



Australia and New Zealand Tribunal Excellence Framework

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If you have any comments on the Framework please
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Introduction

The role of tribunals in Australia and New Zealand

Tribunals play a fundamental role in the day to day lives of citizens, businesses and government.

The structure, jurisdiction, workload and funding mechanisms of tribunals vary widely. In Australia, there are the super tribunals such as the AAT at a federal level and VCAT, SAT, QCAT, ACAT, NCAT, SACAT and NTCAT at the state / territory level. Throughout Australia and New Zealand, there are also smaller tribunals such as the Weathertight Homes Tribunal (New Zealand), the Superannuation Complaints Tribunal (Commonwealth) or the Workcover (WA) Conciliation and Arbitration Service.

Many tribunals are entities within the overall governance of the Attorney General or Justice Departments. Other tribunals might be embedded within a government department such as health or finance. Some tribunals are co-located or share premises, staff, HR and IT resources with the agencies whose decisions they oversee.

The subject matter of their jurisdiction is also varied. Tribunals adjudicate a range of different types of disputes including:

- Civil disputes e.g. between consumers and traders, employee/unions and employers, tenants and landlords, injured person and insurer (in workers compensation or accident claims);
- Human rights e.g. discrimination, mental health and guardianship; and
- Administrative law (the citizen and the State) e.g. licensing and regulatory disputes, professional discipline, planning and the environment and freedom of information.

Most tribunals deal with people and their personal issues rather than disputes between corporations and business entities.

The workload of tribunals will also vary greatly from a tribunal which might receive a few applications a year (such as the Australian Commonwealth's National Native Title Tribunal) to a tribunal which received thousands of applications a year (such as the super tribunal VCAT which, in 2015 received close to 100,000 applications).

Whatever they look like, tribunals are an important part of the justice system in Australia and New Zealand. They provide a quick, cheap and relatively informal means of dispute resolution.

What is an excellent tribunal?
An excellent tribunal resolves disputes in a fair, accessible and efficient manner within a reasonable timeframe. When determining disputes and deciding cases, excellent tribunals interpret the law consistently, impartially and independently protecting the rights of the community the tribunal serves.

The importance of excellence

A tribunal, or perhaps more accurately the people that lead and administer it, aspire to excellence. Those that use the tribunal or the community at large would expect excellence and the Minister responsible for the ultimate delivery of a forum for dispute resolution would generally demand it.

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About the Tribunal Excellence Framework

The first task for any organisation aspiring to be excellent is to define or describe the concept of excellence to which it aspires. For tribunals, this Framework will perform that function by defining or describing what excellence is or what an excellent tribunal would look like.

The Framework is predicated on Core Tribunal Values set out at page 5 of this document. These shared values are embedded into the eight individual areas of measurement specified in the Framework.

The Tribunal Framework is an adaptation of the International Framework for Court Excellence, a quality management tool developed for courts and tribunals by the International Consortium for Court Excellence and launched in 2008.

The Framework provides a resource for the tribunal to assess its own performance in eight areas and it provides a model methodology for continuous evaluation and improvement of performance that is specifically designed for use by tribunals.

By assessing performance (and identifying areas for improvement), the Framework can assist tribunals to deliver the quality services essential to fulfil their critical role in society.

The Framework takes a whole of tribunal approach to achieving tribunal excellence rather than simply relying on a limited range of performance measures which only capture aspects of tribunal activity.

The International Consortium for Court Excellence

The Tribunal Framework is an adaptation of the International Framework for Court Excellence, a quality management tool developed for courts and tribunals by the International Consortium for Court Excellence and launched in 2008.

The signatories and founding members of the International Consortium for Court Excellence are:

1. The Australasian Institute of Judicial Administration
2. The Federal Judicial Center (research and education organisation for the federal judicial system of the United States)
3. The National Center for State Courts (a group providing consulting, training research and evaluation assistance to court systems in the USA and the world)
4. The State Courts of Singapore (formerly known as the Subordinate Courts of Singapore)

Assistance in developing the International Framework for Court Excellence was also provided by:

1. The European Commission for the Efficiency of Justice (CEPEJ)
2. Spring Singapore
3. The World Bank

The 2008 Framework was simplified and updated in 2013. The International Framework for Court Excellence consists of 10 core values and seven areas of court excellence, which can be assessed by each court and tribunal through a continuous improvement methodology of self-assessment (using the self-assessment questionnaire contained in the Framework), analysis, development of an Improvement Plan and review and refinement of the Improvement Plan.

The Consortium has developed significant resources to assist courts and tribunals in applying the Framework to their operations and has published material on its website www.courtexcellence.com. The consortium is active in promoting its Framework by conducting conferences and workshops.

In this document, the International Framework for Court Excellence will be referred to as the Court Framework for simplicity.

The role of COAT

The purpose of the Council of Australasian Tribunals (COAT) is set out in its constitution. COAT is established to:

1. support the work of administrative and civil tribunals and promotes excellence in administrative justice;
2. provide a forum and acts as a catalyst for discussion, education, research, policy development and law reform in the field of administrative justice;
3. promote and encourages tribunals to develop best practice models and standards of behaviour and conduct; and
4. develop and provides training material to support tribunal members.

Members of the COAT executive committee reviewed the International Framework for Court Excellence in 2012 and determined that a separate Tribunal Excellence Framework was necessary to better reflect the values and work of tribunals in Australia and New Zealand. In particular, COAT felt that there were difficulties in applying the Court Framework due to the absence of the important measure of 'Independence' – a value central to the operations of tribunals.

COAT resolved to publish its own Framework designed to assist 'any Commonwealth, State, Territory or New Zealand body whose primary function involves the determination of disputes, including administrative review, party/party disputes and disciplinary applications but which in carrying out this function is not acting as a court'.¹

The Tribunal Excellence Framework draws heavily on the International Framework for Court Excellence. COAT wishes to acknowledge the work of the International Consortium in providing a base document which we have modified and developed so that it meets the specific needs of Australasian tribunals.

Anyone seeking to understand the Tribunal Framework should first consult the [Court Framework](#) and its supporting [material](#).

Why apply the Tribunal Excellence Framework?

No tribunal is perfect and there is always scope for continuous improvement. If the Framework is applied, by completing the questionnaire and analysing the results, areas for improvement will be identified.

