

COUNCIL OF AUSTRALASIAN TRIBUNALS

MINUTES OF INAUGURAL MEETING – 6 JUNE 2002

The Inaugural Meeting of the Council of Australasian Tribunals (COAT) was convened at the Chifley on Flemington Hotel in Melbourne. The meeting was held in conjunction with the AIJA Tribunals Conference.

The meeting was opened by Justice Murray Kellam, President of VCAT.

1. Establishment of a Council of Australian Tribunals

The text of Justice Kellam's opening address to the meeting is at Attachment A.

The issue was raised whether New Zealand tribunals should be able to participate in the COAT. Following discussion on the floor, it was agreed that participation of New Zealand tribunals would be a positive move. In that event, a New Zealand chapter of the COAT could be convened, along the lines of the State and Territory chapters already envisaged. This would also necessitate a change from the original proposal that it be a council of Australian tribunals, to a council of Australasian tribunals.

Other issues raised during plenary discussion included:

- Should the COAT be an incorporated body, or left unincorporated as is presently proposed? and
- Should the COAT attempt to include as many tribunals as possible?

Justice Kellam responded that while incorporation and a more informal approach both have advantages, the view was taken by the Steering Group that leaving the COAT unincorporated at this stage provided the greater flexibility. After the COAT had been in existence and operating for some time its membership could then determine the model it should adopt. Barry Cotterell (member of the Steering Group) supported this view and noted that the definition in the proposed constitution was intended to be as broad and inclusive as possible.

This is consistent with the original Administrative Review Council (ARC) proposal that tribunals be encouraged to join by a process of "guided self selection". Under this model tribunals or bodies who found the COAT's activities not relevant to them would not continue to participate. Justice Kellam added that one of the big issues in the whole process has been identifying what tribunals currently exist in Australia. The coverage at the moment is incomplete, and that is why a broad definition is also an advantage.

Justice Garry Downes (A/g President, Administrative Appeals Tribunal) queried whether there should be a Commonwealth chapter, as well as State and Territory chapters?

Judge Kevin O'Connor (President, NSW Administrative Decisions Tribunal) responded that the benefit of State and Territory chapters was in not separating tribunal members according to jurisdiction, but rather to provide a forum for tribunal members of Commonwealth, State and Territory tribunals in the one geographic location. This would provide a mechanism for a good cross-fertilisation of ideas. It was also noted

that many part time tribunal members hold office in both Commonwealth and State tribunals, and hence the distinction became less important.

The issue of whether the COAT would only apply to review tribunals was raised. The example of the Victim's Crime Tribunal was given, which essentially makes primary decisions. Justice Kellam commented that it was intended that the definition be broad enough to include these bodies, who act in a tribunal-like way in determining issues, and not be limited to review bodies or bodies arbitrating disputes between parties.

2. Meeting of Presiding Officers

Following the plenary discussion presiding officers of tribunals met separately to consider the following issues:

- Adoption of the COAT constitution;
- Members of the COAT;
- Appointment of office bearers.

Adoption of Constitution

Justice Kellam proposed that the constitution as circulated to delegates at the conference, amended as necessary to accommodate the inclusion of New Zealand tribunals, be adopted. This motion was carried on the voices.

Membership of the COAT

Clause 5(5) of the Constitution provides that :

- (a) Tribunals whose presiding officers, or person authorised by them to represent the Tribunal at the Council, who were present at the meeting that adopted this Constitution and voted in favour of the adoption; and
- (b) the President of the Administrative Review Council

A schedule of tribunals qualifying for membership under clause 5(5) and their presiding officers at the meeting is at Attachment B.

Appointment of Office Holders

Chair : The Hon Justice Kellam was nominated as chair of COAT. There being no other nomination this was carried.

Deputy Chair : Steve Karas OAM (President, Refugee Review Tribunal/Migration Review Tribunal) was nominated as Deputy Chair of COAT. There being no other nomination this was carried.

Interim Executive – nominations were received from :

Mr Grant Aislabie (Principal Disputes Referee New Zealand);

Mr Keith Chapman (President, Guardianship and Administration Board, WA)

The Hon Justice Garry Downes AM (A/g President, Administrative Appeals Tribunal);

Mr Barry Cotterell (Chairperson, Property Agents and Motor Dealers Tribunal, Retirement Villages Tribunal QLD);

Mrs Wendy Cull (Chairperson, Queensland Building Tribunal);

The Hon Judge Kevin O'Connor AM (President, Administrative Decisions Tribunal, New South Wales);

Mr Nicholas O'Neill (President, Guardianship Tribunal New South Wales);

Ms Patricia Patrick (Presiding Member, Residential Tenancies Tribunal, SA)

Ms Debra Rigby (President, Mental Health Tribunal Tasmania);

The Hon Justice Terry Sheahan AO (President, Workers Compensation Commission).

