

PART 6: APPENDICES

APPENDIX 1: WORK OF TRIBUNALS

Australian Competition Tribunal

Functions and powers

The Australian Competition Tribunal was established under the *Trade Practices Act 1965* (Cth) and continues under the *Competition and Consumer Act 2010* (Cth) (Act).

The Tribunal is a review body. A review by the Tribunal is a re-hearing or a re-consideration of a matter. The Tribunal may perform all the functions and exercise all the powers of the original decision-maker for the purposes of review. It can affirm, set aside, or vary the original decision.

The Tribunal has jurisdiction under the Act to hear a variety of applications, most notably:

- review of determinations by the Australian Competition and Consumer Commission (ACCC) granting or refusing merger authorisation
- review of determinations by the ACCC in relation to the grant or revocation of other authorisations that 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
- review of determinations by the ACCC in relation to notices issued under section 93 of the Act in relation to exclusive dealing, and
- review of certain decisions of the ACCC and the Minister in relation to international liner cargo shipping.

The Tribunal can also hear a range of other, less common, applications arising under the Act.

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 the Competition and Consumer Regulations 2010 (Regulations), within the discretion of the Tribunal.

The Regulations set out some procedural requirements in relation to the making and hearing of review applications. Other procedural requirements are set out in the Tribunal's Practice Direction.

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.

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 section 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.

Justice Michael O'Bryan is the President of the Tribunal. The Deputy Presidents of the Tribunal are Justice Mark Moshinsky, Justice Sarah C Derrington, Justice John Halley and Justice Kylie Downes. Justice Kathleen Farrell retired as a Deputy President on 1 August 2023.

There are three lay members of the Tribunal: Ms Diana Eilert, Dr Jill Walker and Mr Ray Steinwall. Professor Caron Beaton-Wells and Mr Daniel Andrews retired as lay members during the reporting year.

The Tribunal is supported by a Registrar (Tim Luxton) and Deputy Registrars (Geoffrey Segal, Nicola Colbran, Russell Trott and Michael Buckingham).

Activities

One new matter was commenced and determined during the reporting year (see below).

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

Decision of interest

Applications by Australia and New Zealand Banking Group Limited and Suncorp Group Limited [2024] ACompT 1

This decision concerned an application for review of a determination of the ACCC to reject an application for a merger authorisation. The authorisation was sought by Australia and New Zealand Banking Group Limited (ANZ) and Suncorp Group Limited and concerned the proposed acquisition by ANZ of Suncorp-Metway Limited, a bank. The Tribunal was satisfied that the proposed acquisition would not be likely to have the effect of substantially lessening competition and would be likely to result in a benefit to the public that would outweigh the detriment to the public that would be likely to result from the proposed acquisition. The determination of the ACCC was set aside and the authorisation was granted.

Copyright Tribunal

Functions and powers

The Copyright Tribunal was established under the *Copyright Act 1968* (Cth) to hear applications dealing with four main types of matters:

1. to determine the amounts of equitable remuneration payable under statutory licensing schemes
2. to determine a wide range of ancillary issues with respect to the operation of statutory licensing schemes, such as the determination of sampling systems
3. 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
4. to determine a wide range of issues in relation to the statutory licensing scheme in favour of government.

By virtue of the *Copyright Amendment Act 2006* (Cth), assented to on 11 December 2006, the Tribunal also has jurisdiction 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 within the discretion of the Tribunal.

The Copyright Regulations 2017 came into effect in December 2017 (replacing the Copyright Tribunal (Procedure) Regulations 1969). Part 11 of the regulations relates to the Copyright Tribunal and includes provisions concerning its practice and procedure.

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 appointed by the Governor-General.

On 15 December 2022, Justice Nye Perram was appointed as President of the Tribunal for a period of seven years. Justice Perram had been acting in that role following the retirement of Justice Andrew Greenwood on 19 July 2022. Also on 15 December 2022, Justice Tom Thawley, Justice Michael O'Bryan and Justice Helen Rofe were appointed as Deputy Presidents of the Tribunal for a period of five years.

On 8 June 2023, Mr Michael Fraser AM, Ms Fiona Phillips and Ms Alida Stanley were appointed as non-judicial members of the Tribunal for a period of three years. The appointments of the previous non-judicial members Dr Rhonda Smith, Ms Sarah Leslie and Ms Michelle Groves expired during the reporting period.

The Registrar of the Tribunal is an officer of the Federal Court. The Registrar of the Tribunal during the reporting period was Katie Lynch and then, Susan O'Connor.

Activities and cases of interest

One matter was commenced in the Tribunal during the reporting period:

- CT2 of 2023 – Application by Commercial Radio & Audio Limited under section 152(2) of the *Copyright Act 1968*, filed on 13 September 2023.