The results may lend credibility to the tribunal's request for appropriate funds for certain projects or to update facilities or to engage additional members or invest in new technology. A process of self-examination that is transparent and allows the tribunal to propose improvements based on objective information will lend credibility to that goal including legitimate requests for additional resources.

The results could also be used to address adverse criticism of the tribunal. For example a radio announcer might take a call from a disgruntled user of a particular tribunal, which might escalate to involve the responsible Minister. The tribunal's results on the assessment of its procedures and processes can be used to respond to that criticism and emphasise the difference between a satisfactory process as opposed to an unsatisfactory outcome.

An interesting use of the Framework is to form the outline for a tribunal's annual report. The 2015 annual report of the NSW Civil and Administrative Tribunal (NCAT) is organised into eight sections, one for each of the Framework's areas of excellence, setting out NCAT's activities and achievements in each of those areas.

Finally when a new tribunal is being considered, including a tribunal formed by the amalgamation of several existing tribunals, the Framework could form the solid foundations upon which the structure of the new entity is built.

It should never be forgotten that tribunals exist for users and not the other way round. No matter how good tribunals may be, they do not fulfil their function unless they are accessible by the people who want to use them, and unless the users receive the help they need to prepare and present their cases. Sir Andrew Legatt²

Fundamentals of Tribunal Excellence

Core Tribunal Values

COAT considers there are core values that tribunals should uphold and apply in carrying out their function of dispute resolution. The values are ...

1. Equality before the law
2. Fairness
3. Impartiality
4. Independence
5. Respect for the Law
6. Accessibility
7. Competence
8. Integrity
9. Accountability
10. Efficiency

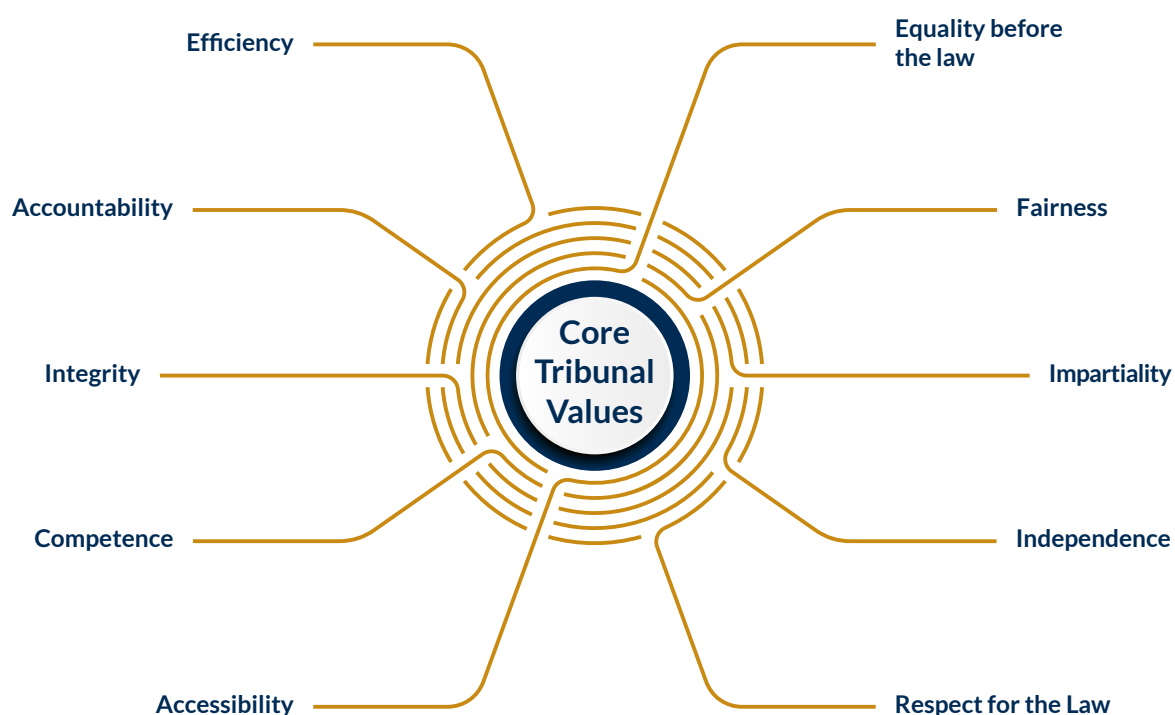
At the heart of these values is the consideration of the parties before the tribunal, or the tribunal's users.

It should never be forgotten that tribunals exist for users and not the other way round. No matter how good tribunals may be, they do not fulfil their function unless they are accessible by the people who want to use them, and unless the users receive the help they need to prepare and present their cases. Sir Andrew Legatt²

¹ Definition of 'tribunal' within the COAT constitution.

² Leggatt, A (2001) Tribunals for Users- One System, One Service, *Report of the Review of Tribunals* paragraph 6

Respect for the law and competence are important values guiding tribunal members in making decisions based solely on the application of the relevant law to the facts of the case.



These core values provide a frame of reference for the assessment of tribunal excellence. These values are similar to the core values of Courts recognised by the International Consortium for Court Excellence.

Values such as fairness and impartiality reflect the principles of procedural fairness (natural justice) and set the standard for how the tribunal should hear and determine its cases.

The value of independence was absent from the Court Framework and appears as 'independence of decision-making' in the current version of the Court Framework. Independence of the tribunal (not just independent decision-making within the tribunal) is perhaps the most important of all values for tribunals, particularly tribunals embedded within a host department or agency. While the independence of Courts is a given in any country which follows the Westminster system of the separation of powers (Parliament,

Executive and Judiciary), tribunals, as part of the Executive, have to fight hard to look and be independent from their host departments.

Respect for the law and competence are important values guiding tribunal members in making decisions based solely on the application of the relevant law to the facts of the case.

Integrity includes the transparency and propriety of the tribunal's process; the member's decision; and the decision maker, and reflects the old adage that justice must not only be done but be seen to be done.

Accessibility goes beyond the ease of obtaining physical access to the tribunal building but incorporates the ease of entry to the tribunal's processes (including for example reasonable filing fees and access to an interpreter), and a party's ability to obtain accurate and complete information about the tribunal process

To a significant extent tribunals, like other justice institutions, depend upon community support for their legitimacy and so robust and fair tribunal processes that are seen to be fair are important.

