

Appendix 6

Work of tribunals

Australian Competition Tribunal

Functions and powers

The Australian Competition Tribunal was established under the *Trade Practices Act 1965* and continues under the *Competition and Consumer Act 2010* (the Act).

The Tribunal is a review body. A review by the Tribunal is a re-hearing or a re-consideration of a matter. The Tribunal may perform all the functions and exercise all the powers of the original decision-maker for the purposes of review. It can affirm, set aside or vary the original decision.

The Tribunal has jurisdiction under the Act to hear a variety of applications, most notably:

- review of determinations by the Australian Competition and Consumer Commission (ACCC) granting or refusing clearances for company mergers and acquisitions
- review of determinations by the ACCC in relation to the granting or revocation of authorisations that permit conduct and arrangements that would otherwise be prohibited under the Act for being anti-competitive
- review of decisions by the Minister or the ACCC in relation to allowing third parties to have access to the services of essential facilities of national significance
- review of determinations by the ACCC in relation to notices issued under s 93 of the Act in relation to exclusive dealing, and
- review of certain decisions of the ACCC and the Minister in relation to international liner cargo shipping.

The Tribunal can also hear a range of other, less common, applications arising under the Act. The Tribunal can affirm, set aside or vary the decision under review.

Practice and procedure

A review by the Tribunal is usually conducted by way of a public hearing, but may in some instances be conducted on the papers. Parties may be represented by a lawyer. The procedure of the Tribunal is subject to the Act and regulations within the discretion of the Tribunal. The Competition and Consumer Regulations 2010 set out some procedural requirements in relation to the making and hearing of review applications.

- The Tribunal issued a revised Practice Direction on 3 April 2019.
- Proceedings are 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.

Membership and staff

The Tribunal is comprised of presidential members and lay members who are qualified by virtue of their knowledge of, or experience in, industry, commerce, economics, law or public administration. Pursuant to s 31 of the Act, a presidential member must be a judge of a Federal Court, other than the High Court or a court of an external territory.

Justice John Middleton is the President of the Tribunal. Justice Andrew Greenwood, Justice Lindsay Foster, Justice David Yates, Justice Alan Robertson, Justice Kathleen Farrell and Justice Jennifer Davies are the Deputy Presidents of the Tribunal.

Professor Caron Beaton-Wells was appointed as a lay member of the Tribunal during the reporting year, joining Rodney Shogren, Dr Darryn Abraham and Professor Kevin Davis. Four lay members of the Tribunal retired during the same period: Robyn Davey, Grant Latta AM, Professor David Round AM and Ray Steinwall.

The Tribunal is supported by a Registrar (Tim Luxton) and Deputy Registrars (Nicola Colbran, Katie Lynch, Geoffrey Segal and Russell Trott).

Activities

One matter was current at the start of the reporting year. During the year, two matters were commenced and one was finalised.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Decisions of interest

- *Application by DBNGP (WA) Transmission Pty Ltd* [2018] ACompT 1 (16 July 2018).

Copyright Tribunal

Functions and powers

The Copyright Tribunal was established under the *Copyright Act 1968* to hear applications dealing with four main types of matters:

1. to determine the amounts of equitable remuneration payable under statutory licensing schemes
2. to determine a wide range of ancillary issues with respect to the operation of statutory licensing schemes, such as the determination of sampling systems
3. to declare that the applicant (a company limited by guarantee) be a collecting society in relation to copying for the services of the Commonwealth or a state, and
4. to determine a wide range of issues in relation to the statutory licensing scheme in favour of government.

By virtue of the *Copyright Amendment Act 2006*, assented to on 11 December 2006, the Tribunal also has jurisdiction to hear disputes between collecting societies and their members.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. The procedure of the Tribunal is subject to the Copyright Act and regulations and is within the discretion of the Tribunal. The Copyright Regulations 2017 came into effect in December 2017 (replacing the Copyright Tribunal (Procedure) Regulations 1969). Part 11 of the regulations relates to the Copyright Tribunal and includes provisions concerning its practice and procedure.

Proceedings are conducted with as little formality and technicality, and as quickly 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.

