

“Tribunals and performance criteria”

Queensland State Chapter of COAT
Should Tribunals be required to meet performance criteria?
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1 Introduction

The topic of today’s conference – “Should Tribunals be required to meet performance criteria” is contentious and brings into focus the tension between accountability and tribunal member independence. It carries with it many value-laden issues including:

- What is performance evaluation?
- What is the purpose of the performance evaluation?
- What methodologies and strategies will be applied in conducting the evaluation?
- What disclosure will be made of the results of the performance evaluation?

1.2 What is performance evaluation?

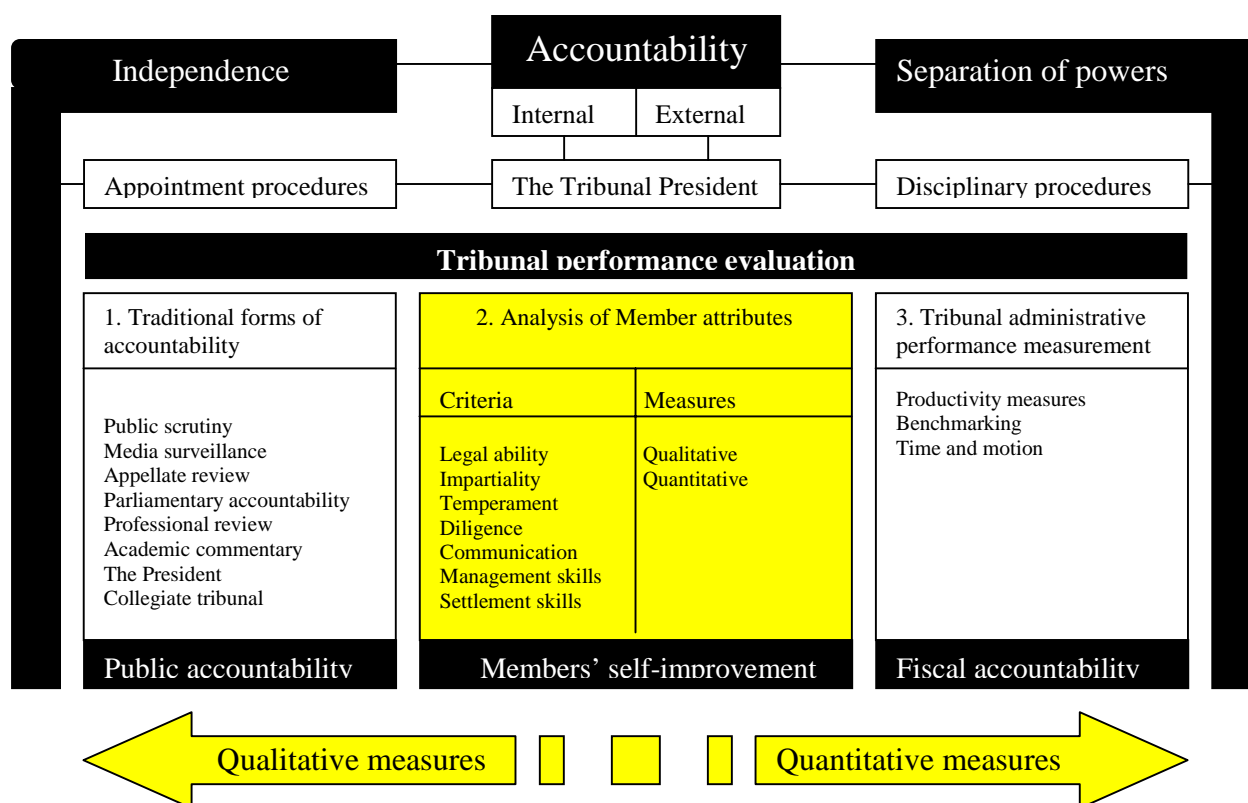
For many tribunal members performance evaluation is as fearsome prospect, one hell bent on undermining their independence. Others take a more liberal view and see the potential for performance evaluation as a useful tool for professional self-development. These contrasting views are based on different perceptions of what the concept of performance evaluation may involve.