(recognising that not all parties appearing before tribunals are allowed or choose to have legal representation).

Efficiency incorporates timeliness and proportionate transaction costs. Timeliness reflects a balance between the time required to properly obtain, present and weigh the evidence, law and arguments, and unreasonable delay due to inefficient processes and insufficient resources. Proportionality is about ensuring that legal cost and other costs incurred in connection with a proceeding are reasonable and proportionate to the complexity and importance of the issues in dispute and the sum at stake.

Shared values such as fairness, impartiality, independence, transparency, efficiency and competence endorsed by tribunal members and staff become the dominant organisation culture of a tribunal.

These shared values in the eight individual areas of measurement specified in the Tribunal Excellence Framework.

One of the most important tasks for the leader of a tribunal is the promotion of shared values. It is the responsibility of that leader and all those in leadership or management positions to encourage an understanding of, and adherence to, common values such as independence, fairness, integrity and efficiency.

Tribunal Excellence

Tribunal excellence has three broad dimensions:

- predictable, just decisions;
- procedural justice; and
- the delivery of a fair and efficient dispute resolution service.

1. Predictability

Predictability is about certainty. Different tribunal members faced with the same facts should, broadly speaking, reach the same outcome. Of course tribunal decisions often involve the exercise of a discretion and on the same facts different tribunal members may legitimately reach different conclusions. But such discretions must be exercised judicially and within acceptable parameters.

A “just decision” is one based solely on the application of the relevant law to the facts of the case.

2. Procedural justice

Procedural justice includes, but is not limited to, the legal concept of natural justice or procedural fairness. It also embraces a judgment about whether a tribunal process is fair in a more abstract sense. In a review of the literature about the factors driving public and participant satisfaction with courts and tribunals, Moorhead, Sefton and Scanlan³ (2008) concluded [page 7]:

... the suggestion that satisfaction is simply dependent upon outcome, driven solely by the self-interest of each participant, and somehow an anathema to justice, is challenged by the evidence. Even losing parties may gain some satisfaction from a process which is palpably just.

In the Moorhead, Sefton and Scanlan study, “participants” included witnesses, parties and their representatives. In this document “participants” and “users” are used interchangeably.

To a significant extent tribunals, like other justice institutions, depend upon community support for their legitimacy and so robust and fair tribunal processes that are seen to be fair are important.

Satisfaction with the process of justice has been found to have a measurable effect on society as a whole. Such satisfaction contributes to the perceived legitimacy of the justice system and there is some evidence that it affects the behaviour of citizens, increasing their respect for the law. A large proportion of the public may never see the inside of a courtroom but many citizens will use a tribunal and so the processes, procedures and steps taken by the tribunal to assist its users will affect how they perceive the law and the operation of the justice system.

Measures of public and participant satisfaction with a court or tribunal are a close proxy for the value of procedural justice.

Participant and public perceptions about the fairness of process (i.e. about procedural justice) depend on a complex mix

³ Moorhead, RL; Sefton, M; Scanlan, L, (2008) *Just Satisfaction? What Drives Public and Participant Satisfaction with Courts and Tribunals* – a review of recent evidence Cardiff Law School Cardiff University

of factors. Moorhead, Sefton and Scanlan (2008) found that five process oriented factors contributed to the perception of fairness, and hence satisfaction:

- the expectations of, and information provided to, participants;
- the quality of participation granted to participants (i.e. the extent to which, and the process through which, participants are able to get their story out in a way they view as accurate and fair);
- the quality of treatment and, in particular, the respect shown to the participant during their time at the tribunal;
- issues of convenience and comfort including timeliness and efficiency; and
- judgments about tribunal members and staff – whether they were perceived as helpful and empathetic.

Delivering justice is not simply about predictable, just decisions. The parties who appear before tribunals and the community have a legitimate interest in procedural justice.

3. The delivery of a fair and efficient dispute resolution service

In addition to the delivery of predictable, just decisions and procedural justice, tribunals have an obligation to provide a fair

and efficient dispute resolution service. The service should be fair, in that it should provide access to a fair hearing.

The service should also be efficient in the sense that the tribunal is affordable and resolves disputes in an appropriate and timely way. The costs incurred by the parties and the tribunal resources allocated to a proceeding must be reasonable and proportionate to the complexity and importance of the issues and amount in dispute.

Eight areas of tribunal excellence

The values and the three dimensions of tribunal excellence are reflected in the eight measureable areas for tribunal excellence.

1. Independence,
2. Leadership and Effective Management,
3. Fair treatment (includes fairness and impartiality),
4. Accessibility,
5. Professionalism and Integrity (includes respect for the law and competence),
6. Accountability,
7. Efficiency, and
8. Client Needs and Satisfaction.



Measuring excellence

How does a tribunal know it is excellent? Put simply, evaluators complete the Tribunal Excellence Framework questionnaire answering all 95 questions to obtain a total score (out of 1,000) which then rates the tribunal within a band (see the later chapters).

For each of the eight areas of tribunal excellence, there are a series of indicia. These indicia are converted into questions which are then put before those that are going to evaluate the tribunal. Each question is answered based on a scale of 0-5 depending on the extent to which the measure has been implemented.

Individual measures

For example one of the questions put in relation to Accessibility is:

Accessibility measures	Rating					Score
Does the tribunal publish user guides in its main areas of jurisdiction?	0	1	2	3	4	5
	No		Partially		Yes	

Some of the indicia are put in the form of **yes/no** propositions. For example one of the questions put in relation to Independence is:

Independence measures	Rating		Score
Is the tribunal established by statute?	0	5	5
	No	Yes	

Some of the questions might be difficult to answer or might prompt a 'not applicable' response. For example, in the area of Accessibility there is a question that asks whether the tribunal's fees are affordable. Yes rates at 5 and No rates at 0.

A tribunal that has no fees might lean towards responding 'not applicable' but this response will throw out the total and the weighting system and so evaluators should rate the tribunal as 'yes'.

Some of the questions might be difficult for a large tribunal with several divisions to answer. For example, the consumer or small claims division of a super tribunal might have developed extensive standard directions (see question 68), but the guardianship or protective division might have no standard directions or may not have developed them to the extent of the other division. In that case the evaluators need to respond with their subjective view, but when analysing the results, the tribunal may be able to explain any discrepancy in scores.

