

TRIBUNAL WATCH

1996 Commonwealth Review Tribunals Conference

The 1996 Commonwealth Review Tribunals Conference was held in Canberra on Friday 13 and Saturday 14 September 1996 at the Law School of the Australian National University. The Conference was organised by the Council primarily for the benefit of members of Commonwealth merits review tribunals. Some State and Territory tribunal members also attended. Unlike previous conferences which had a greater focus on formal speeches to conference participants, the emphasis of the Conference this year was on interaction between tribunal members through workshops.

Keynote address by Attorney-General

The Attorney-General, the Hon Daryl Williams AM QC MP, gave the keynote address to the Conference (reproduced as the first Focus Article in this issue of *Admin Review*). As the Government is yet to respond to the Council's report *Better Decisions: review of Commonwealth Merits Review Tribunals*, conference participants were interested to hear the Attorney-General's comments. The Attorney endorsed the Council's emphasis on the dual role of merits review tribunals – to reach the 'correct and preferable' decision in the individual case and to improve the quality of administrative decision making generally.

The Attorney noted that it was time to reflect on the role of the Council and its relationship with government. He foreshadowed the review of the Council that is now being undertaken by the Senate Legal and Constitutional Legislation Committee (this is discussed earlier in this issue of *Admin Review*).

Workshops

Each workshop had presenters who spoke to open up the topic for discussion by participants. The presenters were drawn from a range of backgrounds including tribunal members, government officials, and private practitioners.

Some workshops were skills based and provided training for participants; others covered a range of legal and policy issues relevant to the work of review tribunals. Workshop topics included: assessing credibility; mediation; expert witnesses; normative effect and primary decision makers; user friendly Tribunals; government policy and tribunal decision making; tribunal cooperation; timely disclosure of relevant material in tribunal proceedings; writing reasons for decision; tribunal independence; and assessing tribunal performance through statistics.

The Australian Law Reform Commission also took the opportunity to obtain the views of tribunal members in relation to the Commission's current review of the adversarial system of litigation (discussed in *Admin Law Watch*).

Survey of participants

Following the Conference, a survey form was distributed to participants, seeking evaluation of the workshops and comments on the objectives, structure, participation and other relevant matters concerning the Conference. The Council would like to thank those Conference participants who responded to the survey as the feedback will assist in discussions between the Council and tribunals about the organisation of the 1997 Tribunals Conference. The general response was that the greater emphasis on workshops and discussion (by comparison to addresses) was desirable.

AAT developments

New AAT Practice Directions

Following a review of its practice directions the AAT has recently issued new practice directions. The new directions take effect from 30 September 1996.

The new practice directions include a General Practice Direction which combines and replaces a number of earlier practice directions as well as a specific Practice Direction con-

cerning statements and documents lodged with the AAT under Section 37 of the AAT Act that replaces the practice direction issued on 26 April 1991 on the same subject.

The new General Practice Direction sets out the procedures to be adopted for applications lodged in the AAT throughout Australia where the applicant is represented noting also that those procedures can be varied by specific AAT directions. Matters covered by this new direction include: Section 37 Documents, Conferences, First Conference, Statements of Facts and Contentions and Witness Statements, Second Conference, Hearing Certificate, Adjournments, Directions Hearings, Medical Witnesses, Summons to Produce, List of Cases, Interpreters, Telephone or Video Proceedings, Consent Decisions and Dismissals and Withdrawals, Refund of Application Fees and Costs.

Increase in AAT filing fees

Fees for AAT applications increased from \$368 to \$500 from 1 September 1996. Provision for refund of fees to successful applicants has been retained and as before, there is provision for waiver of fees in certain circumstances such as where the applicant is incarcerated or where there are circumstances of hardship. Some applicants in low income categories remain exempt from liability to pay the fee.

AAT Charter

The AAT has been developing a Charter of access and service. The impetus for this initiative was the *Justice Statement*, released in May 1995 in which funding was made available to the AAT for the purpose of developing the Charter. Although funding specifically allocated for the development of the Charter has since been withdrawn the AAT has forged ahead with development of the Charter given the investment that it had already made in the project. It is expected that a draft of the Charter will be completed by March 1997.

The Charter will give the AAT a greater consumer focus. Its development involves assessment of court practices and facilities

against criteria of consumer accessibility. It will outline aims for the delivery of the AAT's services.

The AAT has recently completed a round of community consultations and conducted a client satisfaction survey. Results from these will be taken into account in the development of service standards and performance measurement strategies. The AAT also proposes to review its complaints handling mechanism as part of the development process.

Community consultations

Community consultations have recently been completed by the AAT in Darwin, Hobart and Melbourne. A total of 44 organisations were consulted including departments, agencies, private law firms and community organisations such as Welfare Rights and Migrant Resource Centres. Consultations in Sydney and Canberra are also planned.

The consultations provided valuable feedback to District Registry staff as well as to those involved with case management and policy development. Issues specific to each state were aired.

