
From: SACAT Governance
Sent: Monday, 25 March 2024 10:26 AM
Subject: COAT SA News - March 2024 (Issue 21)

OFFICIAL



**March 2024
Issue 21**

Message from the Convenor

Dear everyone

A belated happy new year, and welcome to our first newsletter for 2024. We are planning to circulate a newsletter to COAT SA members quarterly this year but may send bulletins as well if there is anything urgent to let you know about.

We have a number of events scheduled for 2024 and there is more detail about them below, but in brief they are: a seminar on ethics for Tribunal members in May; a seminar about the new Administrative Review Tribunal; a drinks function (which will be combined with our AGM) and a full day seminar about Family Violence.

Our newsletter will cover a number of topics including recent decisions of interest; links to useful resources and information; information about employment opportunities and legislative changes of general interest.

If you have any information you would like us to include in the newsletter, please let us know. If there is anything else COAT SA can be doing to support you as a Tribunal member, please get in touch with us.

Kind regards

Barbie Johns

On behalf of the COAT SA committee

Upcoming Events

Ethical Dilemmas and Tribunals – 14 May 2024

Margaret Castles of Adelaide Law School will facilitate a presentation on Ethical Dilemmas and Tribunals. Margaret is an experienced legal practitioner, academic and tribunal member, and she has taught, researched and published in areas relating to legal ethics for 30 years.

She will present an interactive workshop based on ethical questions, dilemmas and scenarios arising in Tribunal practice.

Please send in any questions, dilemmas and scenarios you would like addressed at this workshop to: governance@sacat.sa.gov.au. They will all be sent to Margaret who will address them in her presentation.

This presentation will be held on **14 May 2024 at the SACAT offices** - further details will be circulated by separate email shortly.

COAT 2024 National Conference

The 2024 COAT National Conference which will be hosted as a hybrid in-person and online event on 6-7 June 2024, in the city of Brisbane.

The theme for the conference is “That’s a good tip ... I can use that” and aims to provide delegates with practical ideas that will help them discharge their day-to-day functions.

You can find out more at: [COAT National Conference \(coatconference.com.au\)](https://coatconference.com.au)

Family Violence Training – Friday 29 November 2024 (Save the Date!)

The National Judicial College of Australia will be presenting its speciality program on Family Violence to COAT SA. The Training aims to assist tribunal members to build their competence in addressing and managing coercive and violent behaviour in hearings.

The full day training will be held on **Friday 29 November 2024** – further details will be released closer to the date of the training.

Resources for Tribunal Members

This section of the Newsletter aims to highlight resources which may be of interest to members. If there is a resource that is helpful in your work that you would like to share, please submit it to: governance@sacat.sa.gov.au

COAT Tribunal Case Update Bulletin

The COAT Tribunal Case Update Bulletin is a quarterly case update for members of Australasian Tribunals focusing on ‘tribunal craft’ and the procedural and ethical aspects of tribunal practice, together with the associated knowledge and skills, that are relevant tribunal members.

The Bulletin is an excellent resource for tribunal members and includes cases from around Australia decided by the courts on review or appeal from a tribunal, together with first instance tribunal decisions and decisions from tribunal appeal divisions. You can access the current issue and back catalogue (and subscribe) at: [Bulletin - Council of Australian Tribunals Inc \(coat.asn.au\)](http://Bulletin - Council of Australian Tribunals Inc (coat.asn.au))

NCAT Appeal Panel Decisions Digest

The NCAT Appeal Panel Decisions Digest provides monthly summaries of decisions of the NSW Civil and Administrative Tribunal Internal Appeal Panel. The Digest has been published regularly since 2015 and is a wealth of useful case law. You can access the current issue and back catalogue (and subscribe) at: [Appeal Panel Decisions Digest \(nsw.gov.au\)](http://Appeal Panel Decisions Digest (nsw.gov.au))

The February Issue of the Digest includes an appeal dismissed as incompetent by way of an absence of standing (*Abraham v The Owners – Strata Plan No 61419* [2024] NSWCATAP 21); a successful appeal from a decision of NCAT on the question on whether documents sought under the summons have apparent,

as distinct from actual, relevance to the case (*Commissioner of Police, NSW Police Force v Bonkain* [2024] NSWCATAP 15); and the question as to whether “presumptive weight” should be afforded to a report where it complies with NCAT’s procedural directions (*Shakiri v Holland* [2024] NSWCATAP 28).

Australian Administrative Law Bulletin published by Lexis Nexis

The Australian Administrative Law Bulletin is an excellent resource focused on the Commonwealth administrative review system. The Bulletin provides updates on Federal legislative developments as well as case summaries of recent AAT, High Court, Federal and Supreme Court decisions as they relate to administrative law. The Bulletin is regularly updated, with new issues released approximately every two months.

The Australian Administrative Law Bulletin is available online through LexisNexis.

