



<p>THE COUNCIL OF AUSTRALASIAN TRIBUNALS: AN OVERVIEW OF ITS OBJECTS AND ACTIVITIES</p>
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President of the Administrative Appeals Tribunal**

**Speech to a Meeting convened to establish a
South Australian Chapter of the Council of Australasian Tribunals**

24 August 2004

Establishment of COAT and its Objects

Thank you very much to the Steering Committee for inviting me to attend today's meeting. I am very pleased to have the opportunity to talk to you today about COAT and to encourage your efforts to establish a COAT Chapter here in South Australia.

Some of you have been involved with the establishment of COAT and are well aware of its genesis and development. For others, today's meeting may be your first contact with the organisation. It may be useful therefore to outline briefly how COAT developed, its structure and objects and to provide the context in which today's meeting is taking place.

The establishment of a peak body for tribunals was recommended by both the Administrative Review Council in 1995 and by the Australian Law Reform Commission in 2000. The proposals reflected the need for a forum that would enable the exchange of information and ideas and the coordination of cooperative initiatives.

In its *Better Decisions* report, the ARC recommended the establishment of a Tribunals Executive for the Commonwealth merits review tribunals.¹ The ALRC's recommendation in its *Managing Justice* report was for a broader-based Council on Tribunals. The ALRC recommended that the Council include the heads of both federal and State tribunals engaged in administrative review as well as the President of the ARC. It would be a national forum for tribunals to develop policies, secure research and promote education on matters of common interest.²

In March 2001, the ARC undertook to progress the ALRC's recommendation in consultation with tribunals. The ARC developed a model for a Council of Australian Tribunals which would include the following features:

- COAT would be an informal body with broad objectives;
- membership would be open to all Commonwealth, State and Territory tribunals;
- COAT would operate nationally as well as establishing State and Territory chapters.³

The proposal had the strong personal support of the then Commonwealth Attorney-General, the Hon. Daryl Williams AM QC MP.

The ARC convened a Steering Group comprising the heads of a number of Commonwealth and State tribunals to develop the proposal further. Justice Murray Kellam led the group. My predecessor as President of the AAT, Justice Deirdre O'Connor, was very much involved.

The proposal developed by the ARC and the Steering Group led to the formation of COAT on 6 June 2002 at a meeting of Commonwealth, State, Territory and New Zealand heads of tribunals. To reflect the inclusion of New

¹ Administrative Review Council, *Better Decisions: Review of Commonwealth Merits Review Tribunals*, Report No. 39, 1995, Recommendation 85.

² Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No. 89, 2000, Recommendation 10.

³ Administrative Review Council, *Report on the Council of Australasian Tribunals*, October 2002,

Zealand tribunals, the body was named the Council of Australasian Tribunals. The meeting adopted a constitution which governs the Council's structure and operations and also sets out the Council's objects.

COAT is as an unincorporated association with a federal structure that consists of:

- a National Council comprising member tribunals and the Executive; and
- State, Territory and New Zealand chapters, each of which is headed by a Convenor.

The National Council consists of tribunals whose presiding officers were present at the meeting which established COAT and such other tribunals as apply for, and are admitted to, membership. Tribunals participate in the National Council through their presiding officer.

The definition of tribunal in the COAT constitution has deliberately been drafted broadly. It defines "tribunal" to mean:

any Commonwealth, State, Territory or New Zealand body whose primary function involves the determination of disputes, including administrative review, party/party disputes and disciplinary applications but which in carrying out this function is not acting as a court.

Accordingly, COAT welcomes membership from administrative review tribunals as well as civil tribunals and from some private bodies as well as public bodies.

It was considered by the ARC that, rather than defining eligible bodies in detail, a broad definition would enable the many bodies falling within the definition to decide for themselves whether or not COAT is a body to which they wish to belong.⁴

The management and control of the affairs of COAT are vested in the Executive which comprises the Chair, a Deputy Chair and the Convenors of the State, Territory and New Zealand chapters. The Chair and Deputy Chair are elected at the Annual General Meeting of the National Council. Under the Memorandum of Objects of State, Territory and New Zealand Chapters, the Convenor of a chapter is to be a member of a tribunal operating in the relevant location who has been elected or appointed by the members of the chapter.

While membership at the national level of COAT is reserved for tribunals, membership of the State, Territory and New Zealand chapters is open to individuals. Importantly, local membership is open not only to members of tribunals that are members of COAT but also to practitioners, academics and other interested persons.

I am pleased to see here a wide range of potential members of the South Australian Chapter of COAT. Active local chapters will be best-placed to contribute to the achievement of at least two of the objects of COAT:

- to provide a forum for the exchange of information and opinions on aspects of tribunals and tribunal practices and procedures; and
- to promote lectures, seminars and conferences about tribunals and tribunal practices and procedures.

The creation of opportunities for interaction between tribunals and tribunal members is one of the most important aspects of the establishment of COAT.