The AAT anticipates that the consultations will give it a much better appreciation of access issues of interest and of concern at a national as well as a regional level. In addition to assisting in the development of the Charter these matters will be important to the future work of the AAT's Community Access Officer.

AAT Client satisfaction survey

The AAT is currently conducting a client satisfaction survey as an essential component of the development of the AAT's Charter. The survey was designed by the AAT in consultation with AGB McNair.

The survey is for individual applicants and respondents to AAT proceedings. It is a national survey and is designed so that clients may give the Tribunal feedback about expectations in relation to its client service as well as the level of satisfaction with that service.

In addition to informing the AAT about how well it is currently servicing client needs and expectations the results will assist with the development of performance standards for inclusion in the AAT's Charter. It will also assist the AAT to develop and improve its programs and policies. This survey is the first of its kind conducted by the AAT.

The survey has been sent to 4,300 applicants who had their applications finalised in the period from 1 April 1995 until 30 June 1996.

The survey had a response rate of 24%. Respondents were generally very satisfied with the services that the AAT provided in terms of communication, staff/member client servicing skills and administrative procedures. The lowest satisfaction ratings concerned the time in which cases were finalised (55%) and understanding of the main points of the case (65%). About two-thirds of respondents (67%) considered that the AAT had dealt fairly with their case although this appeared to be strongly influenced by the outcome of the case.

In addition to the evaluative information contained in responses, the survey has also provided the AAT with information about its client base. Questions were asked about gender, level of education, country of birth, disability and use of interpreters. The most notable points about that client base were the percentage of women clients (28%), clients from an Aboriginal or Torres Strait Islander background (1%) and clients born in non-English-speaking countries (12%).

Assisted Resolution Program

The AAT's Assisted Resolution Program incorporates its conference and mediation processes. The AAT is currently undertaking an evaluation of the program. The objectives of the evaluation include assessment of how effective and efficient mediation and conferences are – individually, jointly and comparatively – in achieving the objectives of assisted resolution and how their effectiveness and efficiency might be improved. The evaluation will also

look at whether there are other ways of improving the effectiveness and efficiency of assisted resolution.

The evaluation is being conducted in six phases: (1) a literature review; (2) qualitative research with those who conduct conferences and mediation; (3) qualitative research with AAT clients; (4) quantitative research with AAT mediators; (5) integration of the qualitative and quantitative research; and (6) report and finalisation.

To date phases (1)-(3) have been completed. Phase 4, which is being conducted by researchers from the Australian Graduate School of Management, is nearing completion. The project will then move into the phase of integration of the qualitative and quantitative research data and the writing of the final report by the Australian Commercial Disputes Centre.

Project on unrepresented parties

The AAT, along with the Australian Research Council and the Federal Court of Australia are jointly funding a project initiated by the University of Wollongong Centre for Court Policy and Administration the main purpose of which is to evaluate the impact of litigants in person on the management of the Federal Court and the AAT. The project is aptly titled *Delivering Justice to Litigants in Person: Managing Litigants in Person in the Administrative Appeals Tribunal and the Federal Court of Australia*. It is intended that the project will result in recommendations indicating effective ways of processing cases conducted by the 'litigant in person' (unrepresented applicant). It is expected that the project will be completed by early 1997.

AAT publications

The AAT has advised that it proposes to publish an information newsletter for community workers and advocates, the first of which will be issued by around March 1997. The newsletter will contain information about legislative changes, interesting cases, the results of

client satisfaction surveys as well as information about the Tribunal's access program and projects.

The AAT has also published a series of essays to mark the occasion of the twentieth anniversary of the establishment of the Tribunal. Essayists include past and present Presidents, members and staff of the Tribunal, and also included is a set of key AAT statistics covering the period. A joint AAT/Australian National University and Australian Institute of Administrative Law conference was held in Canberra on 1-2 July 1996 to celebrate the AAT's twentieth anniversary.

Specialist tribunal Annual Reports 1995-96

Each of the main Commonwealth merits review tribunals publishes an annual report for the year ending 30 June. Some notable points from the annual reports of each of the main specialist tribunals for the 1995-96 year are set out below.

The sorts of decisions being reviewed varies greatly both within and between tribunals, so the statistical information that follows should be read with this in mind, and individual tribunal annual reports should be used for more context and detail. Figures on percentage increases and decreases are all by reference to the comparable figure for 1994-95.