While the questionnaire is usually completed anonymously, it can ask for the evaluator to identify whether they are a decision-making member of the tribunal or administrative staff. If the evaluator is a member, it may also ask them to identify the division they generally work in and whether they are full-time, part-time or sessional.

Overall perception measures

In addition to the individual measures, the **overall perception** in respect of each of the Eight Areas of Tribunal Excellence is measured on a scale from 0 to 10. For example, in relation to Professionalism and Integrity, the following question is posed:

Professionalism and integrity measures	Rating										Score
How do you rate the tribunal's overall professionalism and integrity?	0	1	2	3	4	5	6	7	8	9	10
	Very Poor —————> Excellent										

A tribunal's rating on the '0-10' scale is based upon the evaluator considering all of the indicia within that area of excellence.

For each of the eight areas of tribunal excellence, there are a series of indicia. These indicia are converted into questions which are then put before those that are going to evaluate the tribunal.

The following table provides a guide for scoring overall perception:

0	None	There is no activity in this area or the results show no improvement trends and have not met targets.
2	Limited	Poor results; or poor performance and/or little improvement trends in indicators; or results not reported for most key indicators.
4	Fair	Good performance and/or improvement trends in some key indicators; or early stages; or obtaining comparative information; or results reported for some key indicators.
6	Good	Performance levels are good to excellent in most key indicators and/or improvement trends are sustained in most areas; or there are favourable comparisons and/or benchmarks in most areas; or results are reported for all key indicators.
8	Very good	Current performance levels are good to excellent in most key indicators and/or improvement trends are sustained in most areas; or there are favourable comparisons or benchmarks in most areas; or results are reported for all key indicators.
10	Excellent	Performance levels are excellent in most key indicators and/or there are exceptional improvement trends in most areas; or there are exceptional comparisons and benchmarks in most areas; results are reported for all indicators.

'Do not know' responses

The current version of the questionnaire includes a 'do not know' option. If an evaluator does not know what the tribunal's activity in that area is, the option of 'do not know' can be selected.

The measurement of the 'do not knows' can reveal knowledge gaps within the tribunal that may need to be addressed.

A tribunal which wishes to minimise the 'do not know' responses might wish to undertake a briefing of evaluators before the questionnaire is completed, have someone available while the questionnaire is being completed to answer queries as they arise, or have a resource folder or list of relevant documents, plans and policies available when the questionnaire is completed.

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The Tribunal Excellence Framework questionnaire

1. Independence

About Independence

The measure of independence is the primary and most important distinction between the Court Framework and the Tribunal Excellence Framework. As previously explained, in a country that follows the Westminster system of the separation of powers, independence (from the Parliament and the Executive) is never an issue for Courts. However for tribunals, which are generally part of the Executive arm of government, independence is critical.

A tribunal's degree of independence will influence public perception about the extent of the impartiality of the decision-making within the tribunal. This is particularly important in

tribunals which deal with disputes involving the citizen and the State. Impartiality is essential for the delivery of predictable, just decisions and the acceptance of those decisions by the public.

'Tribunal Independence' written by Professor Pamela O'Connor is an essential resource on this topic¹. As Justice Iain Ross AO, then Chair of COAT, said in his Foreword to that publication:

Tribunals are an important part of the justice system. They provide a quick, cheap and relatively informal means of dispute resolution. Like other justice institutions, tribunals rely ultimately on public confidence and the consent of the governed. The extent to which a tribunal is independent of the Executive influences public perception about the tribunal's impartiality. Impartiality is essential for the determination of just, predictable decisions and the acceptance of those decisions by the community. It is for this reason that tribunal independence matters.

The Independence questions

Independence measures		Rating				
1	Is [YOUR TRIBUNAL] created by statute?	0	5			
		No	Yes			
2	Is the decision-making head of [YOUR TRIBUNAL] a judicial officer or independent statutory officer with security of tenure?	0	5			
		No	Yes			
3	To what extent is [YOUR TRIBUNAL] <u>structurally</u> (or institutionally) separate from the executive and legislative branches of the government? (appointments and remuneration of members)	0	1	2	3	4 5
		No independence	Some independence		Full independence	
4	To what extent is [YOUR TRIBUNAL] <u>functionally</u> separate from the executive and legislative branches of government? (embedded vs stand-alone)	0	1	2	3	4 5
		No independence	Some independence		Full independence	
5	To what extent does [YOUR TRIBUNAL] have <u>administrative</u> or branch independence (control of buildings and facilities, budget, finance and governance)	0	1	2	3	4 5
		No independence	Some independence		Full independence	
6	To what extent does [YOUR TRIBUNAL] control the expenditure of its allocated budget?	0	1	2	3	4 5
		No Control	Partial Control		Full Control	
7	To what extent does [YOUR TRIBUNAL] enjoy <u>adjudicatory</u> or <u>decisional</u> independence? For example can decisions of [YOUR TRIBUNAL] be overruled by the executive?	0	1	2	3	4 5
		No independence	Some independence		Full independence	

¹ O'Connor, P (2013) *Tribunal Independence*, foreword

Independence measures		Rating										
8	To what extent do individual Members enjoy <u>adjudicatory or decisional</u> independence?	0	1	2	3	4	5					
		No independence		Some independence			Full independence					
9	Do Members enjoy personal immunity from suit?	0		5								
		No		Yes								
10	Is the appointment / reappointment process for Members merit based?	0		5								
		No		Yes								
11	Is there an advisory appointments / reappointments or selection panel?	0		5								
		No		Yes								
12	Are Members' positions advertised?	0		5								
		No		Yes								
13	Overall, to what extent is the process for the appointment and reappointment of Members fair and transparent?	0	1	2	3	4	5					
		Arbitrary and opaque			Completely fair and transparent							
14	Tenure (period of appointment) of Members	0	1	3	5							
		< 2 yrs	> 2 but < 5 yrs	5 yrs	> 5 yrs							
15	To what extent do Members have security of tenure during the term of their appointment in terms of legislative protection against arbitrary suspension, transfer or removal from office?	0	1	2	3	4	5					
		No security		Some security			Full security					
16	Overall perception of tribunal independence	0	1	2	3	4	5	6	7	8	9	10
		None —————> Fully independent										

Notes and guidance

Question 1 is a straightforward yes or no question. A tribunal established by statute has a permanency about it that might not be perceived in a tribunal established by executive action or orders.