Job Opportunities

Administrative Review Tribunal – Recruitment of the Chief Executive Officer and Principal Registrar

The Australian Government has commenced the search for the dual role of Chief Executive Officer and Principal Registrar of the new Administrative Review Tribunal (ART), the body that will replace the Administrative Appeals Tribunal (AAT).

The Chief Executive Officer and Principal Registrar will be pivotal in establishing the ART, finalising the transition from the AAT and setting up the new Tribunal for long-term success. The successful candidate will lead with integrity and promote a safe, respectful and inclusive workplace culture.

[Information about the Chief Executive Officer and Principal Registrar position and how to apply](#) is available on the Attorney-General’s Department website.

Applications close: Tuesday 2 April 2024.

NSW Civil and Administrative Tribunal - Deputy President and Division Head Recruitment

The Attorney-General is seeking applications from qualified persons for appointment to NCAT as a full-time Deputy President and Division Head of the Consumer and Commercial Division.

Applicants must be either current or former judicial officers or Australian lawyers of at least seven years' standing.

Information about the role can be found on the 'I Work for NSW' website: [Deputy President and Division Head - Consumer and Commercial Division - NSW Civil and Administrative Tribunal](#)

Applications close: Monday 1 April 2024.

Cases of Interest

Marian Nedza v Return to Work Corporation of South Australia **[\[2023\] SAET 103](#)**

Alternative Dispute Resolution and Enforceability

This is a decision of the South Australian Employment Tribunal on a preliminary question as to whether to dismiss proceedings on the basis that a binding resolution had been achieved at a conciliation conference. Part of the negotiated outcome at conference was that consent orders and deed of release were to be prepared; those documents were never executed by the applicant. The parties disagreed as to whether a binding resolution had been reached at conference.

The Tribunal held that a binding agreement had been reached at the conference and dismissed the proceedings, finding that:

- the use of the term “in principle” is not necessarily inconsistent with a binding agreement.
- there were no substantive terms remaining to be agreed.
- a reasonable person would believe a final agreement had been reached at conciliation.

GM v Department of Human Services [\[2024\] SASC 23](#)

Specialist Tribunal / Specialist Knowledge

This is an application for permission to appeal a decision of the South Australian Civil and Administrative Tribunal (SACAT) to affirm a decision to issue a prohibition notice to the appellant under s 32 of the *Child Safety (Prohibited Persons) Act 2016* (CSPP Act). On the question of leave to appeal, the respondent asserted that granting leave would undermine the legislative intent of the *South Australian Civil and Administrative Tribunal Act 2013* (SACAT Act) and CSPP Act insofar as proceedings should be dealt with by SACAT as a specialist Tribunal. The appellant argued that SACAT operates in many fields reviewing decisions of a range of government activities amongst other things and therefore, is not a specialist tribunal. The Court:

- rejected the appellant's argument which asserted that the Senior Member who made the decision lacked specialist knowledge and noted that it was inappropriate for the Court to scrutinise the subject matter expertise and experience of individual SACAT Members.
- noted that emphasis must be on the nature of the body undertaking the review function and not the individual member.
- rejected the contention that SACAT is not a specialist tribunal for the purposes of the CSPP as Parliament had plainly intended SACAT to be a specialist tribunal for the purposes of the statutory scheme enacted under both the SACAT Act and the CSPP Act.

Ultimately, permission to appeal was granted on a separate issue of principle that was reasonably arguable, but the 17 appeal grounds were dismissed.

NDBR v Minister for Immigration, Citizenship and Multicultural Affairs [\[2024\] FCA 168](#)

Procedural fairness and accommodation of cognitive impairments in Tribunal proceedings

This was a review of a decision of the Administrative Appeals Tribunal where the primary ground of appeal was that the Tribunal had denied the applicant procedural fairness as a result of failing to adhere to the neuropsychologist's recommendations and its own directions about the manner in which the hearing was to be conducted. The Federal Court found that:

- while procedural fairness does not generally require a party to provide advance notice of topics of cross-examination to a witness, the specific

cognitive impairments of the applicant required that the applicant be provided with advance notice of the material to which he would be taken in cross-examination.

- the late provision of that advance notice (on the morning of hearing) was insufficient to avoid practical unfairness to the applicant.
- the Minister's failure to act as a model litigant by failing to provide relevant page numbers in a timely manner and by asking questions that exceeded the length recommended by the neuropsychologist, together with the fact that the Tribunal recognised these failures but set them to one side, resulted in a hearing that was procedurally unfair.
- the Tribunal pressed ahead with determining the application, despite acknowledging the Minister's failure to comply with either the neuropsychologist's report or the Tribunal's directions and that in doing so, the applicant was deprived of an opportunity to present his case in a way which may have allowed him to overcome the barriers caused by his cognitive impairment.