Ms Maureen Shelley (Convenor, Classification Review Board, Office of Film and Literature Classification, Commonwealth);

It was agreed that all those nominated be appointed to the Interim Executive, and the COAT Constitution be amended to reflect that the number of the Interim Executive is more than the eight originally proposed.

() Plenary Discussion – Priorities of COAT

Justice Kellam reported to the plenary session that the COAT constitution had been adopted and the Interim Executive appointed.

Discussion was then opened up as to what the priorities of the COAT should be. This discussion was led by Professor Greg Reinhardt, Executive Director AIJA. The subjects raised during plenary discussion included:

- Priorities of the COAT should include information sharing, and the Register of Tribunals;
- The continuing relationship of the COAT and the AIJA was raised. Justice Kellam indicated that there should be good opportunities for a close relationship between the two bodies without either taking over. He also proposed that, as in the present occasion, a full meeting of the COAT might be held in conjunction with an AIJA Tribunals Conference in the future;
- Tribunal conditions, including remuneration;
- Particular issues faced by sessional and part-time tribunal members, and managers of tribunals with a large proportion of such members;
- Tenure of members;
- Performance evaluation;
- Legal education of non-legal members;
- Specialist members, and in particular continuing education within their profession;
- The COAT acting as a clearing house and a resource bank for tribunals, alerting tribunals to resources that tribunals already have, so that others may take advantage of them if possible or at least not reinvent the wheel. For example, the President of the National Native Title Tribunal noted that in relation to the internal operations of tribunals, his tribunal has prepared policies and manuals as to how its members

should conduct various activities. This was the type of resource that other tribunals might find useful.

- The possibility of tribunal visits or an exchange program between tribunals was also raised;
- Concern was raised that with the increasing volume of work tribunals handle, members need support in both time management and case management, and this might be an area where COAT could contribute;
- Increasing use of appropriate IT, to overcome the isolation of members. Justice Kellam noted the COAT website was operational, and the AAT's support in hosting the site;
- Non adjudicative dispute resolution in the tribunal context;
- It was proposed that COAT might adopt an advocacy role to ensure that tribunals are not the poor relations of the judicial system. This could be a two way function, both enabling tribunals and their members to better perform their role, but also an important public education function;
- Identification of the core characteristics of good tribunal management and membership, as a basis for recruitment according to the needs of particular tribunals;
- An evaluation of what clients think of tribunals (including users, applicants and witnesses);
- COAT has the potential to provide public comment on matters of government policy or action;
- In relation to performance standards it was proposed that this could be addressed by research rather than bureaucratically imposed. The thinking was that while performance standards in the public context are quite entrenched, in the tribunal context unless tribunals actually put some thinking into the development of appropriate performance standards for themselves, inappropriate standards may be imposed on them. The COAT might provide a useful mechanism for tribunals to develop and compare performance standards that might be appropriate in their context;
- Tribunal efficiency. COAT could investigate the question of whether public service efficiency is necessarily the same as tribunal efficiency.

() Meeting of Presiding Officers

Following the plenary discussion presiding officers convened again to consider the next steps.

It was agreed that Barry Cotterell would redraft the COAT constitution to amend references to New Zealand participation. Other matters raised included:

- Clause 9(2) – should there be a limit on membership of the executive? It was proposed that five years would be an appropriate limit. This would be long enough to allow natural movement and changes in membership over time, while preventing any one person from monopolising COAT and its direction.
- Clause 7 – the proposal that State and Territory chapters be opened to “interested persons” was seen as possibly too broad. There was a concern that disgruntled tribunal clients could become members of chapters, leading to disruption and a waste of time and resources. It was suggested that self nomination could be sufficient or a mechanism could be put in place whereby persons are nominated by a member of the COAT.