Other objects of COAT set out in the constitution include:

- to establish a national network for members of tribunals to consult and discuss areas of concern or interest and common experiences;
- to provide training and support for members of tribunals;
- to develop best practice or model procedures rules based on collective experience of what works;
- to develop performance standards for tribunals;

- to provide advice to governments on tribunal requirements;
- to publish and encourage the publication of papers, articles and commentaries about tribunals and tribunal practices and procedures; and
- to cooperate with institutions of academic learning, and with other persons having an interest in tribunals and tribunal practices and procedures in promoting COAT's objects.

The objects specified in the constitution provide a clear sense of direction for the Council. They also identify a wealth of potential work that the Council may undertake.

The Current State of COAT

Since the Council was created in June 2002, a number of dedicated individuals have been working hard to establish and consolidate the constituent parts of COAT. Clearly, the establishment of a functioning organisation is a prerequisite to the achievement of the objects that have been identified for COAT.

Establishing the network of State, Territory and New Zealand chapters is a vital step in making COAT an active and vital organisation. I am pleased to note that chapters have been established in the ACT, New South Wales, Queensland, Tasmania, Victoria and New Zealand. Encouragingly, local chapter committees consist of representatives from the broad range of tribunals that may be members of COAT including:

- Commonwealth, State and Territory tribunals;
- small and large tribunals; and
- tribunals undertaking diverse functions including the resolution of disputes between private citizens, those conducting administrative review and disciplinary tribunals.

The breadth of membership of the local chapters is an important feature of COAT that will encourage sharing of information and experience and cross-fertilisation of ideas.

At the national level, an Interim Executive was formed on the creation of COAT with Justice Murray Kellam, as Chair, playing an indispensable role in laying the groundwork for building a national organisation. At COAT's first Annual General Meeting on 5 June 2003, the Interim Executive was replaced by the first elected Executive. I was elected Chair and John Lesser, President of the Mental Health Review Board of Victoria, was elected Deputy Chair. John and I were re-elected to these positions for a further year at the second Annual General Meeting of the Council held on 10 June this year in Brisbane.

Where local chapters were established, their convenors became members of the Executive. Of course, the Executive did not include representatives from those locations without a local chapter. To address this issue, the COAT constitution was amended to allow the Executive to co-opt presiding officers of a COAT member tribunal where no local chapter has been established or as is otherwise appropriate to assist the business of the National Council. Following this change, I approached a number of people in the Northern Territory, South Australia and Western Australia to join the Executive. I would like to acknowledge Pat Patrick for graciously accepting my invitation to join the Executive to represent South Australia. I am pleased to report that the Executive is a body that has truly national representation.

Like the local chapter committees, the Executive comprises representatives from a diverse range of tribunals. This can only serve to benefit the organisation as it moves from the initial establishment phase to a period of consolidation and growth.

The Current and Future Activities of COAT

Today's meeting is an important first step in establishing a chapter in South Australia. The challenge will then be to create an active chapter. As other

local chapters have ably demonstrated, opportunities exist for a range of activities that will interest and engage people involved in tribunals. Lectures and seminars have been organised by chapters in the ACT, Queensland, Tasmania and Victoria. The New South Wales Chapter organised a full-day conference on 28 May 2004 covering topics such as the use and role of expertise in tribunals and self-represented parties in tribunals. The conference was extremely well-attended. These are excellent examples of the activities that are part of the next phase of COAT's development.

Seminars and conferences provide the opportunity for a diverse range of people to come together to get to know each other and the work that we do in our different tribunals as well as to discuss issues relating to tribunals. Importantly, they provide a forum for papers and presentations that will encourage reflection, provoke thought and generate ideas about the way in which we do our work.

I hope that many of you have already visited the COAT website or will do so in the future. It already contains a range of information about COAT, including the evolving register of tribunals. The website has many potential uses and will undoubtedly grow and change with the organisation. I am confident that the website will be one of the ways in which we create a vibrant Australasian organisation.

Separate pages have already been established for the ACT, New South Wales, Queensland and Victoria chapters. Local chapters are encouraged to provide information on their activities. The website offers an easy way for local chapters to advertise and provide information on forthcoming seminars and conferences.

Papers presented at these events can be made available for download and are therefore accessible to members and interested persons in other locations. As the number of papers available on the website grows, the website will become an increasingly valuable resource on tribunal-related

issues. This can only be a positive development for improving the general awareness and understanding of tribunals and their issues.

Clearly, COAT is not the only organisation in Australia and New Zealand which has an interest in issues relating to tribunals. The Australian Institute of Administrative Law and the Australian Institute of Judicial Administration are two organisations that spring immediately to mind. I am aware that many members in local chapters of COAT are active in these and other organisations with overlapping interests.

The functions and interests of COAT are distinct in some respects from such organisations but this does not detract from the desirability of working cooperatively with them. Opportunities exist for jointly organised seminars and conferences and joint projects to the mutual benefit of the organisations involved.