Immigration Review Tribunal

In the Immigration Review Tribunal for the 1995-96 reporting year:

- 3467 cases were received (up 59%), most of the increase being in respect of the '1 November 1993' class of visas;
- finalised cases increased by 18% (this was less than the Tribunal's internal target);
- 2603 cases were in progress at the end of the year (up 84%);
- the proportion of applications found to be ineligible remained steady at 6%;

- the average rate at which the Tribunal set aside or remitted decisions was 52% (down from 59%), but with a large range of rates depending on the visa class involved;
- cases on average took 236 days to finalise (up 9%);
- the average cost per case was \$3270 (up 4%), but including tribunal superannuation costs for the first time;
- the proportion of two and three-member tribunal panels to single-member panels fell from 20% to 15%;
- interpreters were used in 52% of preliminary meetings and hearings (up from 43%), the most commonly used languages being Mandarin, Cantonese and Vietnamese;
- the Tribunal conducted its second client satisfaction survey – the first was in 1992 – with applicants and 'community' users being surveyed separately (the results are set out at pages 14-15 of the Tribunal's annual report);
- the Tribunal conducted consultations with community representatives in most capital centres during the year; and
- the Tribunal's Principal Member issued an Interim Practice Guideline on the role of advisers and what constitutes 'exceptional circumstances' for the purposes of allowing the Tribunal to permit an adviser to present oral arguments to it (the proposed legislative changes discussed in [1994] *Admin Review* 59 having since become law).

Refugee Review Tribunal

In the Refugee Review Tribunal for the 1995-96 reporting year:

- 4018 applications for review were received, comprising 3483 'new' applications and 535 applications inherited from the review system in place before the Tribunal was established (down on last year, but new applications were up by 10%);

- there were 4492 applications finalised (down 7%), but the number of decisions made by members (as opposed to ineligible and withdrawn applications) increased by 14%;
 - the average cost per finalisation rose from \$2590 to \$3390 and the average cost per decision was \$4500 (up 7%) – overall costs increased due to supplementary salary increases and superannuation supplementation);
 - the average review period for cases finalised during the year was 345 days (up from 258 days);
 - the average processing time from hearing to finalisation decreased to 45 days from 59 days;
 - the average number of cases finalised per member increased to 75 from 69;
 - the proportion of Chinese applications to the total fell from 34% to 18%;
 - computer terminals have been established in the Sydney and Melbourne offices of the Tribunal to allow public access to published Tribunal decisions;
 - the Tribunal established an Internet site which includes information on tribunal procedures and on how to obtain published tribunal decisions (the internet address is as follows: <http://www.austlii.edu.au/au/other/rrt/>); and
 - the Tribunal held its second National Conference of RRT Members in Sydney, at which Professor James Hathaway, a Canadian refugee law expert, was the keynote presenter.
- with increased rates of appeal against these decisions and decisions of the Commonwealth Employment Service;
 - the number of applications finalised was 10514 (up 17%);
 - the number of cases on hand at the end of the year was 3666, up 89% (attributable in part to the increased numbers of student assistance and CES decisions being appealed and to delays in the provision of statements by the relevant Department in these cases);
 - the average processing time for an appeal was 10.7 weeks, up from 8.7 weeks (the delay in the provision of statements again being a factor);
 - the Tribunal changed the decision under review in 32.2% of appeals finalised, down from 37.4%;
 - the number of cases in which the Tribunal had no jurisdiction increased from 10.8% to 13% of the total (mainly being cases where appeals are lodged before internal review process has been undertaken);
 - the adjusted (because of certain unusual non-recurring expenditure and other factors) average cost per application finalised reduced from \$657 to \$621;
 - 88.6% of hearings were conducted in informal, face-to-face hearings with applicants (as is encouraged by the Tribunal), up slightly from 87.8%; and
 - multi-member panels remained the norm – the average number of members per panel was 2.98 for non-medical appeals, 3.85 for medical appeals and 3.73 for mixed (medical and non-medical issues) appeals.

Social Security Appeals Tribunal

In the Social Security Appeals Tribunal for the 1995-96 reporting year:

- the number of applications lodged was 12242 (a substantial increase of 30%) – the increase being the result of this year being the first full year of review of student assistance decisions by the Tribunal along

Veterans' Review Board

In the Veterans' Review Board for the 1995-96 reporting year:

- 10048 applications were lodged, up from 8162 (up 23.1%);
- 9246 applications for review were finalised, up from 7619;

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- 8369 applications remained outstanding at the end of the year, up from 7488, up 11.8% (this increase has been the result of a sustained high level of lodgments and a continued high proportion of applications awaiting action by the parties and beyond the control of the VRB, therefore not ready for hearing);
 - the numbers of cases over two years old and where the parties are not ready to proceed (where the VRB has power to dismiss them unless proper steps are taken) is down to 3.3% – the VRB considers that the time period might be shortened to one year in order to improve the response of parties and reduce the numbers of cases remaining outstanding;
 - the increased use of internal review by the Department has not as yet led to the expected reduction in applications to the VRB;
 - the number of withdrawals increased (including as a result of satisfaction with internal reviews conducted after the application had been made) and the number of published decisions decreased;
 - 22.2% of entitlement decisions reviewed by the VRB were set aside and a pension was granted (down from 27.7%);
 - 53.4% of assessment decisions reviewed by the VRB were set aside (down from 60.4%); and
 - the actual average cost per finalised case fell to \$717 from \$813.