

# APPENDIX 6

## 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**) to hear applications for:

- review of determinations by the Australian Competition and Consumer Commission (**ACCC**) in relation to the grant or revocation of authorisations which 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, such as electricity grids or gas pipelines
- review of determinations by the ACCC in relation to notices issued under s 93 of the Act in relation to exclusive dealing
- review of determinations by the ACCC granting or refusing clearances for company mergers and acquisitions
- authorisation of company mergers and acquisitions which would otherwise be prohibited under the Act
- review of 'reviewable regulatory decisions' (most commonly, network revenue and pricing determinations) of the Australian Energy Regulator under the limited merits review regime: *National Electricity Law*, s 71B(1) and *National Gas Law*, s 245 and certain parallel State legislation, and
- review of certain decisions of the ACCC and the Minister in relation to international liner cargo shipping.

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* sets out some procedural requirements in relation to the making and hearing of review applications.

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.

On 23 September 2016, the President replaced eight existing practice directions with a new practice direction covering all matters before the Tribunal. The treatment of confidential documents has been made consistent across all matters. Also, electronic filing is now the default method of filing. Other changes were made to simplify and clarify the Tribunal's processes.

### 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.

On 1 July 2016 Justice Middleton replaced Justice Mansfield as President of the Tribunal. Also on 1 July 2016, Justice Andrew Greenwood, Justice David Yates and Justice Alan Robertson were appointed Deputy Presidents of the Tribunal, joining Justice Lindsay Foster and Justice Kathleen Farrell. There are seven lay members of the Tribunal: Robyn Davey, Grant Latta AM, Professor David Round AM, Rodney Shogren, Ray Steinwall, Dr Darryn Abraham and Professor Kevin Davis.

The Tribunal is supported by a Registrar and Deputy Registrars appointed by the Treasurer. On 28 September 2016, Tim Luxton was appointed as Registrar. On 20 December 2016, Nicola Colbran, Martin Jan, Katie Lynch, Geoffrey Segal and Russell Trott were appointed as Deputy Registrars.

## ACTIVITIES

Nine matters were current at the start of the reporting year. During the year, three matters were 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

- *Application by ATCO Gas Australia Pty Ltd 2016* ACompT 10 (13 July 2016)
- *Application by Sea Swift Pty Limited 2016* ACompT 9 (28 July 2016)
- *Application by SA Power Networks 2016* ACompT 11 (28 October 2016)
- *Application by Tabcorp Holdings Limited 2017* ACompT 1 (22 June 2017)

# 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:

- to determine the amounts of equitable remuneration payable under statutory licensing schemes.
- to determine a wide range of ancillary issues with respect to the operation of statutory licensing schemes, such as the determination of sampling systems.
- 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
- to determine a wide range of issues in relation to the statutory licensing scheme in favour of government.

The *Copyright Amendment Act 2006*, assented to on 11 December 2006, has given the Tribunal more jurisdiction, including 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 also within the discretion of the Tribunal. The *Copyright Tribunal (Procedure) Regulations 1969* set out procedural requirements for the making and hearing of applications.

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 are appointed as Deputy President by the Governor-General. Justice Greenwood is the President of the Tribunal, Justice Perram is a Deputy President and Justice Jagot was reappointed as a Deputy President on 8 December 2016 for a period of five years. The Registrar of the Tribunal is an officer of the Federal Court. The Registrar of the Tribunal is Heather Baldwin. Details are set out in Appendix 4.

# APPENDIX 6

## ACTIVITIES

At the commencement of reporting period, there was one current matter and no new matters have been commenced.

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

## DECISIONS OF INTEREST

No decisions have been published in the reporting period.

## 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 may bring an appeal to the Tribunal against his or her conviction and/or against a punishment or court order made in respect of that conviction.

Following the decision of the High Court of Australia in *Lane v Morrison* (2009) 239 CLR 230, the Defence Force Discipline Appeals Act was amended by operation of the *Military Justice (Interim Measures) Act (No 1) 2009* (Cth). In the main title to the Act, the reference to the Australian Military Court was replaced with references to courts martial and Defence Force magistrates. Accordingly, appeals to the Tribunal now lie from decisions of courts martial and Defence Force magistrates, rather than from the Australian Military Court.

The Tribunal has the power to hear and determine appeals and questions of law.

## PRACTICE AND PROCEDURE

Formal determination of sitting dates has been introduced. Under s 14(1) of the Act, the sittings of the Tribunal were held at places determined on the following dates, subject to the availability of business: 28–29 July 2016, 27–28 October 2016, 15–16 December 2016, 9–10 February 2017, 27–28 April 2017 and 1–2 June 2017.

Otherwise, the procedure of the Tribunal is within its discretion.

## MEMBERSHIP AND STAFF

The Tribunal consists of a President, Justice Tracey, a Deputy President, Justice Logan, and such other members as are appointed by the Governor-General.

The Registrar and Deputy Registrars of the Tribunal are officers of the Federal Court. Their details are set out in Appendix 4.

## ACTIVITIES

There were five matters before the Tribunal during the reporting year.

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