



# Chapter 4:

Our users and our partners

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This chapter describes the Tribunal's performance in satisfying the goals identified in the Organisational Plan 2003–04 relating to the Tribunal's users and partners.

### Users of the Tribunal

'Users' of the Tribunal include:

- parties in Tribunal proceedings, including individuals, corporations, government agencies and their representatives
- government agencies, organisations and members of the public seeking information about the Tribunal, including its role and functions.

The Tribunal's goal, as outlined in its Organisational Plan, is to:

*provide a national high-quality merits review process that contributes to community confidence in a system of open and accountable government.*

This section of the report describes the strategies and key targets which the Tribunal has adopted in relation to this goal. This section of the report also provides information in relation to the activities of two of the Tribunal's committees, which are directed primarily to the achievement of this goal.

#### Practice and Procedure Committee

The Practice and Procedure Committee assists the President in exercising his responsibility to ensure the orderly and expeditious management of the business of the Tribunal. It considers and makes decisions on practice and procedure issues and, in particular, proposals to improve the way in which the Tribunal manages applications for review. The Committee comprises the President, the members who are the Listing Coordinators for each Tribunal registry, the Registrar, Assistant Registrar,

the District Registrar from each Tribunal registry and a representative of the Tribunal's Conference Registrars. The Committee is supported by staff of the Tribunal's Policy and Research Section.

The Committee met in October 2003 and February 2004. Issues discussed by the Committee included the operation of the General Practice Direction, non-compliance by parties with legislative and Tribunal requirements, the Tribunal's procedures for taxing costs, the management of applications relating to mass-marketed taxation schemes and the conduct of hearings that involve persons in custody or where there are other security concerns. Significant developments that occurred during the reporting period relating to matters considered by the Committee are outlined separately in this chapter.

#### Review of Practice Directions

The Tribunal manages the majority of applications for review in accordance with the Tribunal's Practice Directions, which are referred to in Chapter 2. The General Practice Direction which is complemented by the Section 37 Practice Direction and the Conciliation Conferences Direction has not been reviewed for some time.

The Practice and Procedure Committee has decided to undertake a review of the way in which the Tribunal manages applications for review. The review will consider, in particular, how the Tribunal communicates to parties its expectations and requirements in relation to the review process, with the aim of making management of applications more consistent, orderly and timely. The first part of the review will involve an examination of practice and procedure in the workers' compensation jurisdiction. While some preliminary work has been undertaken during the reporting period, the review, including consultation with Tribunal users and other stakeholders, will be primarily conducted in 2004–05.

## Regular user forums and meetings with users

The Tribunal continued hosting regular user group forums to provide an opportunity for information exchange with key respondents, legal practitioners and other people with an interest in particular areas of the Tribunal's jurisdiction. In Sydney, separate biannual meetings were held in relation to the Tribunal's compensation, social security, veterans' affairs, migration and taxation jurisdictions. A meeting was also held in Sydney with representatives from various law enforcement agencies and the Attorney-General's Department to discuss the procedures in place for the issuing of warrants by authorised Tribunal members.

Some registries held a single annual meeting or biannual meetings for all regular users, while others met on an ad hoc basis with representatives from particular user groups.

While the format of the user forums may vary from registry to registry, they all provide an excellent opportunity for the Tribunal to explain any changes to practice and procedure affecting parties. In addition, the Tribunal receives valuable feedback on areas where we are performing well and those where we might be able to make improvements. The Tribunal remains committed to being a user-friendly organisation that takes account of the needs of the people and organisations that use its services.

During the reporting year, Principal Registry staff also met with senior staff from major users of the Tribunal, including Centrelink, Comcare and the Department of Veterans' Affairs, to discuss practice and procedure issues and other operational matters.

## Addressing non-compliance

Delay by the parties in meeting statutory deadlines, submitting documents or proceeding with conferences or hearings contributes towards delay in the finalisation of reviews, increases costs to both the parties and the Tribunal, and frustrates the non-offending parties.

In order to provide an improved and more efficient service to users, during the reporting year the Tribunal increased its focus on addressing non-compliance with legislative timeframes and other Tribunal requirements. For example, since March 2004 each registry has been required to submit a quarterly report, outlining instances of repeated delay, inaction or non-appearances by parties. The Tribunal is now addressing identified instances of delay through a combination of local and national strategies, such as the holding of non-compliance directions hearings and the sending of notices to non-complying agencies and law firms.