Question 2 concerns the decision-making head of the tribunal. Some embedded tribunals have a Director or Chief Executive who is part of the Executive arm of government and whose tenure will be based on performance. An excellent tribunal requires a head who is a decision-maker (as opposed to an administrator) and who ideally has tenure. This question is also relevant to Leadership measures.

Questions 3, 4 and 5 relate to aspects of independence two of which are discussed by Professor O'Connor. Structural

or institutional independence 'is about [the] arrangements [in place] to ensure that executive powers to appoint and remunerate members do not influence the outcome of tribunal decisions or impair the perception of impartiality'.¹ Therefore a tribunal that can determine its own remuneration (or has remuneration determined by an independent remuneration tribunal), and that is in charge of its own appointments (with or without ministerial approval), would rate at 5 on the scale.

Functional independence ensures the dispute resolution function in the tribunal is separate from the department or agency. A tribunal that is embedded within the host department might only score 0 or 1, whereas a stand-alone tribunal treated as an adjunct to the Courts might score 5.

¹ Ibid p 17

Administrative independence or branch independence is a measure of the control the tribunal has over its governance, finance and resources. A tribunal that does not have sufficient means and resources, and therefore cannot properly discharge its functions and duties, will attract a low score as there is likely to be a threat to the perception of the impartiality of decisions.

A tribunal that has control over the buildings in which it operates as well as all necessary human and financial resources and facilities would score well whereas a tribunal that is required to seek permission from the host department for all expenditure and which relies on the host department for registry staff, IT servers and systems is likely to rate 0 or 1.

There is a separate question about budget control (question 6) as this is an important marker of independence. A tribunal may be allocated a certain amount to spend during the year in which case it is likely to attract a score of 5. Alternatively, a tribunal whose finances are controlled by the host department might score 0 or 1.

While historically [dependence on a host department] may be understandable, it throws their independence and neutrality into question. Tribunals, like courts, must be both independent and seen to be independent.²

Another aspect of independence is adjudicatory or decision making independence which is:

... concerned with the ability of tribunal members and panels to make decisions impartially, free from external interference or improper influence from any source, including the executive, the parties, other external person, and even from the tribunal head and other members.³

Question 7 is aimed at the level of adjudicative independence (from external sources such as the Executive) of the tribunal whereas question 8 is concerned with the adjudicative independence of the individual member and internally independent decision making. All members of a tribunal must be independent from one another and must be, and be seen to be, free from any actual or apparent form of influence, pressure or duress from, or interference by, a fellow tribunal member, including the head of the tribunal.

Questions 9 to 15 identify some of the safeguards that should be in place in an excellent tribunal to enhance independence.

Questions 10 - 13 ask about the process for the appointment and reappointment of members. A tribunal which has a documented open and transparent recruitment process

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should rate well but if it is not utilised and some members are appointed arbitrarily then this would lower the rating. Some of the hallmarks of an open and fair recruitment process is the requirement for appointments to be merit based (question 11), for there to be an advisory group or selection panel (question 12), and for positions to be advertised (question 13).

In August 2016, COAT published the *Tribunal Independence in Appointments – Best Practice Guide* and that guide explains why the process for the appointment and reappointment of members is an important aspect of independence: [page 6]

The process for appointing Heads and members is of particular significance for the independence of tribunals. In Australia and New Zealand, appointments are made by the Executive ...

While the system of appointment by the Executive confers high authority on tribunal members, it also gives Ministers the power to determine the makeup of the tribunal's membership and to affect the interest of members in a direct, individual and concrete way. If the power is exercised improperly, the independence of tribunals may be impaired ...

The system of Executive appointments is not necessarily inconsistent with tribunal independence. The system serves the public well when Ministers take care to appoint applicants who are best qualified for the position

² New Zealand Law Commission, *Delivering Justice for All: A Vision for New Zealand Courts and Tribunals*, Report No 85 (2004) 284 n 2, [1.40] – [1.41].

³ O'Connor p 18

*by their skills, knowledge and personal attributes.
Threats to independence can arise where irrelevant
considerations or improper purposes are taken into
account in appointment decisions ...*

Question 14 relates to tenure of tribunal members. Judges are appointed for life or until a statutory retirement age. Tribunal members do not often enjoy security of tenure and are appointed for a contracted period at the expiry of which they must generally seek reappointment. The longer the period of employment, the greater is the perceived independence of the tribunal member.

Most tribunals have the authority to remove a member or suspend the member's appointment in specific circumstances, for example if the member is declared bankrupt or is convicted of a serious criminal offence. Question 15 is concerned with Ministerial or departmental interference with a member's tenure. The Minister or the department or agency should not be able to arbitrarily remove a member as this could call into question the impartiality of tribunal decisions.

2. Tribunal Leadership and Effective Management

About tribunal leadership and effective management

Strong leadership within a tribunal requires the creation of a highly professional management group which is able to focus on innovation and continuous improvement as well as anticipate changes in society which may influence demands within the tribunal.

In Australia and New Zealand the heads of tribunals are generally judges or experienced tribunal members with extensive decision making expertise and subject matter specialisation but who may have limited management experience. Excellent tribunals encourage and support the head, senior decision makers, non-member tribunal administrators and tribunal members (with leadership roles) to take part in courses to improve their management skills.

Innovation and flexibility are important because of constant changes in society. For example, an ageing population may result in an increase in guardianship applications and the economic cycle may affect demand in tenancy and consumer claims jurisdictions. Excellent tribunal leaders recognise change early and actively involve staff and members in identifying challenges and solutions. They modify work processes and organisational structures and implement innovative solutions that lead to improved performance results.

Other measures of strong leadership include the "openness" of the organisation and its accountability. Tribunals should regularly publish their performance results and provide information on the quality of their service delivery to the public.

Excellent tribunal leadership and management implies the promotion of the external orientation of tribunals, a proactive and professional management culture, accountability and openness, an eye for innovation and a proactive response to changes in society.

Such tribunals use a system of strategies to realise the objectives that have been formulated in terms of tribunal performance and quality.

