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OFFICIAL



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Convenor's Report

2024 so far ...

Dear all

Our COAT SA Committee has met a number of times this year to ensure that our programme for the year continues smoothly. You will have noticed the new format of newsletters on a roughly quarterly basis, but Bulletins being sent on an ad hoc basis to inform you about issues which we think need to be brought to your attention quickly. I hope this is working well for you.

His Honour Justice Kyrrou presented a session in April, entitled **Key Features of the new Administrative Review Tribunal**, which was well attended and informative. We are particularly grateful to His Honour for changing his travel plans so that he was able to present to our group.

There were many aspects of His Honour's presentation which were interesting and so I will only mention a couple.

The obligation to publish decisions concerning a significant issue of law or a significant policy consideration is a reminder to us all that this function is important in providing accessibility to the public of the important role of tribunals.

It was also pleasing to hear of the merit based selection process for the appointment of all non-judicial members of the ART. Such an approach is a measure of the independence of a Tribunal and one of the eight areas of excellence contained in the Tribunal Excellence Framework (see: the [Australian and New Zealand Tribunal Excellence Framework](#), published on the COAT National website).

Of course, the COAT National conference was held on Thursday 6 June and Friday 7 June 2024. We were very pleased to be able to provide financial support for three members to attend on-line. I also participated on-line, and I was impressed at how straightforward that was.

I have had some positive feedback about a number of the sessions in particular, the sessions about AI and the session concerning Communicating with First Nations people. It is always good to hear what has been particularly useful, as those sessions can sometimes be the basis of a seminar we can offer here, and so please let us know your thoughts.

You will find a couple of "Save the Dates" later in the newsletter, for an ethics seminar in August and a full day seminar about Family Violence in November. We have also scheduled an opportunity to catch up between those dates.

Thanks for your support and I look forward to seeing some of you at those events.

A particular thankyou to Elle Spyrou who has put in a significant amount of work with bulletins and newsletters.

Barbie Johns

COAT SA Convenor

On behalf of the COAT SA committee

Upcoming Events

Ethical Dilemmas and Tribunals – 6 August 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.

This presentation will be held on 6 August 2024 at the SACAT offices - further details will be circulated shortly.

2024 COAT NSW Conference

The 2024 COAT NSW Conference will be held as an in-person only event on Friday 11 October 2024 at the Pullman Hotel on Hyde Park in Sydney.

This year's conference: ***Back Together – Back to Basics***, will involve a mix of topics designed to enhance the knowledge and skills relevant to anyone working in tribunals. The program will include sessions designed for newly appointed members as well as sessions of interest to non-legal members of tribunals and those in management roles.

You can find out more at: [2024 COAT NSW Conference – conferences.com.au](https://conferences.com.au)

Annual General Meeting and Drinks Function – October 2024

The COAT SA Annual General Meeting will be held separately together with a drinks function at SAET in October with a date to be confirmed.

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 matters which involve coercive and violent behaviour.

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

June - December COAT Training Courses

COAT offers a range of training programs for Tribunal Members. From June to December the following courses will be available:

- Induction program
- Introduction to Decision Writing
- Advanced Decision Writing

Each program has been tailored to address specific challenges in tribunal work and will offer practical guidance on carrying out the challenging role of a tribunal member. Click [here](#) for more information.

Administrative Review Tribunal National Seminar Series

The **Law Council of Australia** is holding the Administrative Review Tribunal National Seminar Series, presented by its Federal Dispute Resolution Section.

The Adelaide Seminar will be held on Tuesday, 2 July from 4:30pm - 6:30pm at the Law Society of South Australia.

The session will include a 1 hour presentation, followed by a 30 minute Q & A segment. For more information, please visit: [Administrative Tribunal Review National Seminar Series \(eventsair.com\)](http://eventsair.com)

Reflections on COAT National Conference

Following a successful Ballot process, COAT SA were able to support three of its members to attend COAT National Conference online this year. The attendees have provided their reflections on a particularly useful or interesting aspect of the conference below:

Keynote Address – Top Tips – Chief Justice Helen Bowskill, Queensland Supreme Court

Grace McLean, Legal Officer, SACAT

The most beneficial and interesting session that I attended as a part of the COAT National Conference was the Chief Justice's Keynote Address about her Honour's top tips. I found her Honour's presentation to be a reflective and candid discussion of the pressures experienced by decision-makers. Although not directly relevant to my role, I found it to be an insightful perspective on the role

of a decision-maker, particularly in relation to judgment or decision writing. Further, there were a number of tips in relation to approaching stressful tasks and caring for your wellbeing in the workplace that I thought were applicable regardless of position and that I will apply in my own work going forward.

