

Appendix 6: 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).

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 *Competition and Consumer Act 2010* to hear a variety of applications, most notably:

- review of determinations by the Australian Competition and Consumer Commission (ACCC) granting or refusing clearances for company mergers and acquisitions;
- review of determinations by the ACCC in relation to the grant or revocation of 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 *Competition and Consumer Act 2010*.

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 *Competition and*

Consumer Act 2010 and the *Competition and Consumer Regulations 2010* (the 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 *Competition and Consumer Act 2010* 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 *Competition and Consumer Act 2010*, 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 Kathleen Farrell, Justice Mark Moshinsky, Justice Sarah Derrington AM, Justice John Halley and Justice Kylie Downes. Justice John Middleton AM retired as President on 25 December 2022.

Professor Caron Beaton-Wells, Ms Diana Eilert, Dr Jill Walker, Mr Daniel Andrews and Mr Ray Steinwall are the Members of the Tribunal. Dr Darryn Abraham and Professor Ken Davis AM retired as Members on 31 March 2023.

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

Activities

One matter was current at the start of the reporting year. During the year, one new matter was commenced and two matters were determined.

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

Decisions of interest

- Applications by Telstra Corporation Limited and TPG Telecom Limited [2023] ACompT 2 (21 June 2023).
- Applications by Telstra Corporation Limited and TPG Telecom Limited [2023] ACompT 1 (17 March 2023).
- Applications for review of Honeysuckle Health Buying Group authorisation determination (No 2) [2022] ACompT 4 (29 July 2022).

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.

Activities and cases of interest

Two matters were commenced in the Tribunal during the reporting period:

- 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.

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.

The following matters were finalised during the reporting period:

- CT4 of 2018 – *Copyright Agency Limited ABN 53 001 228 799 on its own behalf and as agent for the parties listed in Schedule A v The Universities listed in Schedule B* was finalised by consent orders on 20 February 2023 following the filing of a notice of discontinuance in the application for judicial review: *NSD486/2022 – The University of Adelaide & Ors v Copyright Agency Limited & Anor*.
- CT2 of 2017 – *Meltwater Australia Pty Ltd v Copyright Agency Limited ABN 53 001 228 799* and CT2 of 2018 – *Isentia Pty Ltd v Copyright Agency Limited ABN 53 001 228 799* (which were heard together): see decision of the Tribunal in *Application by Isentia Pty Limited* [2021] ACopyT 2 (15 October 2021).

On 23 September 2023 the Federal Court dismissed the application for judicial review: proceeding *NSD1212/2021 – Copyright Agency Limited v Isentia Pty Ltd ACN 002 533 851 & Ors*. On the same day the applicant and first respondent consented to the discontinuance of the whole of the proceeding against the first respondent.

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 Paul Brereton AM RFD. The other members of the Tribunal are Justice Melissa Perry, Justice Peter Barr and Justice Michael Slattery AM AM (Mil) RAN.

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

Activities

No matters were filed during the reporting year. Two matters were 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

- *Kantibye v Chief of Army* [2022] ADFDAT 4 (21 October 2022).
- *Kearns v Chief of Army* [2022] ADFDAT 3 (12 August 2022).