Performance evaluation is used in the three distinct senses depicted in Figure 1. Firstly, it relates to traditional forms of accountability including the principle of ‘open justice’, parliamentary accountability and appellate review – these are forms of public accountability. Secondly, it relates to analysis of member attributes such as legal ability, impartiality, independence, integrity, temperament, communication skills, management skills and settlement skills, based on the opinions of those directly involved with the tribunal system - a form of self accountability. Thirdly, it relates to tribunal administrative performance measurement, with a focus on time and motion of tribunal activity – a form of fiscal accountability. This is an approach often linked with case management initiatives and demands for efficient use of public resources. The measures associated with performance evaluation tend to move from the qualitative to the quantitative as you move from categories 1 through 3.

While all three approaches to performance evaluation strengthen accountability, the traditional approaches and analysis of member attributes focus on the work of individual tribunal members, while tribunal administrative performance measurement focuses on the aggregate work of the tribunal.

A performance evaluation scheme imposed by the executive, reporting to the public, perhaps even offering interstate comparisons and productivity bonuses may be unacceptable to the Tribunal members. Such an approach would for the Land and Resources Tribunal breach the doctrine of separation of powers, begin to undermine judicial independence, and would be vigorously opposed by the judiciary and the legal profession alike – and rightly so. Instances of such an approach have been evident in attempts by remuneration commissions at commonwealth and state levels to introduce performance based salary packaging. The separation of powers argument for other Tribunals is less strong.

Figure 1



An alternative approach to performance evaluation would involve a voluntary performance evaluation scheme introduced by tribunals for tribunals. Many of you are perhaps wondering why tribunal members should consider participating in such a scheme? The answer is that tribunal members are professionals. They are interested in learning about their strengths and weaknesses as perceived by others. They are interested in continuing education. They are interested in professional self-development.

Another way of looking at the issue is to perceive it as one of maintaining and enhancing competence.

Justice Thomas, now retired, in *Judicial Ethics in Australia*¹ suggests in relation to judges, though equally applicable to tribunal members that:

Competence is not an ethical issue, but it touches ethics in two ways. First, there is a duty to *attempt* to perform competently, and this probably includes a continuing duty to improve competence in areas **where weakness is detected** [emphasis added]. That may raise some moral obligation to participate in suitable forms of judicial education. Secondly, once a judge realises that he or she is incurably incompetent, there is a duty to resign. The problem is that incompetent judges are nearly always the last to identify their failure.

¹ Thomas J, *Judicial Ethics in Australia*, 2nd edn LBC Information Services, 1997, 44.

It is a poor professional who does not investigate their competence, preferring to hide behind unquestioning tradition and conservatism. It is a poor professional who does not seek ways to improve their performance.

1.2 What is the purpose of the performance evaluation?

The purpose of performance evaluation depends on the position of the inquirer. For the executive, the purpose may be to find ways of meeting budgets through better performance of tribunals and their members, to help decide which tribunal members to retain when reappointment is being considered, and to provide a better service at a lower cost.

For tribunal members, the purpose may be self-improvement, to maintain your position, or simply to do a better job. For the public and users of the tribunal system the purpose is to ensure an efficient tribunal system at a reasonable cost maintaining those values which we as a society desire, namely: independence, integrity, impartiality etc.

The extent to which performance evaluation may be imposed on tribunals may depend on how the tribunal is constituted under its legislation.

Table 1 – Tribunal Comparison

	Guardianship and Administration Tribunal	Liquor Appeals Tribunal	Mental Health Review Tribunal	Childrens Services Tribunal
Court of Record	✗	✗	✗	✗
President under the potential administration or control of executive	✗	✗	✗	✗
Members under the potential administration or control of executive (No protection under the Act)	✓	✗	✓	✗
Duty to train members	✓	✗	✗	✗
Limited term appointments	✓	✓	✓	✓
Member protections and immunities as if a judge	✗	✓	✗	✗

1.3 What methodologies and strategies may be applied in conducting an evaluation?

Tribunal members cannot undertake performance evaluation in isolation – it is a specialist field, in the sense that appropriate methodologies and statistical designs need to be implemented to have some confidence in the results. It is here that an independent university can assist. Performance evaluation also requires the cooperation of those who would provide the raw data.

The criteria and measures for performance evaluation should be settled between the tribunals and the university. The criteria may include measures relating to the following areas: legal ability, impartiality, independence, integrity, temperament, communication skills, management skills, and settlement skills.

Information should be compiled from various sources. Not every user of the Tribunal system has the same perspective. Data sources commonly used overseas with respect to courts include appellate judges, barristers, instructing solicitors, jurors, litigants, court staff, court watchers, and peer review etc – anyone who participates in or observes the process. This is not to say the data sources should be equally weighted or that a member should accept any one perspective as gospel. It is a matter of assessing the compiled information in the context of each individual member. This is best done with the confidential assistance of a trusted mentor.