Having determined that the Tribunal denied the applicant procedural fairness in the conduct of the hearing, the Court set aside its decision and remitted the application to be re-heard and determined according to law.

Child Support Registrar v CMU23 [\[2024\] FCA 109](#)

“Convoluting and Byzantine” legislative provisions and the rule of law

This is an appeal of a decision of the Administrative Appeals Tribunal on a question of law on the proper construction of s 53(1)(c) of the *Child Support (Assessment) Act 1989* (Cth). The Federal Court made the following observations in considering the question of law:

- that the “elegant simplicity” of the like clause in the former *Matrimonial Causes Act 1959-1976* (Cth) stood in “marked contrast to the convoluted and Byzantine provisions which have, for some reason or other, commended themselves to Parliament and are presently found in the Assessment Act”.
- the rule of law is put in jeopardy when legislation becomes so complex as not readily to admit of administration by ordinary, good, honest civil servants, or ready comprehension by ordinary Australians of average intelligence.

- it was apparent from the Tribunal's reasons that the Tribunal perceived an anomaly or absurdity in the text of s 53(1)(c), so that it was open, under the principles of statutory construction, to imply or supply particular additional words into that provision.
- however, there was no certainty of the kind required by the authorities as to what language needed to be supplied to address any gap of the kind apprehended by the Tribunal.

The appeal was allowed and the matter remitted was to the Tribunal for further review according to law.

Legislative Update

Federal Administrative Review Reforms

Legislation to reform Australia's system of administrative review has now passed the House of Representatives with additional enhancements to strengthen the new Administrative Review Tribunal (ART) and its merits-based appointment process. The Bills will abolish the Administrative Appeals Tribunal (AAT) and replace it with the ART.

The Bills establish a new Tribunal with the objective of providing independent administrative review that:

- is fair and just
- resolves applications in a timely manner, and with as little formality and expense as is consistent with reaching the correct or preferable decision
- is accessible and responsive to the diverse needs of parties
- improves the transparency and quality of government decision making
- promotes public trust and confidence in the ART.

You can read more about the reforms: [Landmark administrative review reforms pass the House | Our ministers – Attorney-General's portfolio \(ag.gov.au\)](#)

Statutes Amendment (South Australian Employment Tribunal) Bill 2024

Following a review of the South Australian Employment Tribunal the Statutes Amendment (South Australian Employment Tribunal) Bill has been introduced to State Parliament in February 2024. The Bill aims to improve the practices and jurisdictions of the Tribunal and proposes amendments to the *Equal Opportunity Act 1984*, the *Fair Work Act 1994*, the *Magistrates Court Act 1991*, the *South Australian Employment Tribunal Act 2014* and the *Work Health and Safety Act 2012*.

The introduction of this Bill follows consultation on draft legislation last year, as well as the Attorney-General's Department inviting feedback on the practice and jurisdiction of SAET in late 2022.

You can view the Bill at: [Statutes Amendment \(South Australian Employment Tribunal\) Bill 2024 \(legislation.sa.gov.au\)](https://legislation.sa.gov.au)

Residential Tenancies (Miscellaneous) Amendment Act 2023

New rental laws have been passed by the Parliament of South Australia to improve protections for tenants while balancing the rights of landlords – the reforms include significant changes to the jurisdiction of the South Australian Civil and Administrative Tribunal.

The first phase of amendments are rental reforms that do not require significant adjustments to industry or community practices, these include: ensuring rent can't be increased more than once within 12 months, even when mutually agreed during the lease; creating new penalties for existing offences including and increasing penalties for certain offences including; and clarifying that landlords can't unreasonably refuse tenants sub-letting rental properties and may only seek reasonable expenses arising from the sub-letting of rental properties.

Further items will have commencement dates for later in 2024 - these require transitional arrangements, prescribed regulations and industry preparations.

You can find out more at: [Review of SA's renting laws | Consumer and Business Services \(cbs.sa.gov.au\)](https://cbs.sa.gov.au)

Commonwealth Ombudsman Reports

In the last 12 months the Commonwealth Ombudsman has published two reports in relation to income apportionment which may be of interest to COAT SA Members:

- [Lessons in lawfulness](#): Own motion investigation into Services Australia's and the Department of Social Services' response to the question of the lawfulness of income apportionment before 7 December 2020.
- [Accountability in Action](#): identifying, owning and fixing errors Services Australia and the Department of Social Services' Response to addressing the impacts of unlawful income apportionment.



Your COAT SA Committee

Barbara Johns (Convenor); Anne Lindsay (Vice-Convenor); Peter Kassapidis (Treasurer); Elle Spyrou (Secretary); Brenton Illingworth; Marten Kennedy; Kath McEvoy; Jodie Carrel; Kate Millar

Something to share?

Do you have something to share across COAT SA? Let us know for the next newsletter at governance@sacat.sa.gov.au