AI beyond the hype: The good, the bad, and the practical ; A values orientated guide to the use of AI in tribunals

Marie Alvino, Senior Member, SACAT

Dr Sandra Peter (Associate Professor University of Sydney), Professor Kai Riemer (Professor of IT and Organisation, University of Sydney) and Lyria Bennett-Moses (Faculty of Law and Justice, University of New South Wales Sydney) delivered an insightful presentations on the practical application of artificial intelligence (AI) in Courts and Tribunals and the potential of AI to reshape and transform legal processes.

The presenters spoke of the various applications of AI within the legal system such as technology-assisted review, automated dispute resolution, prediction of outcomes, and AI-supported legal research. The concept of "Rules as Code", that is making legislative rules machine-readable to improve transparency, consistency, and compliance, was also considered.

In addition, the ethical and practical implications of AI in judicial settings were discussed, namely, the need for maintaining integrity, fairness, and public trust. It was interesting to learn that the implementation of AI systems in the law still faces many hurdles. For example, AI may unintentionally result in biases in decision-making and stakeholders may need to be consulted on the use of AI technology before it is utilised.

The key takeaway was that AI could be used responsibly and effectively in Tribunals in the not-so-distant future!

Keynote address – Top Tips: Chief Justice Helen Bowskill – Without Fear, Favour or Affection

Kath McEvoy, Senior Member, SACAT

Chief Justice Bowskill presented her “top tips” about managing the essential aspects of judicial (and tribunal) functions around the words of the judicial oath – “without fear, favour, or affection”. While the standard and core understanding of these words which underpin the exercise of all judicial functions (and remembering that tribunal members have a duty to act judicially) are clear, Chief Justice Bowskill also extrapolated from the general meaning, applying them to

other aspects of the judicial role. “Without fear” means acting independently, but also encompasses bravery and courage and freedom, especially in the context of decision making; “without favour” addresses impartiality, but extends also to kindness and appropriate conduct; and “without affection” also includes an affection – love - for the work of judicial office.

The Chief Justice focussed on producing reasons, and the conduct of hearings, as central to the judicial role. She recognised that producing reasons – the need to do so, the piling up of reserved decisions, finding time, overcoming delay - is probably the most stressful aspect of judicial life. She suggested three mantras and one rule, and how they work for her: Perfect is good: done is better; The ship must sail; and Start Writing! Start writing as soon as possible; get onto reserved decisions as soon as possible; keep a comprehensive “to do” list, and review and update it regularly; have trusted colleagues to sound ideas with; and speak up about difficulties, especially to tribunal leaders.

Applying the judicial oath principles, she suggested that fear (or anxiety) may inhibit the production of reasons. She counselled that it was important for the judicial role to be taken on fearlessly, to be fearless in approach, conducting judicial/tribunal work without fear of failure, being wrong, being subject to criticism or being overturned on appeal. In particular there should be no fear of “getting it wrong”: this is an inevitable aspect of our roles as decision makers, is accommodated by appeal and review processes, and we should do our best, without fear. “Without favour” she extended to including the need to be kind, in both the conduct of hearings and in what is included in reasons: courtesy and civility are essential attributes of the judicial role, as is restraint. Lawyers and court/tribunal staff are at their workplace in hearing rooms, and all workplaces should be free of abuse and bullying, which undermine their confidence and capacity to work at their best, and diminishes public trust in the judicial system.

Judicial restraint should also be embraced to avoid any appearance of bias. Courtesy and politeness, and kindness, should also be reflected in decisions: any unnecessary personal judgement, especially negative judgement, should be avoided so as not to cause unnecessary hurt, both in a hearing and in a decision. On “affection”, the Chief Justice suggested that it was important to find a way to love the job, as a key to fearlessness and authenticity.

A values-oriented guide to the use of AI in Tribunals (Professor Lyria Bennett Moses, UNSW)

Kath McEvoy, Senior Member, SACAT

Professor Moses' presentation was based on the AIJA commissioned report AI: Decision Making and the Courts (see Tribunal Resources below for more information).