1.4 What disclosure will be made of the results of the performance evaluation?

Results of performance evaluation in an aggregate sense could be disclosed in the Tribunals annual report. I would not advocate public disclosure of individual tribunal member’s data. If the purpose of the performance evaluation is to meet executive needs the data will be disclosed to the executive. If the purpose of the performance evaluation is self-improvement then an individual members data should not be disclosed other than to that member.

In my view performance evaluation is best used for self-improvement purposes as part of a wider plan for performance planning and review. A realistic model would involve a tribunal-annexed programme whereby tribunal members would voluntarily participate without fear of potential disciplinary use of the results. They would complete a self-evaluation survey dealing with predefined performance criteria, possibly with the assistance of an independent retired tribunal member or perhaps even a magistrate whom they have selected acting as a mentor. An academic would undertake all the surveys and compile a confidential briefing report provided to both the member and their mentor. The briefing report would contain the results of statistical analysis and open-ended comments from survey respondents. The survey respondents will remain anonymous and the academic would ensure this remains the case. Data should be encrypted and the names of members converted on data entry to random three digit codes encrypted and stored separately. Academics are also subject to strict national ethics guidelines when doing such research precluding disclosure of confidential information.

The briefing report should be discussed by the member with their mentor and compared with the member’s self-assessment. An action plan for future development should then be drafted. For example, it may be apparent that a member has a difficulty with communication skills. Litigant reports from various cases may indicate they

cannot understand what the member is saying. Members of the legal profession may also query the member’s actions. In these circumstances a member would need to consider his or her approach – in particular whether more simplified language may be needed. The mentor may sit and observe and make helpful comments. There may in fact be a subsequent training course offered to assist the member.

These are but some of the ways that members can engage in professional development. The remainder of this paper outlines an example methodology in more detail.

2. An example methodology

1.2.1 Purpose and objectives

The purpose of the project is to investigate the possibility of improving the quality of justice in the Magistrates Court of Queensland by providing individual magistrates with detailed information concerning their performance. The anticipated assessment process, similar to processes in the United States and Canada, will ‘provide a basis for judges to maximize their potential for excellence through self-improvement without jeopardizing judicial integrity and independence.’ (American Bar Association, 1985, 2).

The objectives of a potential pilot project may include:

- Introducing both the concept and process of judicial self-development whilst preserving judicial independence;
- Investigating the most appropriate process of judicial self-development through performance evaluation in the Queensland context;
- Researching alternative models on how performance evaluation might be administered and implemented;
- Examining the relationship between self-development and judicial education;
- Providing the tribunal with the practical experience to decide whether to adopt an ongoing programme of judicial development; and
- Creating a template for other Australian tribunals to investigate judicial development.

Tribunal members may be invited to participate on a voluntary basis in the pilot project.

Information concerning a member’s performance could in theory be gathered from many sources, both objective (quantitative) and subjective (qualitative). There are many people from whom members can gather useful information concerning their performance. It is proposed that the project be limited to the following qualitative information sources:

- (a) Member’s self-assessment statement;
- (b) Lawyers (barristers and solicitors) who have appeared before the participating member in a stated time frame;
- (c) Witnesses (lay and expert);
- (d) Litigants;
- (e) Observations by a mentor; and
- (f) Tribunal records.

1.2.2 Criteria and measures

The proposed questionnaires could be based on criteria and measures developed in consultation with the participating members. Core criteria and measures may include the following:

- **Legal ability** (includes legal analysis or reasoning ability; knowledge of the rules of evidence and procedure; ability to explore the strengths and weaknesses of each party’s case; knowledge of relevant law; factual analysis; and ability to keep up to date);
- **Impartiality** (includes equal treatment of parties; sense of basic fairness and justice; ability to be fair and impartial; ability to make decisions without regard to possible public criticism; freedom from bias (actual or ostensible); and ability to avoid prejudging the case); distinct questions relating to bias associated with gender, age, ethnic background, and social or economic status;
- **Temperament** (includes courtesy; understanding and compassion; patience; ability to control the courtroom; ability to promote public confidence; and dignified demeanour);
- **Diligence** (includes preparation skills; attentiveness to oral argument; prompt disposition of pending interlocutory matters; willingness to work diligently; and reasonable promptness in writing judgments);
- **Communication skills** (includes written clarity, logic, and precision; clarity of oral communications to witnesses; clarity of rulings and other oral communications to counsel);
- **Management skills** (includes whether proceedings are moved in an expeditious and orderly fashion; prompt and decisive rulings; effective application of case management principles; and
- **Settlement skills** (includes ability to facilitate settlement opportunities; encourages settlement negotiations; and promotes negotiation without coercion or threats).