## Duty lawyer service

The Tribunal's Organisational Plan 2003–04 included a strategy that the Tribunal would pilot a duty lawyer service to self-represented applicants in two registries. Following discussions with the New South Wales and Victorian Legal Aid Commissions, pilot schemes commenced in both the New South Wales and Victorian Registries in January 2004. A similar scheme was commenced in Queensland in May 2004.

The Tribunal is seeking agreement to extend all of the pilots until the end of December 2004, when they will be the subject of an evaluation. The evaluation will identify whether the pilot schemes have achieved their aims, which are to:

- promote early settlement of matters by providing applicants with access to high-quality legal advice at an early point of time
- increase client satisfaction
- reduce the number of self-represented applicants in the Tribunal.

Following the evaluation, the Tribunal will consider making recommendations to the Attorney-General's Department about the current legal aid guidelines if it can be demonstrated that they are an impediment to the efficient conduct of matters in the Tribunal.

Should the pilots be successful, approaches will be made to other State legal aid bodies to provide a similar service in other registries.

### **Concurrent expert evidence study continued**

In late 2002 the Tribunal's New South Wales Registry commenced a study of the use of concurrent evidence in hearings. The study has been continued throughout the reporting year. The concurrent evidence procedure, sometimes colloquially referred to as 'hot tubs', involves taking sworn evidence from more than one expert at the same time. It provides a forum in which, in addition to providing their own evidence, expert witnesses can listen to, question and critically evaluate other experts' evidence. The potential benefits of the use of concurrent evidence include:

- enabling the expert evidence to be better understood and tested, enhancing the Tribunal's capacity to make the correct or preferable decision
- assisting experts to fulfill their role as independent advisers assisting the Tribunal
- enhancing the efficient resolution of Tribunal proceedings by narrowing the issues in dispute and reducing hearing time.

Concurrent evidence procedures have been used in a number of cases before the Tribunal over recent years, as well as in some other courts and tribunals. However, to the best of the Tribunal's knowledge, no empirical studies have been conducted as to its effectiveness. The Tribunal therefore decided to set up a study to assess the criteria for selecting cases as suitable for concurrent evidence, to refine procedures for the taking of concurrent evidence, and to assess the

effectiveness of concurrent evidence procedures within the Tribunal.

The study, which will assess the use of concurrent evidence in at least 50 cases, is expected to conclude in late 2004. Information gathered from members involved in the hearings, as well as parties' representatives and the experts themselves, will form the basis of a report at the conclusion of the study.

As at 30 June 2004, some 41 cases involved in the study had used concurrent evidence procedures, involving experts from fields including psychiatry, neurology, orthopaedics, accounting and dietetics. Approximately 60 cases which were selected as being suitable to use concurrent evidence did not use the procedure as the matters were settled or otherwise finalised before reaching the hearing stage.

The study has generated considerable interest outside the Tribunal, and the President has presented various papers on the topic, including at the 2003 Judicial Orientation Program and the 2004 Australasian Conference of Planning and Environment Courts and Tribunals.

### **Management of taxation scheme matters**

A taxpayer has the option of challenging an objection decision of the Australian Taxation Office in either the Tribunal or the Federal Court. From 1 June 2000 to 30 June 2004, more than 3,800 applications were made to the Tribunal regarding objection decisions relating to mass-marketed taxation schemes. Many of these were subject to orders postponing review of the applications pending the outcome of test cases in the Federal Court and High Court.

Most appeal test cases have now been finalised and, consequently, some applications have been withdrawn or settled.

In December 2003, the Tribunal devised a case management strategy to deal with all matters not awaiting the outcome of a Federal Court or High Court appeal. This strategy involved the appointment of a managing member to coordinate all applications relating to the same taxation scheme. Generally speaking, managing members have been appointed on the basis of their experience in the taxation jurisdiction and because they are attached to the registry where the majority of applications reside.

Managing members and affected registries have been directed by the President to expedite existing taxation scheme matters. It is not envisaged that the managing member will determine all applications in the schemes they are coordinating. Rather, they will run directions hearings, assess priorities and select appropriate matters for hearing.