She referred to the core values of the judicial system: open justice; accountability and independence; independence and equality; procedural fairness; access to justice; and efficiency. In considering if these core values are met through the use of AI in the tribunal system, both output and outcome must be considered: what you get (say, quick output of orders or decisions), as opposed to the broader outcomes sought or needed, such as learning, confidence in the tribunal. The latter might not be achieved if the public thinks there is no human exercising or overseeing judgement or decision making. Efficiency, she concluded, might be effectively provided by AI, but it doesn't trump everything.

Professor Moses referred to instances where AI has been used to set up schemes to administer legislation: Robodebt is perhaps the most notorious. It illustrates the problems policy makers have in instructing software developers. Neither party understood the other's language, and lacked the skills to interpret it, and the policy makers could not interpret the coding provided to assess whether it correctly implemented their instructions or the legislative requirements. Coding itself cannot manage many features of legislation: for example, "reasonable" discretion cannot be duplicated in code, which requires (for example) precise measurements of time.

Can AI be utilised to produce decisions? Professor Moses suggested caution. AI decisions will be probability text generated, on the basis of manipulating numbers, not from a position of understanding, and even without understanding, text will be generated. Careful checking will always be required, and "reverse checking" will not always be possible. The role of AI is the mimic rather than think, so it can easily go down wrong paths. The consequence is, although there may be an efficient output (the decision is done quickly), it might be wrong or inadequate. The additional issue here is, do we (tribunals, and the public they serve) want mimicry of legal reasoning, or do we want actual legal reasoning?

Professor Moses suggested there are good uses for AI in courts and tribunals: these include transcription, translation, providing information, summarising research, creating summaries of documents and identifying relevant or central parts of documents, and producing chronologies. These are significantly important uses of AI, enabling a massive increase in efficiency and access, more quickly and at less cost.

However, the use of AI in relation to decision writing is far more problematic, as AI is not able to duplicate the actual thought or reasoning process. Even if the output of AI judgment writing was acceptable, there are broader outcomes to consider in terms of the role of courts and tribunals: open justice and natural justice; how “deep fakes” may impact; issues of bias (the inbuilt embedded bias of software, for example in terms of gender and racial assumptions), raising questions such as where the information and the conclusion in the decision comes from; and that the decision is made by some other undisclosed agency. These issues raise questions of transparency and accountability.

Resources for Tribunal Members

COAT SA Resources

Members are reminded that COAT SA maintains a suite of useful resources from its seminars (including speaking notes, papers and recordings).

Most recently, Justice Kyrou (President of the AAT) presented to COAT SA on the *Key Features of the new Administrative Review Tribunal*.

A recording of the session and paper are available to COAT SA Members – if you would like to access these resources, please email governance@sacat.sa.gov.au.

SACAT Annotated Legislation

Deane Jarvis, former Deputy President of the Administrative Appeals Tribunal has recently published, through Lexis Nexis, an *annotated South Australian Civil and Administrative Act 2013* and subordinate legislation as a hard copy booklet. The annotated SACAT legislation is also accessible online, available through Lexis Advance.

It is intended that the annotations to the SACAT Act and subordinate legislation will assist lawyers, members, staff, Tribunal users and academics to be better informed about the role and functions of SACAT. Deane advises that he will continue to refine, update and expand the annotations for inclusion in the online and paper versions of Civil Procedure SA.

SACAT recently held a book launch for the annotated SACAT Act to coincide with its 9th birthday – speakers included SACAT President Justice Judy Hughes and the Attorney-General, the Hon Kyam Maher MLC.

AI Decision-Making and the Courts: a guide for Judges, Tribunal Members and Court Administrators (AIJA)

The Australasian Institute of Judicial Administration (AIJA) has published a comprehensive Report aimed at assisting judges, tribunal members and courts administrators in understanding and utilising artificial intelligence (AI) and automated decision-making tools in judicial decision making. The Report covers common AI terms and tools, areas of AI use in courts and tribunals and the impact of AI tools on core judicial values. The Report is accessible for free online on the AIJA website: [AI Decision-Making and the Courts: a guide for Judges, Tribunal Members and Court Administrators](#)

Judge v robot? Artificial intelligence and judicial decision-making

Continuing on the theme of AI and its impact of decision-making, the Judicial Commission of New South Wales has published a handbook for judicial officers: [Judge v robot? Artificial intelligence and judicial decision-making](#)

Legislative Update

Administrative Review Tribunal Act 2024

The Administrative Review Tribunal Bill 2024 has now been passed and received Assent on 3 June 2024. You can read about the passage of the Bill including explanatory memoranda, bill digest and second reading speeches [here](#). You can find the ART Act on the Federal Register of Legislation [here](#).

