

APPENDIX 7 – WORK OF THE TRIBUNALS

The following summarises the work of the Australian Competition Tribunal, the Copyright Tribunal and the Defence Force Discipline Appeal Tribunal during the reporting year.

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 the review of:

- Determinations by the Australian Competition and Consumer Commission (ACCC) in relation to the grant or revocation of authorisations which permit conduct or arrangements that would otherwise be prohibited under the Act for being anti-competitive.
- 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.
- Determinations by the ACCC in relation to notices issued under s. 93 of the Act in relation to exclusive dealing.
- Determinations by the ACCC granting or refusing clearances for company mergers and acquisitions.

The Tribunal also hears applications for authorisation of company mergers and acquisitions which would otherwise be prohibited under the Act.

A review by the Tribunal is a re-hearing of a matter and it may perform all the functions and exercise all the powers of the original decision-maker for the purposes of the review. It can affirm, set aside or vary the decision under review. The Tribunal also has power to inquire into, and report to the Minister on, whether a non-conference ocean carrier has a substantial degree of market power on a trade route.

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 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.

The Tribunal has been given additional jurisdiction to review ‘reviewable regulatory decisions’ of the Australian Energy Regulator (AER): National Electricity Law, s 71B(1), and 71A (definitions). These reviewable regulatory decisions include:

- a network revenue or pricing determination that sets a regulatory period or
- any other determination (including a distribution determination or transmission determination) or decision of the AER under the National Electricity Rules that is prescribed by the Regulations.

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Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General. During 2010–11 Justice Lindsay Foster was appointed a part-time Deputy President for a six month term from 7 April 2011.

The Registrar and Deputy Registrars of the Tribunal are all officers of the Federal Court. Their details are set out in Appendix 4 on page 76.

Activities

Four matters were current at the start of the reporting year. During the year, ten matters were commenced and five matters were finalised, nine matters are pending.

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 ActewAGL Distribution [2010] ACompT 4 (17 Sept 2010)

Application by Ergon Energy Corporation Limited [2010] ACompT 6 (13 Oct 2010)

Application by ETSA Utilities [2010] ACompT 5 (13 Oct 2010)

Application by Energex Limited (No 2) [2010] ACompT 7 (13 Oct 2010)

Application by Ergon Energy Corporation Limited (Customer Service Costs) (No 2) [2010] ACompT 10 (24 Dec 2010)

Application by Ergon Energy Corporation Limited (Labour Cost Escalators) (No 3) [2010] ACompT 11 (24 Dec 2010)

Application by Ergon Energy Corporation Limited (Non-system property capital expenditure) (No 4) [2010] ACompT 12 (24 Dec 2010)

Application by Ergon Energy Corporation Limited (Service Target performance Incentive Scheme) (No 5) [2010] ACompT 13 (24 Dec 2010)

Application by Ergon Energy Corporation Limited (Street Lighting Services) (No 6) [2010] ACompT 14 (24 Dec 2010)

Application by Energex Limited (No 4) [2011] ACompT 4 (11 Feb 2011)

Application by Jemena Gas Networks (NSW) Ltd (No 3) [2011] ACompT 6 (25 Feb 2011)

Application by Jemena Gas Networks (NSW) Ltd (No 4) [2011] ACompT 8 (29 April 2011)

Application by Energex Limited (Gamma) (No 5) [2011] ACompT 9 (12 May 2011)

Application by Jemena Gas Networks (NSW) Ltd (No 5) [2011] ACompT 10 (9 June 2011)

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.
- 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 by the Governor-General. On 8 December 2010 the following changes occurred to the membership. All of the following appointments or reappointments were for a period of three years:

- Justice Arthur Emmett was reappointed President of the Tribunal
- Justice Jayne Jagot was appointed a Deputy President of the Tribunal
- Dr Rhonda Smith was reappointed as a lay member of the Tribunal
- Dr Hugh Sibly was reappointed as a lay member of the Tribunal
- Ms Catherine Riordan was appointed as a lay member of the Tribunal.

The Registrar of the Tribunal is an officer of the Federal Court. Details are set out in Appendix 4 on page 76.

Activities

Three matters were current at the start of the reporting year. During the year one matter was commenced and one matter was remitted back to the Tribunal by a Full Court of the Federal Court. One matter was finalised in 2010–11, and there are four matters pending.

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

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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) (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 imposed 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, references in the Act to the Australian Military Court were 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 now been introduced. Under s. 14(1) of the Act, the sittings of the Tribunal will be held at places to be further determined on the following dates, subject to the availability of business: 15–16 September 2011; 27– 28 October 2011; 15–16 December 2011.

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

Membership and staff

The Tribunal consists of a President, a Deputy President and such other members as are appointed by the Governor-General. There were no changes to the Tribunal's membership during the reporting year.

The Registrar and Deputy Registrars of the Tribunal are officers of the Federal Court. Their details are set out in Appendix 4 on page 76.

Activities

One matter was current at the start of the reporting year. During the year, three matters were commenced and three finalised. There is one matter pending.

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