

APPENDIX 7 – WORK OF 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 1974* 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 Trade Practices 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 section 93 of the Trade Practices Act in relation to exclusive dealing.

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 Minister may also refer to the Tribunal, for inquiry and report, issues concerning certain practices by ocean cargo carriers. The *Trade Practices Legislation Amendment Act (No 1) 2006* came into effect, granting the Tribunal the authority to decide merger authorisations and to review the ACCC decisions in relation to merger clearance applications.

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 Trade Practices Act and regulations within the discretion of the Tribunal. The Trade Practices Regulations 1974 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.

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 2008–09 there were the following changes to the membership:

President

Justice Alan Goldberg – 5 year full-time term ended 29 July 2008

Justice Robert French – part-time from 30 July 2008 to 31 August 2008 (5 year term ended with appointment as Chief Justice of the High Court of Australia from 1 September 2008)

Justice Raymond Finkelstein (Acting President) – part-time from 10 September 2008 for three months

Justice Raymond Finkelstein – 5 year term commenced 12 December 2008

Deputy Presidents: (all appointed part-time)

Justice Robert French – Term ended 29 July 2008

Justice John Mansfield – 5 year term commenced 30 July 2008

Justice Roger Gyles – Term ended 21 August 2008

Justice Peter Jacobson – 5 year term commenced 22 August 2008

Justice Raymond Finkelstein – Term ended 9 September 2008

Justice Peter Heerey – Term ended 15 February 2009

Justice John Middleton – 5 year term commenced 16 February 2009

Members: (all appointed part-time)

Mr Robin Davey – Reappointed for 5 years from 17 July 2008

Mr Grant Latta – Reappointed for 5 years from 17 July 2008

Dr John Marsden – Term expired 30 July 2008; Reappointed for 5 years from 12 December 2008

Professor David Round – Reappointed for 5 years from 17 July 2008

Mr Rodney Shogren - Term expired 30 July 2008; Reappointed for 5 years from 12 December 2008

Miss Margaret Starrs – Term expired 30 July 2008; Reappointed for 5 years from 12 December 2008

Mr Ray Steinwall- Appointed for 5 years from 12 December 2008

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 98.

Activities

Two review proceedings were current at the start of the reporting year. During the year, 14 proceedings were commenced and four matters were finalised, 12 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 ElectraNet Pty Ltd (No 3) [2008] ACompT 3 (30 September 2008)

Application by Chime Communications Pty Ltd [2008] ACompT 4 (22 December 2008)

Application by Telstra Corporation Limited [2009] ACompT 1 (22 May 2009)

Application by Chime Communications Pty Ltd [2009] ACompT 2 (27 May 2009)

Workload Trends

There has been a significant increase in the Competition Tribunal's workload from the previous financial year. In the 2007–08 period there were two new applications filed. In this reporting period there have been 14 new applications filed. The reasons for the increase are not known to the Tribunal.

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. During 2008–09 there were the following changes to the membership:

Justice Perram was appointed as Deputy President from 8 June 2009 for three years.

The Registrar of the Tribunal is an officer of the Federal Court. Details are set out in Appendix 4 on page 98.

Activities

Seven matters were current at the start of the reporting year. During the year, no matters were commenced, and one matter was finalised. Six matters are pending.

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

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 (being a person convicted by the Australian Military Court) 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. The Director of Military Prosecutions may also bring an appeal against a punishment imposed or court order made in respect of a conviction. Further, a prescribed acquitted person (being a person acquitted by the Australian Military Court on the ground of unsoundness of mind) may appeal to the Tribunal in respect of his/her prescribed acquittal.

Pursuant to s 19A of the Act, the Director of Military Prosecutions may refer to the Tribunal a question of law which arose in a completed trial in 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: 10 & 11 September 2009; 29 & 30 October 2009; 10 & 11 December 2009.

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. During the reporting year the following changes to the Tribunal's membership took place:

- Justice Peter Heerey's appointment as President of the Tribunal concluded on 15 February 2009.
- Justice Richard Tracey was appointed President of the Tribunal on 16 February 2009.
- Justice Margaret White was appointed Deputy President of the Tribunal on 28 November 2008.

The Registrar and Deputy Registrars of the Tribunal are officers of the Federal Court. Their details are set out in Appendix 4 on page 98.

Activities

Two matters were current at the start of the reporting year. During the year, six matters were commenced and eight finalised. No matters are pending.

Complaints

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

Decisions of Interest

- *Chapman v Chief of Army* [2008] ADFDAT 3
- *Vitler v Chief of Army* [2008] ADFDAT 4
- *Pook v Chief of Army* [2009] ADFDAT 1
- *Stapleton v Chief of Army* [2009] ADFDAT 2
- *Carmichael v Chief of Navy* [2009] ADFAT 3