An example of this cooperation was the Seventh Annual Tribunals Conference organised by the AIJA in Brisbane in June this year. Many of the participants in the conference sessions are also active members of COAT, both at the national level and in local chapters. Moreover, COAT held its Second Annual General Meeting on the first day of the AIJA conference.

One of the matters considered at the recent Annual General Meeting of the Council was the issue of funding for undertaking the activities of COAT. When the ARC developed the proposal for COAT, it proposed a self-funding model similar to that which operates for the Council of Chief Justices whereby each tribunal would bear its own costs.⁵ Each tribunal would be free to negotiate additional resources for COAT activities with their respective government. The ARC noted that formal arrangements relating to funding would have required agreement at ministerial level. This would have become more complicated if COAT were to be jointly funded by the Commonwealth, States and Territories. The ARC also observed, however, that COAT would

⁵ Ibid. at 16.

have the capacity to make the case for alternative funding arrangements, if necessary.

The funding model proposed by the ARC was adopted when COAT was established and there is no requirement for membership fees at the national level. It was decided that secretariat services would be provided by the tribunal to which the Chair belongs enabling these costs to be shared among different tribunals over time. The issue of how other particular activities of COAT at the national or local level would be funded was left unresolved.

This is an issue that must be given consideration if COAT is to be in a position to undertake the range of potential activities that will contribute to the achievement of its objects. This is particularly so in relation to larger scale, and therefore more expensive, projects that would be coordinated at the national level.

Two proposals relating to this issue were put to, and accepted by, the National Council at the AGM. The first is that the Council will approach Commonwealth, New Zealand, State and Territory governments and other relevant organisations to provide seed and/or annual funding for the activities of COAT. The second is that the Council, in conjunction with the local chapters, will determine an appropriate funding model and financial arrangements for undertaking the activities of COAT at both national and local level. This will explore a range of funding possibilities including the levying of membership fees and different methods of cost recovery including contributions by tribunals for particular projects. It will also consider how the Council's finances should be arranged at the national and local level. Establishing some clear guidelines about these matters is another important step in COAT's development.

Another significant matter considered by the National Council at the AGM is the first major project that COAT is proposing to undertake at the national level. COAT is interested in developing a generic practice manual for tribunals which would assist members to carry out their duties in the broad

range of tribunals that exist in Australia and New Zealand. The COAT Executive has established a subcommittee to examine and coordinate the project.

The large number of tribunals in Australia and New Zealand are marked by their diversity not only in relation to jurisdiction but in relation to their size, their location and membership profiles. Despite the many differences that exist between tribunals, COAT considered that there is a central set of issues and skills that are common to members of tribunals who must conduct hearings and make decisions. COAT has taken the view that a manual could be a resource that would provide practical guidance to tribunal members in dealing with issues that commonly arise in tribunals.

One of COAT's objects that I referred to earlier is to provide training and support for members of tribunals, particularly in smaller tribunals which may not have the resources to undertake such activities alone. This object reflects the fact that the level of resources available in tribunals to produce a practice manual or for professional development activities such as induction and training varies widely. The development of a generic practice manual would contribute to the achievement of this object.

In consultation with COAT, the Administrative Appeals Tribunal engaged Livingston Armytage, Director of the Centre for Judicial Studies, to undertake some preliminary work relating to the development of such a generic practice manual. The work to be undertaken included:

- an assessment of the needs of tribunal members for a generic practice manual;
- considering the audience and educational objectives for the manual;
- advice on the content of the manual as well as the preferable format and style for the content; and
- advice on the production of the COAT bench book.

As part of the assessment of the needs of tribunal members for the manual, Mr Armytage conducted consultations with tribunal members from a range of

different tribunals in Melbourne and Sydney. In workshops and one-on-one interviews, Mr Armytage explored the professional development needs of tribunal members, the priority audience for a manual of this kind and its content.

The final report of the consultant contained a range of recommendations relating to the development of a practice manual which would aim to establish, promote and support a universal benchmark standard of competence and best practice for all tribunal members on common issues. The report and its recommendations and the further progress of this project were discussed with the COAT National Council at the Annual General Meeting in Brisbane and presented to tribunal members and other interested persons during a session at the AIJA Conference. A copy of Mr Armytage's report is available on the AIJA website.

The National Council decided to proceed with the project subject to securing sufficient funding. Requests for funding have been made to a number of organisations including the AIJA and member tribunals. I am hopeful that the issue of funding will be successfully resolved in the near future and that development of the practice manual can get underway.

I hope this analysis of COAT and what it is trying to achieve demonstrates the importance of national and cross-Tasman links between Tribunals. It seems to me that international links are also important. The more diverse the field of contact becomes the more there is to be taught and learned.

I would like to thank you for attending this meeting and acknowledge the efforts of the South Australian Steering Committee. I hope you are encouraged to take the next step to establish a South Australian chapter and look forward to your participation in the activities of COAT.