The process and administrative arrangements for a pilot programme can guarantee the confidentiality of information concerning individual participating members. A Tribunal Development Committee consisting of the President and two other members could administer the pilot programme. The project advisor would work under the direction of the Judicial Development Committee. The project will have closed office space at the participating university.

1.2.3 Tribunal Members Self-assessment Statement

The purpose of the Tribunal members Self-assessment Statement is to have the participating member reflect on their strengths and weaknesses. Similar self-assessment questionnaires are used for judges in Alaska, Colorado, Massachusetts, Connecticut, Nova Scotia, and the United Kingdom. The Association of District

Judges (UK) Appraisal and Mentor Scheme was modified to include a self-assessment questionnaire after criticism from Sir Leonard Peach who observed:

Most modern schemes put considerable onus on the individual to assess his or her own performance with the manager/tutor helping by confirming or in some cases contradicting the appraisal and agreeing an improvement process or programme, with relevant experience or training.²

Self- assessment is the basis from which the mentoring relationship develops. Members are asked to state what they perceive to be their level of proficiency according to the criteria and measures used by the project. This gives a firm basis for comparison with results derived from the other data sources. The self-assessment statement remains confidential between the mentor and the participating member, except for one question which will be forwarded to the project advisor to be used to calculate an aggregate profile for the tribunal and to evaluate and report back to the assessed member and mentor whether there are any statistically significant differences in the results when compared with all survey results for all participating member on the same criteria and measures.

Aggregate results, not identifying any individual member may be reported in the project report.

The draft Members Self-assessment Statement asks members to consider their abilities according to the criteria and measures stated at 1.2.2. The self-assessment statement also explores other aspects of the participating members’ work including:

- Workload;
 - Participation in committees and other tribunal related work;
 - Community service work;
 - Scholarly works, including books, articles, speeches;
 - Health;
 - Stress levels;
 - Goals for development; and
 - Any other factor which impacts on their performance as a tribunal member.
- Examples may include the quality of record keeping, interpersonal conflicts etc

1.2.4 Lawyer questionnaires

There are several strategies, which may be used to select respondents to lawyer questionnaires. What is important is that only lawyers with a direct knowledge of the activities of the participating member respond to the survey instrument. To achieve this it will be necessary to track which barrister or solicitor appears before each member through the use of a case summary document compiled from tribunal records.

Having gained an accurate picture of who actually appears before each member, a decision needs to be made as to whether the data will be collected on a hearing specific basis or a reflective basis.

² Peach L, *Independent Scrutiny of the Appointment processes of judges and Queens Counsel*, December 1999 <<http://www.open.gov.uk/led/judicial/peach/indbod.html>> [accessed 3/3/01].

Survey instruments may be sent to practitioners after the decision of the member is handed down. Data would need to be collected on whether the decision was for or against the party represented to take into account this potential bias. It would not be appropriate to collect the data before the decision is handed down.

A reflective approach involves lawyers being asked to reflect on their experience with the member over a stated time period, usually 12 months. This would require the construction of a master database well beyond the resources of this project.

It is proposed that the case specific approach be adopted.

1.2.5 Witness questionnaires

Witnesses have not been the subject of any significant analysis overseas, though is often mooted as a viable data source. They are a group, which may offer a different perspective on the performance of a member. For recent research touching on some of these issues with respect to expert witnesses, see Freckelton I, Reddy P, Selby H, *Australian Judicial Perspectives on Expert Evidence: An Empirical Study*, Australian Institute of Judicial Administration, Carlton, Victoria, 1999.

1.2.6 Observations by mentors

The Tribunal Development Committee will recruit retired members or magistrates who have appropriate qualities to serve as ‘mentors’ to the participating members. The participating members will be able to select their preferred mentor from the mentor group. Individuals agreeing to join the mentors group will receive training for the task and will meet with the participating magistrates to review the evaluation findings, including the member self-assessment survey, and discuss their implications for self-development. The mentor will be involved with reviewing files and observing the member in action. The member may also be filmed for the purpose of review. Mentors will also provide the project advisor with general recommendations for continuing member education. Aggregate not individual recommendations will be passed on to the President.

