members and staff.

District Registries

District Registries are located in each capital city. In Hobart, the registry service is provided by the Federal Court of Australia. The Queensland Registry has responsibility for Northern Territory applications and for ensuring an effective level of service to Northern Territory residents. Each registry is headed by a District Registrar who is responsible for local case management and registry management.

Conference Registrars conduct the bulk of the pre-hearing processes in all District Registries with the exception of Tasmania, where the District Registrar performs that role. Tribunal members also conduct conferences in some matters.

District Registries are also responsible for:

- providing information to the public, agencies, and parties to proceedings and their representatives on the operation and procedures of the Tribunal, including outreach to self-represented parties
- processing of documents
- facilitating the listing and conduct of conferences, mediations and hearings
- providing administrative and other support services to members.

The dispute resolution process

The Tribunal has a case management system aimed at dealing with applications in a timely and flexible manner. The purpose of the case management system is to promote:

- orderly and controlled passage of matters from lodgement to resolution
- achievement of case management targets
- equitable treatment of all parties
- effective use and allocation of Tribunal resources
- maintenance and enhancement of public confidence in the Tribunal.

The Tribunal has developed a number of Practice Directions which set out the procedures that will generally be adopted by the Tribunal in applications lodged with the Tribunal. These include:

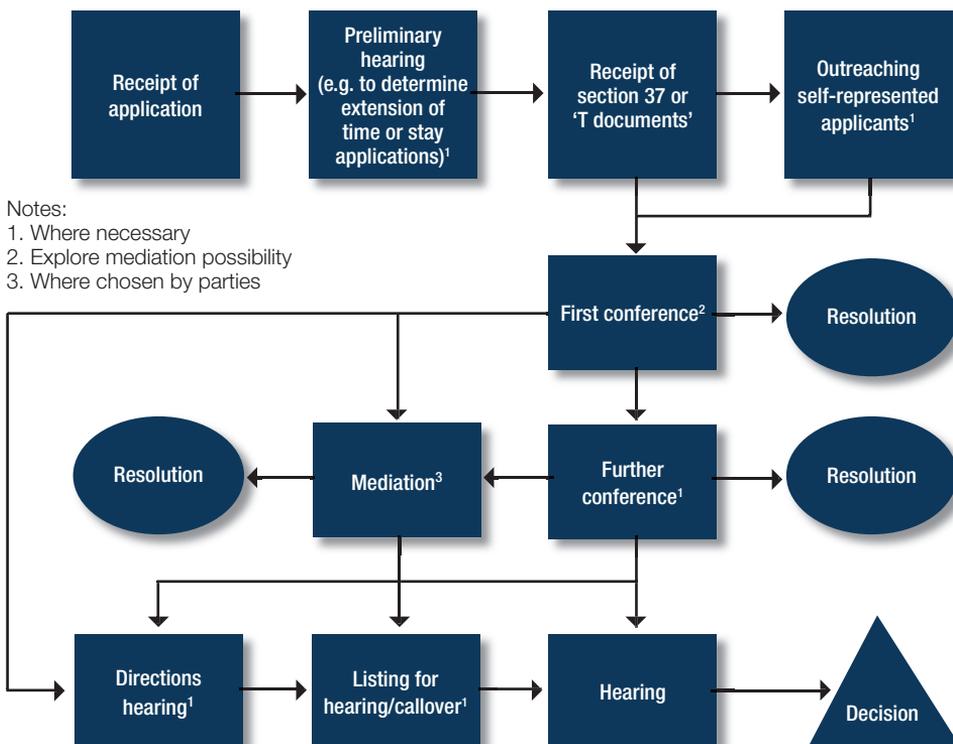
- the General Practice Direction which applies to the majority of applications lodged with the Tribunal where the applicant is represented
- the Small Taxation Claims Tribunal Practice Direction which applies to all applications to be dealt with by the Small Taxation Claims Tribunal.

These documents are complemented by further Practice Directions, including the Practice Direction on Procedures relating to section 37 of the AAT Act, the Direction on Conciliation Conferences which applies in the workers' compensation jurisdiction and the Freedom of Information Practice Direction.

Parties are expected to play an active part in identifying legal and factual issues early in the pre-hearing process. This encourages early resolution of disputes or, where that is not possible, a clear framework within which the parties can prepare for hearing. The Tribunal provides assistance to self-represented parties.

A flow chart outlining the progress of an application through the Tribunal, from receipt of application to resolution, appears in Figure 2.2. In applications in the workers' compensation jurisdiction where the applicant is represented, the Tribunal will usually convene a conciliation conference prior to the hearing.

