

Council of Australian Tribunals

Minutes of Meeting of Interested Tribunal Heads – 3 October 2001 Jubilee Room, Parliament of New South Wales

Attendees – see attached schedule.

Item 1 Opening by the Commonwealth Attorney-General, the Hon Daryl Williams AM QC MP

The Attorney-General was introduced by the Chair of the meeting, Mr Wayne Martin QC. The text of the Attorney's comments is attached. The Attorney departed.

Conduct of the meeting

The Chair noted that while the proposal for a COAT has been facilitated by the Administrative Review Council, how it is established, and the form it will take, will ultimately be up to tribunal leaders to determine.

As ideas for a COAT are still developing, the objective for the meeting should be to seek general views on key issues to provide a basis for progressing to the next stage. It was not necessary for matters to be determined conclusively. The meeting might become lost in minutia if this was attempted. Progress could be achieved if the meeting proceeds relatively informally, guided by the ARC agenda and discussion papers.

The considerations and resolutions from the meeting might :

- endorse the concept of a Council of Australian Tribunals;
- endorse a general model or series of options which arise from the discussion as having support; and
- identify how the proposal might be taken forward ie. by a steering group.

This approach was endorsed by the meeting.

Item 2 Statements by Tribunal Heads

Justice Murray Kellam, President, Victorian Civil and Administrative Appeals Tribunal

Justice Kellam spoke of his experience in amalgamating 16 different organisations in Victoria and emphasised that there was something to learn from each of the organisations. That experience can be applied to tribunals across Australia. The costs need not be high, eg VCAT was able to adapt another tribunal's IT system; there is no reason why their experience could not be shared with other tribunals.

A council of tribunals might achieve benefits in the following areas:

- ◆ Professional development and training – particularly in terms of developing generic programs which would be of value to large numbers of tribunal members;
- ◆ Sharing of knowledge;
- ◆ Co-ordination and transfer of information by visiting other tribunals;
- ◆ Sharing of the resources of larger tribunals with smaller tribunals;

- ◆ Proposals for research (eg the council could co-operate with other research bodies such as the AIJA – council of tribunals would survey facilities and the charters of member tribunals and disseminate this information to other member tribunals);
- ◆ Complaint handling mechanisms;
- ◆ Development of performance standards; and
- ◆ Improving standards (professional development and training, ethics, dealing with unrepresented litigants etc).

Mrs Wendy Cull, Chairperson, Queensland Building Tribunal

One of the challenges for COAT will be that every tribunal is different in its processes and the COAT will need to be sufficiently flexible if it is to cater to the needs of both judicial and investigative tribunals. However, a body such as the COAT could assist in the development of guidelines for tribunals addressing issues such as procedural fairness and assistance of unrepresented litigants.

COAT would need to be careful to keep in mind the costs of each tribunal's involvement and ensure that costs do not prevent tribunals from participating.

Some objectives that the COAT could achieve include:

- ◆ Training in decision writing;
- ◆ Practical approaches to procedural fairness;
- ◆ Support and training for members;
- ◆ Benchmarks for performance standards and financial accountability; and
- ◆ Providing advice to tribunals on maintaining independence.

Mr Keith Chapman, President, Guardianship and Administration Board (WA)

Supported the concept of establishing the COAT. The cost to tribunals will need to be kept in mind – travel from WA is costly. Support from the Commonwealth and State governments will be important.

Caution should also be taken to ensure that the larger Commonwealth tribunals do not have a disproportionate role to play in the COAT.

The work of the AIJA (and its facilities) should also be kept in mind as the COAT should work in conjunction with the AIJA.

Justice Deirdre O'Connor, President, Administrative Appeals Tribunal

Justice O'Connor pointed out that a body similar to the proposed COAT is operating well in Canada, which has similar mix of agencies at different levels of government. There is no reason why the COAT could not work equally as well in Australia.

One of the key benefits to be gained from establishing a COAT will be the increased emphasis on a "tribunals' culture"; developing a mature understanding of the role of tribunals. The Leggatt Report, which was recently released in the UK, notes that the UK courts have naturally developed their own system and culture. Tribunals have been added to this system but they need to be able to develop their own body with issues

common to tribunal as its focus. Issues of particular importance to tribunals include independence and low cost dispute resolution.

If the COAT is to succeed it must make use of technology to help keep the costs to tribunals low. For example, this could be achieved by establishing a website for information dissemination, newsletters, use of video conferencing etc. The AAT was in a position to provide assistance to help set up the website and get the COAT established.