Based on empirical data, excellent tribunals actively use tribunal policies to improve services. Policies may focus on strengthening specific values or the realisation of well-defined goals. For example, in civil proceedings, a policy can encourage tribunal members to take an active role in utilising and enforcing standards for submitting documents or new evidence.

The best tribunals formulate, implement and continuously evaluate strategies for achieving performance objectives which they have set at an earlier stage.

Such policies by themselves do not guarantee excellence in tribunal performance. It is important that such policies are implemented effectively and that they reflect the tribunal's values as well as the demands and expectations of the community.

Strong leadership within a tribunal requires the creation of a highly professional management group which is able to focus on innovation and continuous improvement as well as anticipate changes in society which may influence demands within the tribunal.

The tribunal leadership and management questions

Leadership and management measures		Rating										
17	Has a vision for [YOUR TRIBUNAL] been developed and translated into concrete, measurable objectives and priorities	0	1	2	3	4	5					
		No	Partially				Yes					
18	Is wide publicity given to the vision among stakeholders and the community?	0	1	2	3	4	5					
		No	Partially				Yes					
19	Does [YOUR TRIBUNAL] have a business plan (for the year or years ahead) identifying projects and priorities?	0	1	2	3	4	5					
		No	Partially				Yes					
20	Does [YOUR TRIBUNAL] manage change proactively and efficiently to adapt to meet future demands?	0	1	2	3	4	5					
		No	Partially				Yes					
21	Is there a defined leadership group within [YOUR TRIBUNAL] which meets on a regular basis?	0	1	2	3	4	5					
		No	Partially				Yes					
22	Does the leadership group promote a culture that stimulates and inspires innovation and continuous improvement?	0	1	2	3	4	5					
		Never	Sometimes				Always					
23	Does the leadership group periodically evaluate [YOUR TRIBUNAL's] performance?	0	1	2	3	4	5					
		Never	Sometimes				Always					
24	Does the leadership group regularly review existing processes and procedures with a view to improving them particularly using advances in information or other technologies?	0	1	2	3	4	5					
		No	Partially				Yes					
25	Does [YOUR TRIBUNAL] regularly publish its performance results and provide information on its service delivery to the public?	0	1	2	3	4	5					
		Never	Sometimes				Always					
26	Overall perception of [YOUR TRIBUNAL] management and leadership	0	1	2	3	4	5	6	7	8	9	10
		Very poor —————> Excellent										

Notes and guidance

Questions 17 and 18 ask about the tribunal's vision. Vision or mission statements are common in the corporate world (such as Nike's 'to bring inspiration and innovation to every athlete') and in many government departments. The State Courts of Singapore's vision is, 'inspiring public trust and confidence through an effective and accessible justice system'. Developing a vision, along with the path or plan to achieve it, is a core responsibility of the leadership group in a tribunal.

Question 19 relates to plans the tribunal may have. The questionnaire may help a tribunal develop its first plan by identifying areas for improvement (the areas where the tribunal scored poorly). A tribunal which is conscious of community and stakeholder needs will rate well.

Questions 21 – 24 deal with the leadership group and its function. An excellent tribunal will have a leadership team (ideally including the head and deputy heads, registrars and senior staff) who meet regularly to look at the tribunal's progress as well as consider ideas and initiatives for improvement of its programs, policies and processes.

Excellent tribunals will review their performance and will publish those results (see question 25). The following factors should be taken into account when assessing the overall perception of the tribunal's leadership and management:

- current performance levels, relative to targets set;
- performance levels relative to appropriate comparisons and/or benchmarks;

- rate, breadth and importance of performance improvements; and
- linkages of results to key performance requirements identified in the tribunal's strategic plan.

3. Fair Treatment

About fair treatment

A central obligation of a tribunal is the provision of a fair hearing.

A fair hearing involves the opportunity for each party to put their case – the right to be heard – and have the case determined impartially and according to law. It involves identifying the difficulties experienced by any party, whether due to lack of representation, unfamiliarity with the law, language, culture, disability or any other matter, and finding ways to assist parties through the tribunal process.

An important element of this obligation is the duty to provide assistance to self-represented parties (sometimes called litigants in person). Members and staff should identify the difficulties experienced by any party whether due to the law, language, culture, disability or any other matter, and find ways to assist them through the tribunal process.

A report prepared by the Australian Institute of Judicial Administration ⁴ makes the following observation about the disadvantage encountered by litigants in person that comes from a lack of objectivity:

The problem of self-representation is not just a lack of legal skills – it is also a problem of a lack of objectivity and emotional distance from their case. Litigants in person are not in a good position to assess the merits of their claim

A tribunal has an obligation to assist a litigant in person to overcome these disadvantages, to the extent necessary to ensure a fair hearing.

The fair treatment questions

Fair treatment measures		Rating					
27	Does [YOUR TRIBUNAL] promote (to members and staff) the obligation to provide a fair hearing to users and the public?	0	1	2	3	4	5
		Never	Sometimes			Always	
28	Are tribunal members educated about conflicts and encouraged to proactively declare disqualifying associations?	0	1	2	3	4	5
		Never	Sometimes			Always	
29	Does [YOUR TRIBUNAL] provide oral hearings as of right or can a party request an oral hearing?	0	1	2	3	4	5
		Never	Sometimes			Always	
30	Does [YOUR TRIBUNAL] provide a free translation and interpreter service in all or the most common community languages?	0	1	2	3	4	5
		Never	Sometimes			Always	
31	Does [YOUR TRIBUNAL] promote cultural competency and awareness to Members and staff?	0	1	2	3	4	5
		Never	Sometimes			Always	
32	Are [YOUR TRIBUNAL] proceedings (in general) open to the public?	0			5		
		No			Yes		
33	Are all [YOUR TRIBUNAL] hearings recorded?	0			5		
		No			Yes		
34	Are parties (and the public) able to obtain copies of recorded hearings (or transcripts) at a reasonable cost?	0	1	2	3	4	5
		Never	Sometimes			Always	

⁴ Australian Institute of Judicial Administration, *Litigants in Person Management Plans: Issues for Courts and Tribunals*.