1.2.7 Litigants questionnaires

Litigants, including self-litigants, can provide data on a case specific basis. Litigants, including self-litigants, will complete a witness questionnaire.

1.2.8 Project in context

A project of this nature cannot be implemented in isolation from the legitimate interests and concerns of others associated with the justice system in Queensland. The issues and concerns include the larger professional context of this initiative and the related requirements for consultation, the requirements for confidentiality, the voluntary basis of participation, and the issue of maintaining independence.

1.2.9 Independence and separation of powers

This project is designed to:

- Provide experience with the process of performance appraisal to provide systematic feedback to members for self-development; and
- Suggest directions for member education.

The project does not interfere with individual decisions taken by members nor have any links to the executive. The project does intend, however, to encourage self-directed improvement in member performance, thereby enhancing the quality of justice and improve the administration of tribunals.

The project does not provide individual members data to the President.

1.2.10 Professional development

The success of the project depends on the willingness of tribunal members to accept this strategy for self-development. To date no discussions have been held with any persons or groups who may have an interest in the project and whose cooperation may be required.

Those persons or groups include:

- The Attorney-General;
- Litigants, defendants, witnesses;
- Individual lawyers – barristers and solicitors;
- Queensland Law Society
- Queensland Bar Association; and
- Groups with an interest in the administration of justice, e.g. Victim Support Services.

Each of these persons or groups has an interest in the quality of justice in Queensland and in the potential for this project in tribunal development to contribute to the overall performance of tribunals.

1.2.11 Consultation

An initial draft proposal may be circulated to tribunal members for the purposes of consultation.

The process for determining the final shape of the project may also benefit from wider consultation with other stakeholders. Each of the persons and groups previously identified could contribute to the review. For example, the Judicial Development Committee may conduct an invitation only workshop involving representatives from each stakeholder category. Consultations with participating members, mentors, and the President must take place before any proposal is finalized.

1.2.12 Confidentiality

The project raises many issues concerning confidentiality. First, participating members must be assured that their individual assessments will not be viewed by anyone other than the project advisor, and their personal mentor. They will not be identified within any aggregate data, which may be used for the purposes of guiding continuing member education. Secondly, the identity of the survey respondents must not be associated with the questionnaire, to remove any fear of reprisal. Thirdly, the data needs to be screened for malicious responses.

Confidentiality for participating members will be preserved by a research methodology containing the following elements:

- The returned questionnaires will be assigned a confidential code identifying the member before data processing. Both the quantitative and qualitative analysis will be processed using this confidential code known only by the project advisor.
- The entire questionnaire will be shredded after data entry and verification of correct entry.
- Data files will be encrypted and stored on a stand-alone computer not connected to any network, kept in a secure office at the participating University. A further encrypted backup copy will be kept at a separate location.
- The project advisor will prepare the participating members’ briefing document for the member and their mentor. The documents will not be available to the President or anyone else.
- The hard copy and computer-based copies of the briefing document are not subject to Freedom of Information access.
- All research and briefing documents relevant to individual members will be held within the facilities of the Tribunal and the participating University and are not materials under the responsibility or control of any government department or agency.
- Members of the Mentor Group only have access to the briefing documents pertaining to their assigned member and will be asked to sign a confidentiality agreement with respect to that material before undertaking the assignment.

Confidentiality for survey respondents will be preserved by a research methodology, which separates the substantive flow of information from the administrative record of who has received and returned questionnaires. The methodology includes the following elements:

- The survey respondent’s name will not be associated with the returned questionnaire.
- The return of the questionnaire will be noted through a separately mailed ‘return notification’ card received from the survey respondent.
- Limited demographic information will be collected from survey respondents. For example, demographic information for lawyers would include gender, age, type of practice and area of law, experience in years, and the number of appearances before the magistrate. The information will be collected in ranges (e.g. under 30, 31-40, 41-50 etc) to preserve confidentiality. The characteristics used will be screened to eliminate from the analysis any data, which would identify an individual survey respondent. All data will be removed where there are insufficient respondents in a category to preserve confidentiality.
- The project advisor will screen open-ended comments that may identify a particular case and will either eliminate the data or put it in more generic terms. Examples include the length of the case, area or issue of law.