Item 3 COAT Paper 1 The Proposed Approach to a Council of Australian Tribunals

The meeting agreed that a COAT would provide a useful resource for tribunals and identified the objects that the COAT could work towards as including:

- ◆ Developing the culture of tribunals;
- ◆ Implementing and using modern technology;
- ◆ Sharing knowledge and experiences;
- ◆ Sharing resources;
- ◆ Undertaking research on areas of common interest;
- ◆ Developing best practice guides;
- ◆ Identifying common approaches to issues;
- ◆ Enhancing training and professional development; and
- ◆ Providing a common point of reference for governments and the public (for example the COAT could liaise with the AIJA and AIAL).

The meeting agreed that the COAT's structure and objectives should encourage smaller tribunals to participate in the COAT. It was agreed that the COAT should make use of technology to facilitate this. It was noted that the proposed federal structure of the COAT, including its provision for State and Territory chapters, would allow tribunals to meet frequently on a regional basis. The need for national meetings, which might not be efficient for all tribunals to attend regularly, could then be reduced.

The meeting generally supported the ARC proposal as a basis for further consideration by a steering group of tribunal heads.

Item 3(a) COAT Paper 2 Structure of the Council

The paper proposed a structure for the COAT incorporating a periodic chairperson holding office for 1-2 years. The secretariat services would be provided by the chair's registry.

The proposal is based on the Council of Chief Justices. This approach was endorsed as a workable model for the COAT to adopt. The problems of rotating the chair and secretariat highlighted in the paper, particularly the lack of continuity, were noted. To overcome these problems, the proposal that the functions of the secretariat and chair should reside with the one tribunal for 1-2 years rather than rotating for each meeting received support. It was noted that the proposed model should not be seen as self-limiting, and that after the COAT was established it could adopt other forms in light of its experience.

The formation of a proactive body was generally supported by the meeting. The COAT's objectives (when finalised) should form part of the business plan to guide its operation.

The proposal that membership of the national body should be restricted to tribunal presiding officers and the heads of State and Territory chapters was supported. The meeting noted that participation by tribunal members would be encouraged through the State and Territory chapters.

Item 3(b) COAT Paper 3 Objectives of the Council

The meeting noted the draft Statement of Objects included in the discussion paper, but considered that the final Statement of Objects would need to be amended to reflect the range of issues discussed at the meeting. As the operational and legislative requirements for tribunals differ, expanding the objects the COAT would also accommodate the diversity of member tribunals.

It was also suggested that the COAT might extend its objectives to providing advice to governments on tribunal requirements and legislation.

The meeting agreed that it was important for one of the COAT's objects to include networking and liaising with international or similar domestic bodies as one of its objectives.

Item 3(c) COAT Paper 4 Eligibility for Membership

The meeting discussed how broadly the COAT should define its membership criteria eg. should bodies such as Ombudsmen (including industry ombudsmen), which have some determination or grievance resolution functions, be included.

Discussions noted that there were a number of options for defining eligibility of the COAT, including limiting membership to 'administrative' tribunals. However, this would exclude tribunals that hear *inter partes* disputes. Similarly, restricting membership to review tribunals would exclude those that hear first instance matters and could overemphasise Commonwealth tribunals, as State and Territory tribunals (including large tribunals such as VCAT and ADT) have both civil and administrative functions.

The functions of some agencies, for example the Office of Film and Literature Classification Board and Classification Review Board, might not fit neatly into any common definition of 'tribunal'. However, such bodies could still derive some benefit from membership of the COAT.

While a broad definition has its advantages, support was expressed for limiting the COAT to statutory tribunals. However, discussions also noted that this would not include bodies such as professional disciplinary boards or sporting tribunals. Accordingly, there might be some exceptions where non-statutory tribunals should be granted membership, or possibly observer status. This could also prevent the COAT from losing its focus through becoming too broadly based.

Identifying the COAT's objectives will then inform decisions about what its membership criteria might be. It is likely that the majority of the activities that the COAT undertakes will only be of interest to statutory tribunals. However non-statutory tribunals or other 'marginal' bodies could still derive benefit from access to COAT information, through its website, training programs and participation in State and Territory chapters.

The meeting noted the difficulty in identifying relevant tribunals (even if confined to statutory tribunals). A more comprehensive listing might be facilitated by seeking registration of interest in membership.

As the state of knowledge of what tribunals exist is incomplete, it was felt that the steering committee could deal with the question of how to get the COAT up and running, including the issue of membership.

The group also noted that before the issue of membership can be settled, there is a need to know what the new council is intended to achieve. Accordingly, it was agreed that the steering group would need to present further views on membership criteria after identifying the objectives of the COAT.

