

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 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 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 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 (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 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 John Middleton is the President of the Tribunal. Justice Andrew Greenwood, Justice David Yates, Justice Kathleen Farrell, Justice Jennifer Davies and Justice Michael O'Bryan are the Deputy Presidents of the Tribunal. Justice Lindsay Foster retired as a Deputy President of the Tribunal during the reporting year.

Dr Darryn Abraham, Professor Kevin Davis, Professor Caron Beaton-Wells, Ms Diana Eilert and Dr Jill Walker are the Members of the Tribunal.

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, four new matters were commenced, two matters were remitted by the Full Federal Court of Australia, one matter was determined and one matter was withdrawn.

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 Flexigroup Limited [2020] ACompT 2 (15 September 2020)
- Application by Port of Newcastle Operations Pty Ltd (No 2) [2020] ACompT 3 (14 December 2020)
- Application by Port of Newcastle Operations Pty Ltd [2021] ACompT 1 (9 March 2021)
- Application by New South Wales Minerals Council [2021] ACompT 2 (20 May 2021)
- Application by New South Wales Minerals Council (No 2) [2021] ACompT 3 (16 June 2021)

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.

Justice Andrew Greenwood is the President of the Tribunal. Justice Nye Perram and Justice Jayne Jagot are Deputy Presidents.

The current members of the Tribunal are Dr Rhonda Smith (reappointed on 12 December 2017), Mr Charles Alexander (appointed from 30 November 2017), Ms Sarah Leslie (appointed from 1 March 2018) and Ms Michelle Groves (appointed from 16 April 2018). Appointments are usually for a period of five years.

The Registrar of the Tribunal is an officer of the Federal Court. Katie Lynch was appointed Registrar of the Tribunal on 25 March 2021. Before this, the Registrar was Murray Belcher.

Activities and cases of interest

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

- CT1 of 2020 – Audio-Visual Copyright Society Limited ACN 003 912 310 v Foxtel Management Pty Limited ACN 068 671 938, being an application brought under section 135ZZM of the *Copyright Act 1968*, filed on 22 July 2020.

- T1 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.

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

- CT2 of 2017* – *Meltwater Australia Pty Ltd v Copyright Agency Limited* ABN 53 001 228 799, being an application brought under section 157(3) of the *Copyright Act 1968*, filed on 28 November 2017.
- CT2 of 2018* – *Isentia Pty Ltd v Copyright Agency Limited* ABN 53 001 228 799, being a further application brought under s 157(3) of the *Copyright Act 1968*, filed on 20 June 2018.
- 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*, being an application brought under section 113P and section 153A of the *Copyright Act 1968*, filed on 12 November 2018.

*These matters are being heard together.

The following matter was finalised during the reporting period:

- CT1 of 2018 – *Stroom Pty Ltd v Copyright Agency Limited* ABN 53 001 228 799 (withdrawn on 12 October 2020).

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) (the Act). Pursuant to section 20 of the Act,

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 Act, 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 and Justice Peter Barr. There was no change to the composition of the Tribunal during the reporting year. One vacancy in the Tribunal's establishment remains unfilled.

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

Three matters were filed during the reporting year. One of those matters 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

- *Mikus v Chief of Army* [2020] ADFDAT 1 (22 December 2020)