- It was queried whether the objects of State and Territory chapters, which presently pick up the national objects verbatim, should be amended. It was discussed in the context that the State and Territory chapters are expressed to support the COAT whose objects are as set out in the constitution, but it is not envisaged that chapters would comment on matters of public interest, whereas the COAT might.
- All members of the Interim Executive were concerned to broaden the membership of COAT as much as possible. It was proposed that the ARC would provide details of participating members so that they could make arrangements to meet with members in their area.
- Other suggestions to identify relevant tribunals for membership were proposed, including the Commonwealth Remuneration Tribunal which determines the terms and conditions of members of Commonwealth tribunals, and the Monash University Tribunal Members Course would have information about relevant tribunals.

The Register of Tribunals was then discussed. The proposal is that a comprehensive register of tribunals, including the name of the tribunal, the name of the presiding officer and CEO or registrar, weblink and email addresses and a short summary of their activities be provided in respect of as many tribunals as possible. The ARC has started compiling such a register based on its initial consultations during the early COAT processes. The ARC undertook to write to all tribunals represented at the AIJA/COAT meeting seeking relevant details to include in the register.

It was also questioned whether such a letter could begin the process of a “survey” or “stocktake” of the terms and conditions of tribunal members, the selection and recruitment processes for tribunals and educational and professional development resources each tribunal has. However, it was decided that such a stocktake of resources, while valuable, needs to be carefully considered, and that basic particulars for inclusion on the register be sought at this stage. The COAT itself could resolve to use the Register (and the mailing list derived from it) to conduct such a survey at an early opportunity.

The meeting was closed on the motion of Justice Kellam.

ADDRESS BY JUSTICE MURRAY KELLAM – 6 JUNE 2002

Welcome on behalf of colleagues on the Steering Group :

- Judge Kevin O'Connor, Mrs Wendy Cull, Mr Keith Chapman and Mr Barry Cotterell.

SUMMARY OF THE COAT PROPOSAL

- The COAT will be an informal body, operating largely by consensus.
- Its objectives will be broadly expressed, to enhance its appeal to a diverse membership of State, Territory and Commonwealth tribunals.
- The COAT will include State and Territory chapters.
- Membership will be open to all Commonwealth, State and Territory tribunals. Membership will be determined by “guided” self selection and the statement of objectives, rather than strict eligibility criteria.
- Each tribunal will bear their own costs of participating in the COAT.

THE PROPOSED CONSTITUTION

You should all have seen the proposed constitution by now.

It was developed by the Steering Group following a meeting on 3 October 2001 convened by the Administrative Review Council.

Copies were circulated as widely as possible in advance of today’s meeting. Copies are also included in the background information provided to you today. In brief it provides :

Structure

The COAT will be constituted by (clause 4 refers) :

- the National Council (the Executive and member tribunals); and
- State and Territory Chapters, headed by a convenor for each State and Territory.

The constitution proposes an executive comprising the Chair, deputy chair and the convenors of state and territory chapters.

During the first year of its establishment, as there are no state or territory chapters we propose an Interim Executive chosen by today’s meeting.

Objects

The objects of the COAT are set out in clause 3.

- (a) to establish a national network of Tribunals and a national register of Tribunal members;
- (b) to establish a national network for members of Tribunals to consult and discuss areas of concern or interest and common experiences;
- (c) to provide training and support for members of Tribunals, particularly of smaller Tribunals which may not have the resources to undertake such activities alone;
- (d) to provide a forum for the exchange of information and opinions on aspects of Tribunals and Tribunal practices and procedures;
- (e) to develop best practice or model procedural rules based on collective experience of what works ;
- (f) to develop standards of behaviour and conduct for members of Tribunals;
- (g) to develop performance standards for Tribunals;
- (h) to develop support systems for Tribunals, including case management and IT systems;
- (i) to provide advice to governments on Tribunal requirements;
- (j) to publish and encourage the publication of papers, articles and commentaries about Tribunals and Tribunal practices and procedures;
- (k) to promote lectures, seminars and conferences about Tribunals and Tribunal practices and procedures;
 - (l) to make and disseminate reports, commentaries and submissions on aspects of Tribunals and Tribunal practices and procedures; and
 - (m) to co-operate with institutions of academic learning, and with other persons having an interest in Tribunals and Tribunal practices and procedures, in promoting the objects referred to in paragraphs (a) to (l).

Membership and participation

An eligible tribunal is:

‘Any Commonwealth, State or Territory body whose primary function involves the determination of disputes, including administrative review, party/party disputes and disciplinary applications but which in carrying out this function is not acting as a court’ (clause 1).