In addition to allocating a managing member, the Tribunal wrote to all applicants or their representatives in December 2003 seeking confirmation of whether their matters had been settled or withdrawn, or whether they wished to proceed to hearing. This process has resulted in a significant number of applications being finalised without a need for hearing.

The number of taxation scheme matters current in the Tribunal per registry at 30 June 2004 is as follows:

**Table 4.1 Numbers of current taxation scheme matters as at 30 June 2004**

| ACT | NSW | Qld/<br>NT | SA | Tas | Vic | WA    | Total |
|-----|-----|------------|----|-----|-----|-------|-------|
| 3   | 287 | 161        | 56 | 0   | 270 | 1,285 | 2,062 |

It should also be noted that 610 of the current taxation scheme matters are recent lodgements received after 1 July 2003.

**Table 4.2 Current taxation scheme matters lodged after 1 July 2003**

| ACT | NSW | Qld/<br>NT | SA | Tas | Vic | WA  | Total |
|-----|-----|------------|----|-----|-----|-----|-------|
| 0   | 106 | 36         | 32 | 0   | 32  | 404 | 610   |

The number of taxation scheme applications pending in Western Australia continues to remain particularly high. The appointment of two managing members in Western Australia will assist in the expedition of these applications. Where possible, members from other registries will be temporarily deployed to Western Australia to assist with hearings.

#### Improved information about the Tribunal

During the reporting year, the Tribunal took steps to improve the accessibility and quality of information that is provided to parties and the general public about the Tribunal. Notably, the Tribunal:

- upgraded and redesigned its website ([www.aat.gov.au](http://www.aat.gov.au))
- revised its Client Service Charter
- updated its information pamphlets.

The revised Client Service Charter and updated pamphlets will be made available in the next reporting period.

## Constitution Committee

The President established the Constitution Committee to examine issues relating to the constitution of tribunals and, in particular, the appropriate and consistent constitution of multi-member tribunals. The Committee comprises the President, a diverse group of members from different Tribunal registries and the Registrar. The Committee is supported by staff of the Tribunal's Policy and Research Section.

The Committee met in October 2003 and February 2004. The major focus of discussion during the reporting year was the development of Tribunal guidelines on constitution. The Committee considered a range of issues relating to the scope and content of such guidelines and provided feedback which will inform the development of draft guidelines.

The Committee also recommended that information about the expertise and qualifications of Tribunal members should be more easily accessible to assist Listing Coordinators to constitute tribunals with appropriate expertise. This issue has been addressed during the reporting period and information on the expertise of the membership is now readily accessible to Listing Coordinators.

## Tribunal partners

The Tribunal considers its 'partners' to be government agencies, tribunals, courts, the legal profession and other individuals and entities with whom it may develop a relationship that is not related to specific applications for review or other specific functions undertaken by the Tribunal. Partners may be other organisations involved in administrative review or interested in tribunal-related issues, or organisations with which the Tribunal develops cooperative arrangements for the sharing of resources.

The Tribunal's goal, as outlined in its Organisational Plan 2003–04, is to:

*work cooperatively with government, other tribunals, the legal profession and other interested groups.*

This section of the report describes the activities undertaken by the Tribunal during the reporting period that are directed to satisfying this goal.

## Developing and enhancing links with government, other tribunals and other relevant individuals and organisations

### Liaison with the Attorney-General's Department

During the reporting year the Tribunal liaised with the Attorney-General's Department on a wide range of matters relevant to the Tribunal and its operations. In particular, the Tribunal made submissions and provided comments in relation to proposed amendments to the AAT Act designed to enable the Tribunal to manage its workload more flexibly and facilitate the more efficient conduct of applications for review. An exposure draft of the Administrative Appeals Tribunal Amendment Bill 2004 was released for public comment in June 2004.

The Tribunal provided comments to the department on the recommendation relating to the Tribunal in the report prepared by Mr Tom Sherman, AO on the review of named person warrants and other matters relating to the *Telecommunications (Interception) Act 1979*. The Tribunal also made submissions to the department in relation to issues of wider significance for the federal civil justice system, including the Federal Civil Justice Strategy Paper and the review of the Commonwealth Legal Services Directions.