The following matters were commenced in the Tribunal before the reporting period and remain ongoing:

- CT1 of 2021 – Australasian Performing Right Association Limited ABN 42 000 016 099 and Australasian Mechanical Copyright Owners' Society Limited ABN 78 001 678 851, being a reference under section 154 of the *Copyright Act 1968*, filed 26 March 2021.
- CT2 of 2021 – Copyright Agency Limited ABN 53 001 228 799 v Department of Education (Queensland) and the bodies listed in Schedule A, being an application brought under section 113P and section 153A of the *Copyright Act 1968*, filed 18 May 2021.
- CT1 of 2022 – The DLA Group Pty Limited ACN 003 329 039 v The State of Western Australia, being an application brought under section 183(5) of the *Copyright Act 1968*, filed on 20 April 2022.

- .CT2 of 2022 – Free TV Australia Ltd (ACN 101 842 184) v Phonographic Performance Company of Australia Limited (ACN 000 680 704), being an application brought under section 157 of the *Copyright Act 1968*, filed on 22 December 2022
- CT1 of 2023 – Reference brought by Phonographic Performance Company of Australia Ltd (ACN 00 680 704), being an application brought under section 154 of the *Copyright Act 1968*, filed on 18 May 2023.

Some cases of interest include:

- CT1 of 2021 – Australasian Performing Right Association Limited ABN 42 000 016 099 and Australasian Mechanical Copyright Owners' Society Limited ABN 78 001 678 851, filed 26 March 2021. As set out at [2] of Reference by APRA AMCOS (Summons)[2023]ACopyT 3: "The reference is concerned with the appropriate fee to be charged to the providers of subscription video on demand services (SVOD services) in return for the licence of APRA AMCOS to communicate and/or reproduce musical works within their repertoire which, in practical terms, includes the vast bulk of commercially available music. Although some of the content streamed by SVOD providers has been acquired by them pursuant to arrangements which licence the communication and/or reproduction of the music contained within that content, there is no practical way that an SVOD provider can check whether this has in all cases been done. In practical terms, they need a blanket licence from APRA AMCOS to avoid inadvertent infringements of copyright". The parties to CT 1 of 2021 include: APRA/AMCOS, Netflix Inc, The Walt Disney Company (Australia) Pty Ltd, Paramount and Stan Entertainment Pty Ltd.
- CT1 of 2023 – Reference brought by Phonographic Performance Company of Australia Ltd (PPCA) (ACN 00 680 704), being an application brought under section 154 of the *Copyright Act 1968*, filed on 18 May 2023. PPCA proposes to bring into operation a new Commercial Radio Broadcasters Licence Scheme (Scheme) to licence commercial radio broadcasters (the Licensees) to communicate PPCA Sound Recordings to the public by way of a radio broadcast using the Broadcasting Services Bands (as defined in s 6(1) of the *Broadcasting Services Act 1992* (Cth)). In bringing these proceedings, PPCA seeks to confirm the Scheme as proposed, or alternatively, vary as the Tribunal reasonably sees fit. Parties include PPCA and Commercial Radio & Audio Ltd.

Defence Force Discipline Appeal Tribunal

Functions and powers

The Defence Force Discipline Appeal Tribunal was established as a civilian tribunal under the *Defence Force Discipline Appeals Act 1955* (Cth). Pursuant to section 20 of the *Defence Force Discipline Appeals Act 1955*, a convicted person or a prescribed acquitted person may bring an appeal to the Tribunal against his or her conviction or prescribed acquittal. Such appeals to the Tribunal lie from decisions of courts martial and of Defence Force magistrates.

Practice and procedure

Subject to the *Defence Force Discipline Appeals Act 1955*, the procedure of the Tribunal is within its discretion. In practice, appeals are conducted in a similar way to an appeal before a state or territory Court of Appeal/Court of Criminal Appeal or the United Kingdom's Court Martial Appeal Court. Counsel robe on the hearing of an appeal but, because the Tribunal does not exercise the judicial power of the Commonwealth, the members of the Tribunal do not.

Membership and staff

The Tribunal is comprised of the President, the Deputy President and other members.

The President of the Tribunal is Justice John Logan RFD. The Deputy President is Justice Melissa Perry. The other members of the Tribunal are Justice Robertson Wright, Justice John Halley and Justice Lincoln Crowley.

Justice Paul Brereton AM RFD has retired as Deputy President. Justice Peter Barr and Justice Michael Slattery AM (Mil) RAN have retired as members.

The Tribunal is supported by a Registrar (Tim Luxton) and Deputy Registrars (Nicola Colbran, Kim Lackenby, Geoffrey Segal, Susie Stone and Russell Trott).

Activities

Two matters were filed during the reporting year. One matter was determined during the year.

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

Decisions of interest

- *Poulton v Chief of Navy* [2023] ADFDAT 1