The basis of membership is that at the national level, tribunals are members (clause 5(1)).

Under clause 5(5), tribunals whose presiding officers (or person authorised by them) are present at today’s meeting and who support adoption of the constitution become members of the Council.

It is appropriate that tribunals participate through presiding officers (clause 5(4)) or a person authorised by them (clause 16(4)) :

- tribunals participating in COAT will have to bear their own costs, and members of the executive may need to be able to speak for their tribunal.

Any tribunal member can participate in State or Territory chapters, as can practitioners, academics, and other interested persons.

I propose that we move that the constitution be adopted as a whole, rather than proceed clause by clause. Of course any suggestions to change the draft will also be considered.

I now move that the proposed constitution be adopted by this meeting [seconder?]

State and territory chapters

The draft objects for State and Territory chapters have also been circulated.

The chapters will be a great opportunity to for members, academics and practitioners to network about tribunal issues.

While we propose that membership be open, the Convenor should be from a tribunal (as it is after all a council of tribunals).

I'd encourage any one is interested in convening a chapter to discuss it with me.

OFFICES OF THE COAT

Offices in the COAT are :

1. Chair of the COAT:

- The Chair is to preside at a general meeting.
- Consistent with the model approved by Tribunal heads on 3 October 2001, one of the functions of the Chair is to appoint the senior registrar or chief executive officer of a member tribunal as the Secretary of the COAT. It is anticipated that the Chair would appoint the CEO or registrar of their tribunal as the Secretary.

2. Deputy Chair:

- The Deputy Chair would assist the chairperson in carrying out his or her role.
- In the Chair's absence, the Deputy Chair is to preside at a general meeting.

3. Interim Executive:

- The Interim Executive will oversee implementation of the COAT in the year immediately following its establishment.

The Role of the Administrative Review Council

The Administrative Review Council proposed a ‘Tribunals Executive’ in its *Better Decisions* report.¹

In 2001 the proposal for a COAT was developed further by the ARC in consultation with a number of tribunals. The ARC convened a meeting of Commonwealth, State and Territory tribunal heads on 3 October 2001 in the NSW Parliament House.

The proposal before us today was supported by tribunal heads at that meeting.

Background

Tribunals occupy an increasingly important place in the justice system.

- Eg. Reviews of administrative decisions of Government, licensing and planning decisions, decisions affecting the liberty, care and treatment of individuals, veterans’ entitlements, industry regulation and accreditation, allocation of benefits, professional discipline matters.

Despite the increasing reliance of tribunals to achieve justice, there is no national body through which tribunals can come together, examine and compare ideas, working methods, organisation and management, member training and support programs.

The Council of Australasian Tribunals will provide a valuable forum for tribunals, their presiding officers and members, as well as interested practitioners and members of the community, to enhance the best that tribunals can offer.

Benefits of the COAT

I envisage that the COAT will achieve practical benefits in the following areas:

- ◆ Professional development and training;
 - ◆ Sharing of knowledge and experience among tribunals;
 - ◆ Co-ordination and transfer of information by visiting other tribunals;
 - ◆ Proposals for research (eg the council could co-operate with other research bodies such as the AIJA, the ARC or the National Judicial College);
 - ◆ Complaint handling mechanisms;
 - ◆ Development of performance standards;

¹ *Better Decisions: Review of Commonwealth Merits Review Tribunals*, Report No. 39, paragraph 7.48, recommendation 85.

- ◆ The COAT website will be an effective and inexpensive tool for information dissemination.
- ◆ Improving standards (ethics, dealing with unrepresented litigants etc);

The COAT will offer continuity. While tribunal members and presiding officers may come and go and structures may change, the COAT will remain as a valuable basis for information sharing;

The COAT will enable tribunals to have a voice that is heard in government.

Small tribunals will be able to draw on the resources and learn from larger tribunals, particularly in the areas of training and development, IT and member support.

- ◆ For example, recently, VCAT was able to adapt another tribunal's IT system. There is no reason why their experience could not be shared with other tribunals. The COAT provides a facilitating mechanism for this to happen at minimal cost.

But it is not one way. Small tribunals undoubtedly have a level of expertise and efficiencies which larger tribunals could learn from.

Challenges for the COAT

1. Keeping Costs to a Minimum

The COAT model should enable all tribunals to participate.

