

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.

The Tribunal also hears reviews of 'reviewable regulatory decisions' of the Australian Energy Regulator (AER): National Electricity Law, s 71B(1) and National Gas Law, s 245 and certain other parallel State legislation. These reviewable regulatory decisions include:

- a network revenue or pricing determination covering a regulatory period, or
- any other determination (including a distribution determination or transmission determination) or decision of the AER under the National Electricity Law or National Gas Law.

A review by the Tribunal is in some instances a review on the papers, with some qualifications, and in some instances it is a full merits review, with additional investigative powers. 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.

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 2014–15 there were no changes to the membership of the Tribunal.

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 134.

ACTIVITIES

Two matters were current at the start of the reporting year. During the year, eight matters were commenced and two were finalised. In one of those two matters (the application by ActewAGL Distribution) leave to withdraw the application was granted before the hearing. The eight new matters

filed with the Tribunal consist of the first matters filed under the new statutory arrangements in the National Gas Law and National Electricity Law as proposed by the Standing Council on Energy and Resources.

The Tribunal has instigated projects to introduce electronic lodgment of documents into the Tribunal and an electronic Tribunal file during 2014–15.

The Tribunal has also undertaken work sentencing Tribunal files for archiving with National Archives of Australia in accordance with the relevant authority.

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 [2014] ACompT 2 (25 August 2014)

Application by Independent Contractors Australia [2015] ACompT 1 (21 January 2015)

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.

The members of the Tribunal have commenced a consultation process with the Tribunal users with a view to issuing a practice direction in the latter half of 2015.

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. Justice Perram has been reappointed as a Deputy President for five years effective from 8 June 2015. Professor John McMillan AO was appointed as a lay member of the Tribunal effective on 16 April 2015 for a period of three years.

The Registrar of the Tribunal is an officer of the Federal Court. Details are set out in Appendix 4 on page 134.

ACTIVITIES

Five matters were pending at the commencement of the year, three matters were finalised and no new matters were filed. Two matters are currently 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

President Justice Bennett in CT 2/2013 *Pocketful of Tunes Pty Ltd v Commonwealth of Australia* [2015] ACopyT 1 and on costs [2015] ACopyT 2.

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) (the 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 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 been introduced. Under s 141(1) of the Act, the sittings of the Tribunal were held at places determined on the following dates, subject to the availability of business: 30-31 July 2014, 29-30 October 2014, 17-18 December 2014, 26-27 March 2015, 9-10 April 2015 and 25-26 June 2015.

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.

The Registrar and Deputy Registrars of the Tribunal are officers of the Federal Court. Their details are set out in Appendix 4 on page 134.

ACTIVITIES

There were four matters before the Tribunal during the reporting year.

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