Malicious responses will be dealt with by reviewing both forced choice and open-ended questions. The objective is to identify extreme or idiosyncratic responses. An example would be a respondent who consistently gives a member the lowest possible rating on all criteria and measures. The project advisor will review such responses and either delete the data or amend open-ended comments into a more generic comment or concern.

The project office, being located at the participating University is organizationally separated from the offices of the Queensland Government, Queensland Law Society, and Queensland Bar Association etc to warrant the trust required for the project to succeed.

Survey respondents’ identity and the participating member’s individual data and results will remain anonymous and confidential.

1.2.13 Voluntary participation

Participation in the project will be on a voluntary basis. Members have been invited to express an interest in participating in the project.

Whilst participation is voluntary, the participating members would have to agree to participate in both their individual assessments and contribute to the over-all evaluation of the project. The latter would involve agreeing to complete a programme assessment survey on the over-all effectiveness of or value the member attached to their participation and identification of any flaws in the project. There may also be a debriefing workshop at the conclusion of the project.

Participation of all survey respondents (lawyers, tribunal staff, and expert witnesses) will also be on a voluntary basis.

3. Strategies for implementation

Implementing the project requires the making of many choices, including:

- Alternative approaches to data gathering;
- Project time frames; and
- Communication strategies.

3.1 Options for evaluation

The central questions concerning evaluation options include:

- Who will do the evaluation?
- What will be the criteria for the evaluation of the judiciary?
- How will the evaluation process establish the presence or absence of the criteria?
- How will the evaluation findings be used?

Evaluations may be done by one’s self, peers, or others. The project adopts all three approaches. Participating members will complete a self-evaluation questionnaire. A mentor (retired peer) will observe the participating member in the tribunal and examine tribunal records. Lawyers (barristers and solicitors), witnesses and tribunal staff will complete the questionnaires.

The criteria to be used to evaluate participating magistrates are outlined at 1.2.1 and include:

- Legal ability;
- Impartiality;

- Judicial temperament;
- Diligence;
- Communication skills;
- Management skills;
- Settlement skills; and
- Other relevant criteria identified through consultation.

These broad performance criteria and their respective measures were derived from an extensive review of judicial performance evaluation programmes in other jurisdictions conducted by the project advisor for his PhD thesis. This research indicated that the criteria and measures were of a generic nature and equally applicable to Australian jurisdictions as they were to American, Canadian and United Kingdom jurisdictions. Feedback to participating members will be based on assessments from multiple data sources on these criteria and measures.

Judicial performance can be documented through direct observation, process indicators derived from a tribunal information system (e.g. case management data), or volunteered assessment by participants in the tribunal process. Direct observation through a tribunal watching programme is very time consuming and expensive process. This project involves a small amount of direct observation and examination of tribunal files by the mentor. Volunteered assessment by individuals participating in the tribunal process is the main strategy used by this project.

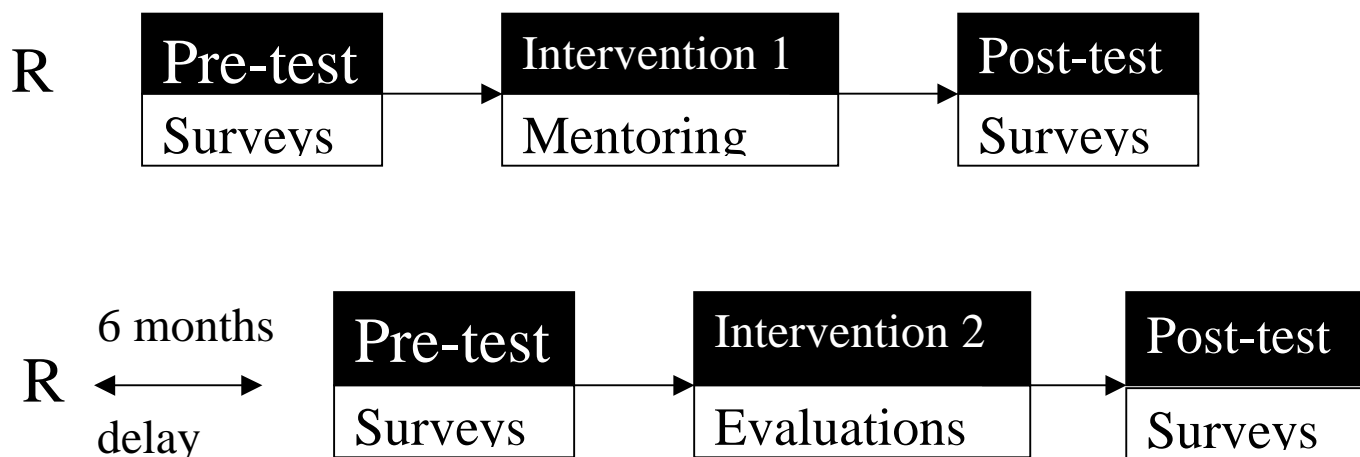
A questionnaire mailed or handed directly to litigants, lawyers, witness's has been chosen as the primary means of assessing the criteria and measures. Such an approach complements the members' self-assessment survey. Alternative methods for gathering volunteered assessments from participants include the use of personal interviews (face-to-face or telephone), focus groups, or an open forum. There are advantages and disadvantages for each approach. A questionnaire is the most economical approach and enables the preservation of confidentiality, which is an essential requirement for this project. Draft survey instruments are available from the author.