South Australian Rental Reforms

South Australia's rental laws are being updated 1 July 2024 to improve protections for renters and ensure landlords can manage properties effectively.

It's the biggest update of rental laws since they were introduced nearly 30 years ago and follows a review of the entire *Residential Tenancies Act 1995*. You can read about the changes to the RTA (including the impact on SACAT) on the

Consumer and Business Services website: [Rental reforms | Consumer and Business Services \(cbs.sa.gov.au\)](#)

South Australian Civil and Administrative Tribunal (Miscellaneous) Amendment Bill 2024

The South Australian Civil and Administrative Tribunal (Miscellaneous) Amendment Bill was introduced in Parliament on 16 May 2024 by the Attorney-General. The Bill broadens the scope of Part 3A of the SACAT Act to allow for the referral of federal matters more generally, rather than the current restriction of this part to federal diversity jurisdiction.

The Bill also amends the definition of “legally qualified member” to include members who meet the following requirements:

- hold a qualification in law (either from an Australian tertiary institution, or from a tertiary institution in a foreign country and who are duly admitted and enrolled as a barrister and solicitor of the Supreme Court); and
- have 5 years or more relevant experience in a law-related field; and
- are designated as a legally qualified member by the President of the Tribunal.

You can view the Bill [here](#).

Cases of Interest

The following case summaries from the [NCAT Appeal Panel Decisions Digest](#) may be of interest to members as they relate to Tribunal practice:

Jeray v Blue Mountains City Council [\[2024\] NSWCATAP 66](#)

An Appeal Panel refused leave to appeal from a decision of NCAT where the appellant submitted he had been denied procedural fairness. The appellant alleged NCAT had a duty to make sure he was aware of practice and procedure in relation to summonses as he was self-represented. The Appeal Panel held that the appellant here was familiar with NCAT practice and procedures having appeared before the Tribunal several times. This was insufficient to establish that a ‘practical injustice’ had occurred.

Zahan and Jubly v Aly Pty Ltd [\[2024\] NSWCATAP 55](#)

An Appeal Panel allowed an appeal from a decision of NCAT which had dismissed a claim heard by NCAT twice before. Each time proceedings were initiated the names of the parties had changed. The Appeal Panel held that the Tribunal at first instance was wrong in referring to the principles of estoppel and res judicata as interchangeable and unavailable in these circumstances. Instead, the defence of res judicata should have been available as, despite the names of the parties changing, the parties in the final set of proceedings were privy in interest to the parties mentioned in prior proceedings.

Cornucopia (Young) Pty Ltd v Ward t/as Newcastle Model Autosports and Hobbies [\[2024\] NSWCATAP 59:](#)

An Appeal Panel ordered an appellant pay the legal costs of the respondent where the appellant withdrew from its appeal four calendar days (two business days) before the appeal hearing. In making this costs decision, the Appeal Panel was not required to assess whether special circumstances were established under s 60(2) of the Civil and Administrative *Tribunal Act 2013* (NSW) (NCAT Act), as the criteria in rr 38 and 38A of the Civil and Administrative Tribunal Rules 2014 (NSW) (NCAT Rules) had been satisfied. In finding for the respondent, the Appeal Panel considered the discretionary matters in *Arambewela*, ultimately distinguishing the present matter because that case had involved withdrawal at a relatively early stage in comparison to the two business days here.

Job Opportunities

Expression of Interest for Sessional Ordinary Members of the Tasmanian Civil and Administrative Tribunal (TASCAT)

The Tasmanian Government has issued an Expression of Interest request for persons who wish to apply for sessional membership of the TASCAT. Expressions of Interest should be lodged with the Department of Justice by **5 July 2024**.

Information packages are available on the Department of Justice website [Department of Justice](#) that provides details about how to make an Expression of Interest application and the expertise the Tribunal is seeking.

Reappointments to the Administrative Appeals Tribunal

The Australian Government has made 72 reappointments to the Administrative Appeals Tribunal (AAT) including two non-judicial Deputy Presidents, 14 Senior Members and 56 Members.

Congratulations to COAT SA Committee Member Kate Millar who has been appointed as a non-judicial Deputy President of the AAT as part of these reappointments.

You can read more about the recent reappointments at: [Reappointments to the Administrative Appeals Tribunal | Our ministers – Attorney-General's portfolio \(ag.gov.au\)](#)

COAT SA Public Officer

A notice to members that COAT SA Secretary, Elle Spyrou has been appointed to the role of Public Officer.



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