Fair treatment measures		Rating						
35	Are [YOUR TRIBUNAL] decisions subject to a fair and efficient ‘appeal’ mechanism?	0	1	2	3	4	5	
		No		Partially			Yes	
36	Are the participants in proceedings, and the public, treated with courtesy and respect?	0	1	2	3	4	5	
		Never		Sometimes			Always	
37	How do you rate [YOUR TRIBUNAL]’s overall capacity to deliver fair treatment to the parties before it?	0	1	2	3	4	5	6 7 8 9 10
		Very poor —————▶Excellent						

Notes and guidance

The two rules of procedural fairness (the right to a hearing and the right to an impartial decision maker) are covered in questions 27 and 28. Question 27 asks whether the tribunal promotes the obligation to provide a fair hearing. An excellent tribunal might conduct regular training with members and staff, may have an induction or practice manual which explains the concept to members or publishes material on the website.

An excellent tribunal might have a clause in a code of conduct requiring members to be proactive in declaring conflicts of interest and might offer regular training about potential conflicts, disqualifying associations and the process of recusal.

A tribunal should be able to offer oral hearings for those users who have literacy or language issues (question 29).

Question 30 incorporates an element of accessibility because an excellent tribunal should provide translation services (so that users can access the tribunal) as well as interpreting services at any hearing to ensure fairness of that hearing.

A tribunal should promote cultural competency so that Members are aware of changes they may need to make to hearing processes to take cultural differences into account (question 31).

The openness of proceedings (question 32) is a sign of fair treatment (and accountability) however some of the tribunal's hearings may be closed due to the sensitivity or private nature of the subject matter. If all hearings are closed to the public, this will still attract a 0. In this instance the tribunal should explain the low mark. Similarly if the Tribunal does not record its hearings, evaluators might wish to answer question 33 with 'not applicable' but it should still be answered as 'never' with a rating of 0.

Question 35 might be difficult to answer but a super tribunal might have internal appeals to a panel of three in all matters which might then attract a score of 5. Where there is a right to appeal to a court on a matter of law a score of 4 might be appropriate, subject to the fees for the institution of such an appeal being capable of being waived in the case of hardship. Where there are no effective means to secure judicial review of a tribunal decision asserted to have been made in error other than by way of the constitutionally protected writs a score of 0 - 1 may be appropriate. Practical experience of the convenience of that pathway in respect of such applications in a particular jurisdiction might however justify a higher rating.

4. Accessibility

About Accessibility

Access to justice is a fundamental human right and a core principle of the rule of law. Tribunals as well as courts have an obligation to provide the community they serve with access to a fair hearing.

Tribunals are a key element of access to justice designed to be more accessible to the general public than the Courts. In the Australian Productivity Commission's report on Access to Justice it was said⁵:

They are intended to provide a low cost alternative to the courts by creating a forum where self-representation is the norm and where parties generally bear their own costs irrespective of the outcome.

There may however be a sense of 'creeping legalism' into tribunal processes, and this is a common concern about tribunals⁶. While a degree of structure and formality is required in all tribunal proceedings and hearings, tribunals should consider whether the needs of the tribunal are taking

⁵Australian Government Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry report No. 72 Page 13

⁶See Creyke, R, *Tribunals – Carving out the philosophy of their existence: the Challenge for the 21st Century*, AIAL Forum No. 71 p 24

priority over the needs of the people who appear before it. Of course this must be tempered with a consideration of the type of matters the tribunal is dealing with. A tribunal which is determining whether a health practitioner should have his or her

registration revoked may require more formality in the hearing process than a tribunal dealing with a person whose recreational license to fish has been cancelled.

Accessibility questions

Accessibility measures		Rating					
38	Does [YOUR TRIBUNAL] have a litigant in person management plan to assist parties who do not have legal representation?	0		5			
		No		Yes			
39	Is there access to pro-bono legal services and are parties made aware of these services?	0	1	2	3	4	5
		Never	Sometimes			Always	
40	Do Members and [YOUR TRIBUNAL] staff have sufficient time and training to provide parties with an appropriate level of assistance?	0	1	2	3	4	5
		Never	Sometimes			Always	
41	Is appropriate advice provided by Members to the participants in the proceedings while still maintaining the impartiality and fairness of [YOUR TRIBUNAL]?	0	1	2	3	4	5
		Never	Sometimes			Always	
42	Are fees paid to [YOUR TRIBUNAL] affordable and proportionate to the nature of the proceedings?	0	1	2	3	4	5
		Never	Sometimes			Always	
43	Does [YOUR TRIBUNAL] offer fee relief/waiver based on financial circumstances	0		5			
		No		Yes			
44	Is there an on-line lodgement facility for applications to [YOUR TRIBUNAL] or the ability to lodge applications and upload documents electronically?	0	1	2	3	4	5
		No	Partially			Yes	
45	Does [YOUR TRIBUNAL] have a functional and easy to access website?	0		5			
		No		Yes			
46	Does [YOUR TRIBUNAL] publish (in written or electronic form) user guides in its main areas or jurisdiction?	0	1	2	3	4	5
		Never	Sometimes			Always	
47	Are user guides published in languages regularly spoken by users?	0	1	2	3	4	5
		No	Partially			Yes	
48	Does [YOUR TRIBUNAL] have an information or reception desk with staff to assist visitors?	0		5			
		No		Yes			
49	Are staff trained to explain [YOUR TRIBUNAL] processes and provide other practical information to [YOUR TRIBUNAL] users and visitors?	0		5			
		No		Yes			
50	Is there a provision to hold hearings in locations away from the main location of [YOUR TRIBUNAL] (e.g. to reduce party travel time and transaction costs?)	0		5			
		No		Yes			

Accessibility measures		Rating										
51	Does [YOUR TRIBUNAL] hold hearings at times which may be more convenient to the parties (e.g. in the evenings and/or on weekends)?	<div>0 1 2 3 4 5</div> <div>Never Sometimes Always</div>										
52	Does [YOUR TRIBUNAL] provide access to telephone and videoconferencing facilities to save parties travel time and costs?	<div>0 5</div> <div>No Yes</div>										
53	Do people with special needs have easy access to [YOUR TRIBUNAL]?	<div>0 1 2 3 4 5</div> <div>Never Sometimes Always</div>										
54	Are the waiting and hearing rooms properly equipped and of a reasonable size and standard?	<div>0 5</div> <div>No Yes</div>										
55	Are there rooms available where lawyers and other representatives can meet with their clients?	<div>0 1 2 3 4 5</div> <div>No Partially Yes</div>										
56	Are there appropriate measures in place to protect the security of Members, tribunal staff and members of the public attending [YOUR TRIBUNAL]?	<div>0 1 2 3 4 5</div> <div>No Partially Yes</div>										
57	How do you rate the overall accessibility of [YOUR TRIBUNAL] to users and the public?	<div>0 1 2 3 4 5 6 7 8 9 10</div> <div>Very poor —————> Excellent</div>										