### Participation in the Tribunal Efficiencies Working Group

As the Tribunal noted in its 2002–03 annual report, the Tribunal Efficiencies Working Group was established to investigate and report on administrative efficiencies that may be achieved by cooperation between the Commonwealth merits review tribunals. The working group comprises the presiding officers of the AAT, Migration Review Tribunal, Refugee Review Tribunal, Social Security Appeals Tribunal and Veterans' Review Board, and officers of the Attorney-General's Department and Departments of Family and Community Services, Immigration and Multicultural and Indigenous Affairs, and Veterans' Affairs.

The Tribunal was an active participant in the working group during the reporting year. It worked cooperatively with the other members of the working group to gather and analyse information on the operations of the tribunals. The Tribunal participated in all meetings of the working group held during the reporting year and contributed to the preparation of a report of the working group's deliberations.

### Australian Law Reform Commission's inquiry into protecting classified and sensitive security information

The Tribunal contributed to the inquiry conducted by the Australian Law Reform Commission into the protection of classified and security sensitive information in the course of investigations and court or tribunal proceedings. The Tribunal regularly handles information of this kind, most often in applications for review in the Security Appeals Division concerning adverse or qualified security assessments given by the Australian Security Intelligence Organisation.

The President, Justice Downes, was a member of the advisory committee convened by the Commission for the purposes of the inquiry. The Tribunal also made two submissions to the Commission during the course of the inquiry. The Tribunal's submission on the Commission's discussion paper focused on practical issues relating to the application and implementation of the Commission's proposals for dealing with classified and sensitive security information in tribunal proceedings.

### Council of Australasian Tribunals

The Council of Australasian Tribunals (COAT) was established in 2002 as a peak body for Commonwealth, State, Territory and New Zealand tribunals. It aims to:

- facilitate liaison and discussion between tribunals, tribunal members and staff, and others interested in tribunals
- undertake projects and activities of relevance and assistance to tribunals.

COAT operates with a federal structure consisting of a National Council and Executive, together with State, Territory and New Zealand chapters.

On 5 June 2003 Justice Downes was elected Chair of COAT, a position that he held throughout the reporting year. He was elected for a second term as Chair at the annual general meeting of COAT held on 10 June 2004. The Tribunal's Registrar, Doug Humphreys, became the Secretary of COAT shortly after his appointment to the Tribunal in August 2003.

The Tribunal supported the work of COAT in a variety of ways during the reporting period. The Tribunal performed secretariat functions for COAT, including managing its finances, as well as arranging and providing administrative support for meetings of the National Council and the Executive. The Tribunal continued to host the COAT website and added a range of new material to the website, including, in particular, information relating to State and Territory chapters and their activities.

During the reporting year, COAT identified and endorsed as its first major project the development of a practice manual for tribunal members. The manual is intended to be a readily accessible, generic ‘how-to-do-it’ guide that will assist tribunal members to undertake their duties, including hearings, effectively. The Tribunal undertook the preliminary work relating to the project.

This included:

- preparing an issues paper on the development and maintenance of the practice manual
- managing and funding a consultancy undertaken by the Centre for Judicial Studies Pty Ltd relating to the audience, educational objectives, content, style and production of the practice manual.

Tribunal members and staff have also been active in COAT’s State and Territory chapters. Justice Downes gave the opening address at the inaugural conference of the NSW chapter of COAT on 28 May 2004. Deputy President Stephanie Forgie is a member of the committee of the Victorian chapter of COAT.

### Participation in heads of tribunals meeting

In addition to meetings of the Tribunal Efficiencies Working Group, the President of the AAT and the presiding members of the other Commonwealth merits review tribunals met in June to discuss matters of common interest. The registrars of the tribunals have communicated on a regular basis to discuss areas of common interest and to explore potential efficiencies through cooperative action between tribunals.

### Involvement in the Administrative Review Council

The President of the Tribunal is an ex-officio member of the Administrative Review Council (ARC), a body responsible for advising the Attorney-General on the operation of the Commonwealth administrative law system and recommending possible reforms. The President attended meetings and participated in the activities of the ARC during the reporting year. For further information relating to the ARC and its operations, please refer to the ARC’s annual report.

### Information technology strategies with partners

The Tribunal is working with the Migration Review Tribunal and the Refugee Review Tribunal in their case management system project. The Tribunal’s Manager, Information Services and Technology, Paul Hoffmans, was invited to be a member of their tender evaluation panel in assessing and choosing a new case management system.