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as appointed by the Governor-General. Justice Andrew Greenwood is the President of the Tribunal. Justice Nye Perram and Justice Jayne Jagot are Deputy Presidents. The current members of the Tribunal are Dr Rhonda Smith (reappointed from 12 December 2017), Mr Charles Alexander (appointed from 30 November 2017), Ms Sarah Leslie (appointed from 1 March 2018) and Ms Michelle Groves (appointed from 16 April 2018). Appointments are usually for a period of five years.

The Registrar of the Tribunal is an officer of the Federal Court of Australia. Murray Belcher was appointed Registrar of the Tribunal on 16 August 2018. Before this, the Registrar was Michael Wall.

Activities and cases of interest

Three matters were commenced in the Tribunal during the reporting period:

- CT3 of 2018 – *Fueltrac Pty Ltd v State of Queensland*, being an application brought under s 153E of the *Copyright Act 1968*, filed on 4 October 2018.
- CT4 of 2018 – *Copyright Agency Limited v Universities listed in Schedule B*, being an application brought under s 113P and s 153A of the *Copyright Act 1968*, filed on 12 November 2018.
- CT5 of 2018 – *Jon Sainken and White Dee Pty Ltd v Australasian Performing Right Association Ltd & Anor*, being an application under s 155, s 156 or s 157 of the *Copyright Act 1968*, filed on 16 November 2018.

Both CT3 of 2018 and CT5 of 2018 have been finalised. CT4 of 2018 remains ongoing.

The following matters were commenced in the Tribunal before the reporting period and remain ongoing:

- CT1 of 2017 – *Copyright Agency Limited v State of New South Wales*, being an application brought under s 153K of the *Copyright Act 1968*, filed on 17 November 2017.
- CT2 of 2017 – *Meltwater Australia Pty Ltd v Copyright Agency Limited*, being an application brought under s 157(3) of the *Copyright Act 1968*, filed on 28 November 2017.
- CT1 of 2018 – *Streem Pty Ltd v Copyright Agency Limited*, being a further application brought under s 157(3) of the *Copyright Act 1968*, filed on 21 May 2018.
- CT2 of 2018 – *Isentia Pty Ltd v Copyright Agency Limited*, being a further application brought under s 157(3) of the *Copyright Act 1968*, filed on 20 June 2018.

The following matter was remitted back to the Tribunal by order of the Full Court of the Federal Court of Australia [see *Phonographic Performance Company of Australia Limited v Copyright Tribunal of Australia* [2019] FCAFC 95]:

- CT 1 of 2012 – *Reference by Phonographic Performance Company of Australia Limited*.

Defence Force Discipline Appeal Tribunal

Functions and powers

The Defence Force Discipline Appeal Tribunal was established under the *Defence Force Discipline Appeals Act 1955* (Cth) (the Act). Pursuant to s 20 of the Act, a convicted person or a prescribed acquitted person may bring an appeal to the Tribunal against his or her conviction or prescribed acquittal. Such appeals to the Tribunal lie from decisions of courts martial and of Defence Force magistrates.

Practice and procedure

Tribunal hearings were conducted as follows:

- 2 May 2019, in Brisbane, and
- 7 December 2018, in Melbourne.

The procedure of the Tribunal is within its discretion.

Membership and staff

The Tribunal is comprised of the President, the Deputy President and other members.

There were a number of changes to the composition of the Tribunal during the reporting year. Justice John Logan RFD was appointed as President (having formerly been Deputy President). Justice Paul Brereton AM RFD was appointed as Deputy President (having formerly been a member). Justice Melissa Perry and Justice Peter Barr were appointed as members of the Tribunal.

There were also a number of retirements from the Tribunal during the reporting year. Justice Richard Tracey AM RFD retired as President. Justice Graham Hiley RFD and Justice Greg Garde AO RFD retired as members of the Tribunal.

The Tribunal is supported by a Registrar (Tim Luxton) and Deputy Registrars (Phillip Allaway, Murray Belcher, Nicola Colbran, Kim Lackenby, Geoffrey Segal, Susie Stone and Russell Trott).

Activities

Three matters were current at the start of the reporting year. During the year, one matter was commenced and four were finalised.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Decisions of interest

- *Boyson v Chief of Army* [2019]
ADFDAT 2 (2 May 2019)
- *McCleave v Chief of Navy* [2019]
ADFDAT 1 (21 February 2019)
- *Betts v Chief of Army* [2018]
ADFDAT 2 (10 July 2018)
- *Randall v Chief of Army* [2018]
ADFDAT 3 (10 July 2018).