No membership fees is positive. They would have served as entry barriers, and would have been counterproductive at this stage.

The largest single cost is the Secretariat.

- The fact that this is going to be provided by the Chair's registry means that the cost is not overly burdensome on any particular tribunal.

Keeping travel costs down by the use of technology.

- The COAT website is now up and running. This helps to ensure that costs are kept low. I would like to recognise the role of the AAT in hosting the COAT website.

2. Bringing Together a Diverse Range of Tribunals

The question arises as to how the COAT can be an effective body for such a diverse range of tribunals.

Each tribunal has different processes, roles and functions – 'quasi-judicial', 'executive', Commonwealth, State and Territory Tribunals.

This will be one of the challenges for the COAT.

The COAT will need to be sufficiently flexible to cater for the needs of all the different kinds of tribunals.

But ultimately it is up to us, the tribunals to make of it what we will.

The COAT model of having a Chair and a Deputy Chair also allows a balance to be achieved between both judicial and executive tribunals, as well as the States, Territories and the Commonwealth.

3. Ensuring that the voice of all tribunals is heard and that the larger tribunals do not have a disproportionate role to play in the COAT

This is a real challenge for the COAT but one that I believe we are able to meet.

So far a balance has been achieved. This is reflected in the Steering Group that was comprised largely of a number of State tribunals and has representatives from judicial and non-judicial backgrounds.

A good balance should also be achieved in the Interim Executive :

- with representatives from the Commonwealth, Western Australia, South Australia, Victoria, New South Wales and Queensland;
- good mixture of tribunals led by judges and non judicial officers.

Schedule of Member Tribunals and Presiding Officers

Tribunal	Presiding Officer
1. Administrative Appeals Tribunal, Cth	The Hon Justice Garry Downes, A/g President
2. Administrative Decisions Tribunal, NSW	The Hon Judge Kevin O'Connor
3. Anti-Discrimination Tribunal, Tas	Ms Helen Wood, Chair Person
4. Australian Competition Tribunal, Cth	The Hon Justice John von Doussa
5. Children's Services Tribunal, Qld	Ms Beverly Fitzgerald, President
6. Classification Review Board, Office of Film & Literature Classification, Cth	Ms Maureen Shelley, Convenor
7. Consumer, Trader & Tenancy Tribunal	Mr Nick Vrabac, Deputy Chair
8. Copyright Tribunal, Cth	The Hon Justice Ray Finkelstein
9. Disputes Tribunal, NZ	Mr Grant Aislabie, Principal Disputes Referee
10. Guardianship & Administration Board, WA	Mr Keith Chapman, President
11. Guardianship & Administration Tribunal, Qld	Ms Ann Lyons, President
12. Guardianship Tribunal, NSW	Mr Nicholas O'Neill, President
13. Legal Profession Tribunal, Vic	Mr Gerard Butcher, Deputy Registrar
14. Medical Assessment Services, Motor Accident Authority, NSW	Ms Belinda Cassidy, Manager
15. Mental Health Review Board, Vic	Mr John Lesser, President
16. Mental Health Review Tribunal, NSW	Ms Diane Robinson, Deputy President
17. National Native Title Tribunal, Cth	Mr Graeme Neate, President
18. Property Agents & Motor Dealers Tribunal, Retirement Villages Tribunal, Qld	Mr Barry Cotterell, Chairperson
19. Queensland Building Tribunal	Ms Wendy Cull, Chairperson
20. Refugee Review Tribunal & Migration Review Tribunal, Cth	Mr Steve Karas, Principal Member
21. Residential Tenancies Tribunal, SA	Ms Pat Patrick, Presiding Member
22. Social Security Appeal Authority, NZ	Ms Marilyn Wallace, Chairperson
23. Social Security Appeals Tribunal, Cth	Mr Les Blacklow, Executive Director
24. Superannuation Complaints Tribunal, Cth	Ms Nicole Cullen, Deputy Chairperson
25. Tenancy Tribunal, NZ	Ms Trish McConnell, Principal Tenancy Adjudicator
26. Veterans' Review Board	Brigadier Bill Rolfe, Principal Member
27. Victorian Civil & Administrative Tribunal, Vic	The Hon Justice Murray Kellam, President
28. Workers Rehabilitation & Compensation Tribunal, Tas	Mr Rod Chandler, Commissioner

29. Workers Compensation Commission, NSW	The Hon Justice Terry Sheahan, President
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