Judicial independence has implications for how the findings of this project can be used. On an individual level the findings provide systematic feedback to enable self-improvement strategies to be voluntarily adopted. Information is restricted to the project advisor, mentor, and the participating member. On an aggregate level, information can be used to develop an overall court strategy for the improvement of performance and refinement of judicial education programmes. Aggregate data may be released to all members and in tribunal annual reports. The data is not to be used in any form of disciplinary procedure.

Mentoring and feedback evaluations (in the form of briefing reports of survey results) are two interventions that should affect performance. Both interventions will affect the perceptions that others (survey respondents) have of members because it will affect members' behaviour.

The experimental design will control for unanticipated external events by engaging in two separate phases of intervention and randomly assigning members to one phase or the other, using those assigned to the second intervention as a waiting list control. Figure 1 depicts the design in visual form. R represents random assignment.

Figure 1 Experimental design



3.2 Time frames

The proposed project time frames are depicted in figure 2.

Figure 2 Time frames

Stage 1	Stage 2	Stage 3
<ul style="list-style-type: none"> • Formation of supervising committees • Approval and recruitment of participating members 	<ul style="list-style-type: none"> • Ethics approval • Data collection • Analysis and synthesis of findings • Mentor meetings • Utilization of findings 	<ul style="list-style-type: none"> • Assessment of the project • Project report

Stage 1

It is anticipated that 2-4 months will be required to form the development and advisory committees, recruitment and final approval of all participating members.

Stage 2

Start-up will require up to two months. Project activities will include finalising the administrative arrangements necessary to establish the autonomous project office and gaining ethics approval for the research. The graphic design of all the survey instruments will be completed. The survey instruments, covering letters, and envelopes will be printed. A meeting with participating members will be arranged to complete the introduction of the project to them and to answer any further questions regarding the project.

Data collection will begin on the commencement of the tribunal year in 2004 and is scheduled for up to a twenty four-month period. Those members randomly selected to

receive mentoring and feedback evaluations will commence data collection in early 2004. For those members randomly selected to receive only feedback evaluations, data collection will commence June 2004. The latter group will also receive mentoring at the conclusion of data collection.

Tribunal clerks will need to record the names and addresses of lawyers, witnesses, and parties who appear before a participating member. This will be known as a case summary document. This information is to be forwarded to the project advisor on a weekly basis. This information will be entered into a database by the project advisor.

The analysis of members will be done on a case specific basis. Due to the short nature of many tribunal matters the project advisor suggests collecting data for 50 cases for each tribunal member over the intake period. Half will relate to pre-intervention, half to post-intervention phases. The cases should involve substantive contested argument. These can be selected on a random basis and should where possible involve different lawyers. The clerk will record on a case summary document the names of the lawyers etc appearing before the member and fax/email these to the project advisor once a week. The clerk will hand the parties and witnesses from each side a questionnaire, covering letter from the President explaining the questionnaire, a response card, and a pre-addressed reply paid envelope. There will be one follow up mailing for those who do not respond. Lawyers will be direct mailed by the project advisor. Lawyers who have previously received a case specific survey will not receive more than two case specific surveys for each member during the data intake period. The project advisor will check this before sending a survey instrument.

Figure 3 provides an estimate of the possible size of the project in terms of questionnaire distribution. The questionnaires will be divided evenly between pre and post-tests.