Item 3(d) COAT Paper 5 Funding

Various funding options were considered (see below). However, the meeting considered that the COAT should initially be set up as a body that is sufficiently flexible and able to evolve according to its members needs. The meeting considered that clarification of the Statement of Objects and work towards a first meeting of the COAT could be achieved by establishing a Steering Group. The ARC secretariat would continue to provide some administrative support up to the inaugural meeting of the COAT.

While the proposal outlined in the paper would allow an effective, workable and active COAT to be established early, it should not be seen as a limit and in the longer term the COAT should work towards establishing a permanent secretariat with a source of funding. It was acknowledged, however, that there would be political and procedural issues to be resolved in pursuing this model.

Similarly, discussion covered whether levying a small membership fee was feasible. A membership fee could cover the cost of employing secretariat staff for the COAT if membership of the body was large.

It was noted that the AIJA was initially established without a funded secretariat and continued without funding for six years. This allowed the organisation to establish itself and identify its own needs and aims before putting the case for funding.

Item 3(e) COAT Paper 6 Management of the COAT, Chair, Executive Committee and Secretariat

The meeting noted the paper.

Item 4 COAT Paper 7 The Inaugural Meeting of the COAT

It was agreed that a Steering Group should be established to develop the proposal further. The Steering Group comprises :

- The Hon Justice Deirdre O'Connor (Chair of the Steering Group)
President, Administrative Appeals Tribunal
- The Hon Justice Murray Kellam
President, Victorian Civil and Administrative Appeals
- Mrs Wendy Cull
Chairperson, Queensland Building Tribunal
- Mr Barry Cotterell
Chairperson, Property Agents and Motor Dealers Tribunal
- Mr Keith Chapman
President, WA Guardianship and Administration Board
- Justice Kevin O'Connor*
President, NSW Administrative Decisions Tribunal

It was agreed that the Steering Group should consider options for an inaugural meeting of the COAT at the next AIJA conference to be held in July 2002.

Item 5 Other Business

There was no other business.

The meeting closed at 12pm.

* Mr Gary Byron, Executive Director of the Social Security Appeals Tribunal, was nominated for membership of the steering group at the 3 October meeting. Mr Byron subsequently resigned from the SSAT and withdrew from the steering group. Justice Kevin O'Connor joined the steering group after being nominated by Justice Kellam at a steering group meeting of 14 November.

**Record of Attendance at Meeting to Discuss a Council of Australian Tribunals, 3
October 2001, NSW Parliament House, Sydney**

<p>Ms Marion Brown Deputy President NSW Guardianship Tribunal 2A Rowntree Street Locked Bag 9 BALMAIN NSW 2041</p>	<p>Ms Patricia Lynch Senior Chairperson Government and Related Employees Tribunal Level 4, 55 Market Street SYDNEY NSW 2000</p>
<p>The Hon Justice Kellam President Victorian Civil & Administrative Tribunal 55 King Street MELBOURNE VIC 3000</p>	<p>Mr Graham McDonald Chairperson Superannuation Complaints Tribunal Level 8, 60 Collins Street MELBOURNE VIC 3000</p>
<p>Mr Keith Chapman President Guardianship & Administration Board PO Box 6127 EAST PERTH WA 6892</p>	<p>Mrs Wendy Cull Chairperson Queensland Building Tribunal GPO Box 2469 BRISBANE QLD 4001</p>
<p>Mr John Holmes Director Professional Services Review PO Box 136 YARRALUMLA ACT 2600</p>	<p>The Hon Justice Deirdre O'Connor President Administrative Appeals Tribunal (Cth) Level 7, 55 Market Street SYDNEY NSW 2000</p>
<p>The Hon Justice Kevin O'Connor President Administrative Decisions Tribunal Level 15, St James Centre 111 Elizabeth Street SYDNEY NSW 2000</p>	<p>Mr John Lesser President Mental Health Review Board of Victoria Level 30, Marland House 570 Bourke Street MELBOURNE VIC 3000</p>
<p>Mr Michael Peedom President Administrative Appeals Tribunal (ACT) GPO Box 9955 CANBERRA ACT 2601</p>	<p>Mr Derek Cassidy QC Chair Medicare Participation Review Committee PO Box 1001 TUGGERANONG ACT 2901</p>