Figure 2.2 Dispute resolution process flow chart



Case management responsibilities

As part of its case management system, the Tribunal has Listing Coordinators in each registry. These members are responsible for ensuring that appropriate systems are in place and that matters progress as quickly as possible. Listing Coordinators control listings generally and give instructions to the registry. They are responsible for the management of the Tribunal's pre-hearing process, including the establishment of procedures to ensure adherence to the Tribunal's General Practice Direction and time standards. National standards for consistency of procedures have been adopted.

The following table sets out case management arrangements as at 30 June 2004. Northern Territory matters are the responsibility of the Queensland Listing Coordinator.

Table 2.2 Case management arrangements

Registry	Listing Coordinator
New South Wales	Deputy President Handley
Victoria	Deputy President Forgie Senior Member Handley
Queensland	Deputy President Muller
South Australia	Deputy President Jarvis
Western Australia	Deputy President Hotop
Australian Capital Territory	–
Tasmania	Deputy President Estcourt

Access to the Tribunal

Website, pamphlets, information sheets and video

Comprehensive information about the Tribunal and its procedures is available on the Tribunal's internet website (www.aat.gov.au). The website was upgraded in 2003–04 to make it faster, more user friendly and more accessible. Material included on the site includes information about when the Tribunal can be of assistance, how to make an application, the pre-hearing process, mediation, what happens at a hearing, and what to do once a Tribunal decision is made. This information is also available in pamphlet form in a range of languages and in large print. A video entitled 'Getting Decisions Right', which is available to applicants, provides information about the Tribunal's practices and procedures.

The Tribunal has developed information sheets for overseas applicants, outlining the general practice and procedures of the Tribunal. The Tribunal has also developed information sheets specific to the immigration jurisdiction, where applicants may be in prison or detention and for whom it is difficult to access other information sources. Where appropriate, the sheets have been translated into community languages.

Outreach Program

The Tribunal has an Outreach Program to provide self-represented applicants with information about the Tribunal's processes and answers to questions they may have about procedural issues. Outreach is usually conducted over the telephone by trained officers, who identify any further information needs the self-represented applicant may have and what is necessary to meet those needs.

Interpreter services

Where a party requires an interpreter for a conference, mediation or hearing, the Tribunal will arrange for the interpreter and will meet the associated cost. The Tribunal's policy is to arrange interpreters who are accredited by the National Accreditation Authority for Translators and Interpreters (NAATI) at the 'professional' level (formerly Level 3). A 'paraprofessional' interpreter (formerly Level 2) may only be used in languages where no professional-level interpreter is accredited. In languages where there is no NAATI accreditation, a NAATI certificate of recognition is provided. Information to assist interpreters, such as the Tribunal procedures for attendance, is available in an information sheet for interpreters, which can be accessed via registries or the Tribunal website.

Access by persons with disabilities

In accordance with the Tribunal's Disability Action Plan, the Tribunal strives to make access to the Tribunal easier for people with disabilities by:

- making electronic and printed material available in appropriate formats
- providing hearing induction loops in Tribunal premises, including conference and hearing rooms, and at most registry counters
- providing a telephone typewriter machine with national Freecall access for those with hearing impairment
- making all premises wheelchair accessible
- providing facilities for participation in conferences or hearings by telephone or video link.

Further information about the Tribunal's Disability Action Plan and performance against the Commonwealth Disability Strategy is outlined in Chapter 5 of this report.

Duty lawyer pilot schemes

In January 2004, the Tribunal commenced pilots for a duty lawyer service to self-represented applicants in the New South Wales and Victoria Registries. A pilot commenced in the Queensland Registry in May 2004. Should the pilots be successful, approaches will be made to other State legal aid bodies to provide a similar service in other registries. Further details about the pilot are contained in Chapter 4.

Client Service Charter and complaints

The Tribunal's Client Service Charter provides information to users about the Tribunal's service standards, our commitments to clients, responsibilities of the parties, contact information and how to make complaints to the Tribunal. Information on the Tribunal's performance against the Client Service Charter and on complaints is set out in Chapter 3.

Additional functions relating to warrants, controlled operations certificates and examinations under the *Proceeds of Crime Act 2002*

In addition to their functions under the AAT Act, nominated members of the Tribunal also have power to issue telecommunications interception warrants under the *Telecommunications (Interception) Act 1979* and warrants for the use of listening devices under the *Australian Federal Police Act 1979* and the *Customs Act 1901*. Nominated members may also review certificates that authorise controlled operations under the *Crimes Act 1914*.

All Tribunal members have the power to issue certain warrants pursuant to the *Education Services for Overseas Students Act 2000* and the *Migration Act 1958*.

Functions are also conferred on certain Tribunal members by the *Proceeds of Crime Act 2002* to issue examination notices upon a request being made by the Director of Public Prosecutions and to carry out compulsory examinations in connection with confiscation proceedings. Regulations made under that Act provide that certain Tribunal members (presidential members and Senior Members whose names are on a register kept by the Minister for Justice and Customs) are approved examiners for the purposes of the Act.