## International partners

The Tribunal strengthened its links with international partners this year by participating in international conferences and providing information about administrative law and merits review in Australia to overseas visitors.

During April, the President of the Tribunal attended the congress of the International Association of Supreme Administrative Jurisdictions in Madrid, Spain, and presented a paper on the Australian administrative review system. He also met with judges of the Italian Council of State and a variety of individuals and organisations in the United Kingdom, including the Council on Tribunals and the Judicial Studies Board.

During the reporting year, the Tribunal hosted judicial officers from Sri Lanka, Thailand and Trinidad-Tobago, as well as academics and a delegation of tax accountants from Japan. These visits typically involved members and senior registry staff presenting sessions about the Tribunal's procedures and systems, and enabled information and experiences to be shared.

## Cooperative arrangements with courts and other tribunals

The Tribunal has entered into a number of memorandums of understanding to provide facilities and services to other Australian government agencies. These include:

- *Migration Review Tribunal (MRT)* – the MRT had registries in Canberra, Melbourne and Sydney during 2003–04. In Adelaide, Brisbane and Perth, AAT staff receive applications and handle inquiries on behalf of the MRT. The Tribunal also provides accommodation and hearing room facilities for MRT members, including hearing room assistance and video-conferencing facilities. The MRT pays an agreed amount to the Tribunal to provide these services.
- *National Native Title Tribunal (NNTT)* – during the reporting year the AAT provided additional accommodation to the NNTT from within its Adelaide premises on a cost reimbursement basis.
- *Professional Services Review Tribunal (PSRT)* – by arrangement with the Department of Health and Ageing, the AAT provides an administrative and registry service to the PSRT, which reviews determinations of the Professional Services Review Committees regarding inappropriate practices in the provision of services under the *Health Insurance Act 1973*. The District Registrar of the AAT's ACT Registry is also Registrar of the PSRT. The PSRT expects to wind up these activities during the course of 2004.
- *Australian Institute of Criminology* – the Tribunal provides personnel and payroll services to the Australian Institute of Criminology on a fee-for-service basis.
- *Federal Court of Australia* – the Tribunal shares a joint registry with the Federal Court in Hobart. The Tribunal reimburses the court for the staff and management costs required to service the needs of the Tribunal in that registry.
- *Federal Magistrates Court* – The Tribunal shares its Brisbane premises with a small group of magistrates and staff from the Federal Magistrates Court. The court runs its operations independently of the Tribunal, from an area that has been formally transferred to the court from the Tribunal's tenancy.

## Raising awareness of the Tribunal and its role in administrative law

### Tribunal participation in education, training and other activities

Members and senior staff of the Tribunal were actively involved in organising and participating in a variety of conferences, seminars and workshops relating to the Tribunal and its work during the reporting year. These activities enhanced community awareness of the Tribunal, and increased knowledge of the Tribunal and its procedures amongst advocates and other persons appearing before the Tribunal.

Activities in which members and staff were involved included:

- a training program for Department of Veterans' Affairs advocates at the University of Canberra in September 2003
- a workshop, 'Representation and Procedure in Tribunals', hosted by the South Australian Law Society in February 2004
- a presentation, 'Rehabilitation, Compensation and the Administrative Appeals Tribunal', at the National Injury Management and Prevention Summit held in Canberra in March 2004
- a presentation, 'Issues in Administrative Law from an AAT Perspective', to the External/ Administrative Review Conference hosted by the Australian Public Service Commission in May 2004
- a presentation to the Insolvency and Trustee Service Australia 5th National Bankruptcy Congress held in Melbourne in May 2004
- a training program for social security advocates in Perth in March and May 2004
- community information sessions on merits review and the Commonwealth and State ombudsmen in Port Augusta and Whyalla in May 2004.

Members also contributed material on the Tribunal and its operations for a range of publications.

The profiles of the Tribunal's members included in Appendix 1 provide additional information about activities undertaken by members of this kind.

### Sponsoring work experience placements

The Tribunal's registries provided at least eight work experience placements for school-age and university students during the year. The Tribunal recognises that it can provide these opportunities to students and does so to the extent that staff availability and accommodation will allow. Work experience placements comprised school children undertaking their first days in a working office, graduate and near-graduate law students gaining required credits to complete their degrees, and a person from a disability services unit of a State TAFE. Work placements generally range from two weeks for school-age students to three months for law graduates.