Figure 3 Estimated size of the project (24 months data intake)

Tribunal	Total number of members	Lawyers receiving questionnaires (Including barristers, solicitors) Case specific	Witnesses receiving questionnaires (1 witness each side)	Parties in attendance
A	10	10x50x2=1000	5x50x2=500	10x50x2=1000
B	10	10x50x2=1000	5x50x2=500	10x50x2=1000

The project advisor will carry out the **analysis** of the questionnaires. The analysis of the ‘forced choice’ questions on a rating scale will be integrated with additional comments provided by respondents to open-ended questions. The project advisor will produce a briefing document to be used by the judicial mentor and participating member. The project advisor will discuss with the mentor the interpretation of the findings in preparation for the mentor’s meeting with the participating member.

The **utilization of findings** will take two forms. The first use will be in the meeting between the mentor and the participating member. They will consider the findings noted in the briefing report, compare that assessment with the participating member’s self-assessment, and discuss resources and strategies for development that could benefit the member.

Aggregate data from all participating members will be used to assess areas of need in education programmes. Aggregate results of the programme should be forwarded to the proposed judicial college, Australian Institute of Judicial Administration, and the Judicial Conference of Australia to assist these organisations in developing education programmes targeted at identified issues needing action. Individual members will not be identifiable from the aggregate data.

3.3 Project management and accountability

The key individuals and groups participating in the project include:

- The Tribunal Development Committee;
- The Tribunal Development Project Office administered by the project advisor;
- Mentors;
- Participating members;
- Participating lawyers who complete questionnaires; and
- Participating witnesses who complete questionnaires.

The Tribunal Development Committee is responsible for the overall management of the project. The Committee will recruit the mentors and will invite members to participate in the project. The Committee will supervise the work of the project advisor. The Committee will never receive individual-level data concerning any member, but will receive aggregate data and a yearly report from the project advisor. The Tribunal Development Committee will communicate the nature, purpose and benefits of the project to all stakeholders identified at 1.3.2.

The project advisor will be responsible for setting up and administering the project office, all data entry, security and confidentiality of data, and for administering and implementing the project, including distribution and analysis of questionnaires, preparation of briefing documents to be used by mentors, and training of mentors. The project advisor is accountable to the Tribunal Development Committee and may seek advice from the Australian Institute of Judicial Administration advisory panel and other experts.

The project advisor distributes the surveys, collects and analyses the data, except as follows:

- The mentor distributes the member self-assessment statement to the participating member. A copy is retained by the mentor and participating member;
- The mentor engages in court watching and analysis of files and procedures;
- A case summary document will be prepared by tribunal staff, and forwarded in batches to the project advisor;
- Parties surveys (and reply paid envelopes addressed to the project advisor) will be handed out by tribunal staff at the conclusion of a case; and

- Witness surveys (and reply paid envelopes addressed to the project advisor) will be handed out by tribunal staff at the conclusion of a witness’s evidence.

The mentor will report to the Tribunal Development Committee on the process of their work. The mentor will not discuss nor reveal any information concerning individual members. They will only discuss the substance of their work with the project advisor. Mentors will be responsible for meeting with participating members, discuss the analysis and conclusions of the briefing document prepared by the project advisor, and assist the participating member in preparing a development plan.

The member evaluation data and results may not be used for disciplinary procedures.

3.4 Assessment of the project

The project will involve several layers of debriefing. The project advisor will compile the results for each individual member. The mentor will be provided with individual and aggregate results to assist with a confidential debriefing session with the individual member concerned. The President will be provided with aggregate data.

The mentors will provide a general report on the programme to the President to pass on to other members and the project advisor. Each participating member will be asked to complete a questionnaire about his or her experience with the project, which will be used as a basis for a workshop at the conclusion of the project. The reflections of these participants, the Tribunal Development Committee and project advisor will be published in a final report written by the project advisor. The report will not contain references to individual performance data, but will focus instead on the usefulness of the methodology, implementation issues, and a critique of the project.

4. Resources supporting the project

The project will require a project advisor and research assistant. The budget must include replacement salary for the project advisor, salary for the research assistant, and funds to support the materials and supplies necessary for the multiple questionnaires, the purchase of computer software, and costs of the project evaluation. Funding could be supported by an Australian Research Council Linkage Grant.

5. Conclusion

I hope that members give performance evaluation and this proposal some serious thought. For many it will be a challenge to long held ideas and values. The unique insight into how members perform, viewed from the perspective of the many other people involved in the work of the Tribunal has a significant benefit for professional development.