<p>Mr Steve Karas Principal Member Migration Review Tribunal Level 1, Colombia House 101 Northbourne Avenue TURNER ACT 2612</p> <p>Dr Tom Parry Chairman Independent Pricing & Regulatory Tribunal of NSW Level 2, 44 Market Street SYDNEY NSW 2000</p> <p>Mr Jim Cox Member Independent Pricing & Regulatory Tribunal of NSW Level 2, 44 Market Street SYDNEY NSW 2000</p> <p>Mr Steve Rosier Secretary Greyhound Racing Authority 16-18 Bridge Street LIDCOMBE NSW 2141</p> <p>Mr Des Clark Director Classification Board Locked Bag 3 HAYMARKET NSW 1240</p> <p>Mr Jonathon O'Dea A/g Convenor Classification Review Board Locked Bag 3 HAYMARKET NSW 1240</p> <p>Mr Duncan Chappel President Mental Health Review Tribunal The Priory, Salter Street GLADESVILLE NSW 2111</p>	<p>Ms Joanna Palser General Manager Vocational Training Board NSW Vocational Accreditation Board NSW Department of Education and Training (NSW) Locked Bag 1131 DARLINGHURST NSW 1300</p> <p>Brigadier Bill Rolfe (ret'd) Principal Member Veterans' Review Board 10th Floor Woden Tower 13 Keltie St WODEN ACT 2606</p> <p>Mr Barry Cotterell Chairperson Property Agents & Motor Dealers Tribunal Retirement Villages Tribunal GPO Box 2469 BRISBANE QLD 4001</p> <p>Mrs Jennifer Stuckey-Clarke Member National Native Title Tribunal GPO Box 9973 SYDNEY NSW 2001</p> <p>Mr John Collins Director, National Operations Social Security Appeals Tribunal GPO Box 9943 MELBOURNE VIC 3001</p>
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**Opening by the Commonwealth Attorney-General
the Hon Daryl Williams AM QC MP**

Council of Australian Tribunals

Meeting of Tribunal Heads

Jubilee Room, NSW Parliament House, Sydney

10:20am, Wednesday 3 October 2001

Introduction

1. The proposal to establish a Council of Australian Tribunals is not a new one. It has been recommended by both the Administrative Review Council and the Australian Law Reform Commission.
2. However, for such a council to be established, it must be supported by the tribunals themselves.
This meeting will provide you, the heads of tribunals, with the opportunity to discuss the establishment of a council and to comment on the ARC's model.
3. I strongly support the proposed Council.
And I have written to my Commonwealth, State and Territory Ministerial colleagues seeking their support for it.
4. Such a coordinating body has worked very effectively for the courts, through the Council of Chief Justices, and I can see it working equally well for tribunals.
5. The Council will provide tribunal leaders with the opportunity to promote and discuss their experiences and to develop new practices in a national forum.
Preliminary discussions between tribunals and the ARC indicate that there is considerable support for the proposal.
This support is demonstrated by the level of representation from tribunals. I am particularly pleased that tribunals from interstate are represented here today, given the difficulties of travel at the moment.
6. I note that even some of my fellow Western Australians have managed to make it.

The proposal

7. Given that the purpose of the Council is to identify common interests, it is proposed that it would operate with little formality.
8. The model has been developed after consultation between the ARC and tribunal members.
How it develops will be a matter for you to determine.
9. The Council will allow a broad range of tribunals to share ideas and develop networks.
This is a recognition that tribunals share many of the same interests and concerns, even though they exercise many different roles and functions. And that it is important to foster a sense of professional cohesion and cooperative interaction between them.

What will the Council's functions be?

10. It is hoped that the Council will provide a national forum for tribunal leaders.
11. The Council would serve as a network for the dissemination of information and exchange ideas.

Tribunals could develop best practice or model procedural rules based on collective experience of what works.

The Council could assist in the development of standards of behaviour and conduct for members.

It could increase the capacity for the training and support of members.

And it could also contribute to the development of performance standards.

12. I am pleased that the Council will also encourage discussion and liaison between tribunal members through the State and Territory chapters. These chapters will provide an opportunity for local tribunal members to share experiences and views about developments in administrative decision making.

This can only serve to improve the overall standard of tribunal performance.

13. I envisage that the Council will provide a much needed support network for members, particularly those from smaller tribunals, in what is often described as a lonely and difficult office.

Conclusion

14. The Australian administrative review system is changing dramatically in many jurisdictions.

15. In these circumstances, it is important that tribunals have access to resources to help them adapt to changing practices and new technology.

16. Although the heads of major Commonwealth merits review tribunals already meet on a regular basis, I believe a more broadly based national council has great merit.

It will encourage Commonwealth, State and Territory tribunals to exchange views and experiences more widely.

This will have a beneficial impact for the administrative justice system by providing another source of information and advice to governments, tribunals and tribunal members.

17. I would like to thank the ARC for its role in bringing the proposal to this position.

But I do note that if the Council is to develop and be a body which tribunals and members find valuable, it will be through the efforts and participation of the tribunals themselves.

18. So it is over to you.

19. I wish you well in your deliberations and look forward to hearing of the outcomes.