

APPENDIX 6

WORK OF TRIBUNALS

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 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 set 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 2013–14 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

Three matters were current at the start of the reporting year. During the year, two matters were commenced and all were finalised. In one of those five matters, the application by Murray Goulburn Co-operative Co Limited for authorisation of its proposed acquisition of Warnambool Cheese and Butter Factory Company Holdings Limited was discontinued before the hearing. That application and a further application by AGL Energy Limited for authorisation of its proposed acquisition of the assets of Macquarie Generation in New South Wales were the first applications to the Tribunal under s 95AT of the Act.

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 Multinet Gas (DB No 1) Pty Ltd and Multinet Gas (DB No 2) Pty Ltd, trading as Multinet Gas Distribution Partnership (No 2) [2013] ACompT 6 (31 July 2013)

Application by SPI Electricity Pty Limited (Trading as SP AUSNet) [2013] ACompT 7 (1 August 2013)

Application by APA GasNet Australia (Operations) Pty Limited (No 2) [2013] ACompT 8 (18 September 2013)

Application by APA GasNet Australia (Operations) Pty Limited (No 3) [2013] ACompT 9 (3 October 2013)

Application by Murray Goulburn Co-operative Co Limited (withdrawn 29 November 2013)

Application for Authorisation Acquisition of Macquarie Generation by AGL Energy Limited [2014] ACompT 1 (25 June 2014)

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.

APPENDIX 6

WORK OF TRIBUNALS

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 the reporting year Justice Annabelle Bennett was appointed President of the Tribunal for a period of three years with effect from 25 July 2013.

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

ACTIVITIES

Three matters were current at the start of the reporting year. During the year three new matters were filed and one matter finalised; there are five matters pending.

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

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 on the following dates: 26–27 September 2013, 24–25 October 2013, 13–14 December 2013 and 26–27 March 2014.

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. In August 2013 Justice Paul Brereton of the NSW Supreme Court was appointed as a member of the Tribunal. On 15 March 2014 Justice Dennis Cowdroy retired from the Tribunal.

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 two 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.