Notes and Guidance

Question 38 asks about a litigant in person plan. The Australian Institute of Judicial Administration report “Courts and the Public” recommended:

All [courts] should have a litigants-in-person plan that deals with every stage in the process, from filing through to enforcement, or the equivalent in criminal matters. This is recommended so that systematic attention is given to the issues. As part of the litigants in person plan, guidelines should be prepared by judicial officers so that best practice is identified and shared between them as to how to conduct a hearing where one or more of the parties are unrepresented.⁷

This observation applies with equal or greater force to tribunals. In many tribunals, people without legal representation may be more common than those who are legally represented. It must be recognised that some tribunals do not permit legal representation at all or permit it only with leave of the tribunal.

Part of the litigant in person plan may include access to pro-bono legal advice (question 39). A tribunal may not provide such access by having a pro-bono service on site but may have posters, brochures and staff trained to direct tribunal users

to those services, in which case a higher rating score of 4 or 5 might result.

Tribunal fees, forms and processes have an important impact on access to justice, as does the extent of information and assistance provided to parties. If the tribunal does not charge any fees, the answers to questions 42 and 43 are always a ‘yes’, both of which attract 5 points.

Question 44 concerns on-line lodgement and electronic filing and is not answered with a simple yes or no. While on-line lodgement may improve efficiency and therefore this question could be located in that area of the Framework, an on-line lodgement facility means the tribunal’s users do not have to physically attend the premises in order to file applications or lodge supporting material. A tribunal which permits the filing of applications or lodgement of documents by email may score as well as a tribunal with a web-based on-line registry system. A large tribunal may have some high volume areas which are supported by an on-line facility (for example consumer claims or residential tenancy disputes) but if other areas of the tribunal do not have access to on-line lodgement, the tribunal may not rank highly in this measure. On-line lodgement may mean some users in some tribunal matters are marginalised. For example in public housing disputes, many potential

⁷ Stephen Parker, Courts and the Public (Australian Institute of Judicial Administration 1998).

Competency standards and associated performance benchmarks are one means of ensuring that members are aware of their obligations.

applications may not have access to a computer or sufficient facility to manage this type of lodgement. If on-line lodgement is not supported by the registry, some members of the public may be disadvantaged and lose their right to challenge or appeal a department or agency decision.

Questions 45-47 are designed to address issues of accessibility in terms of access to information about the tribunal. Previously, brochures would have provided information about the tribunal. Now, the vast majority of the population of Australia and New Zealand have access to the internet. Tribunals need to have an accessible website (question 44) as well as electronic (including video) user guides in English and regularly occurring languages (questions 45 and 46).

The location and time that a tribunal hears disputes also directly affects access to justice. Those living in regional and remote locations should have the same level of access to the tribunal as those who live in metropolitan areas (question 50). Those who work full-time or who have family obligations should also be accommodated with 'after hours' or more flexible arrangements for hearings (question 51).

Technology has the ability to enhance access to justice by enabling tribunals to undertake telephone conferences and hearings or conduct on-line proceedings through platforms such as Skype or similar (question 52).

There is also a physical element to accessibility. People with disabilities affecting their mobility should be able to get into the tribunal, and those with a hearing impairment might need access to a hearing loop (question 53). Tribunals should have adequately sized hearing rooms with room for users to sit and wait, and breakout rooms to facilitate resolution of disputes (questions 54 and 55).

Another aspect of physical accessibility is security. Excellent tribunals should ensure security is provided not only to Members and staff but also to users and visitors to the tribunal (question 56).

In 2013, COAT commissioned the IA Group to undertake an analysis of the physical premises of a number of tribunals in order to develop a set of workplace design guidelines or 'baseline' best practice features for appropriate and secure tribunal accommodation. The report is available on the COAT website and is a useful resource for tribunals seeking to understand and improve the physical accessibility and security of their premises.

5. Professionalism and Integrity

About Professionalism and Integrity

While the Court Framework and this document recognise competence as a core value, the Tribunal Framework recognises the importance of a competency framework for members by ensuring professionalism of those members appointed for a fixed term without tenure.

Competency standards and associated performance benchmarks are one means of ensuring that members are aware of their obligations.

COAT has produced a competency framework which is available on its website. Tribunals may adapt this document for its own use. The core competencies published in that document include:

- knowledge and technical skills;
- communication (including cultural competency and working with interpreters);
- decision-making;
- professionalism and integrity;
- efficiency; and
- leadership and management.

The Australian Institute of Judicial Administrators has developed suggested criteria (core competencies) for judicial appointments.⁸ Beneath the heading 'personal qualities' the first listed criteria is 'integrity and independence of mind'. The necessity for tribunal members and staff to be honest with strong moral principles is linked to the values of independence and fair treatment (to deal with users and decide cases fairly and free from influence).

⁸ The Australian Institute of Judicial Administration Incorporated, 2015 Suggested Criteria for Judicial Appointments

The Professionalism and Integrity questions

Professionalism and integrity measures		Rating	
58	Is there a competency framework for Members?	0	5
		No	Yes
59	Are there documented selection criteria for Members as part of an open and transparent recruitment process?	0	5
		No	Yes
60	Is there a system of induction and mentoring for new members?	0	1 2 3 4 5
		No	Partially Yes
61	Does [YOUR TRIBUNAL] have a strategic approach to professional development of Members, aligned to the key competencies?	0	1 2 3 4 5
		No	Partially Yes
62	Is there a formal appraisal system for Members?	0	5
		No	Yes
63	Do Members practice a form of peer review (discussion of cases between colleagues)?	0	5
		No	Yes
64	Is there a code of conduct for Members?	0	5
		No	Yes
65	Are there specific methods used to promote legal certainty, e.g. a system of binding internal jurisprudence or does the organisation holds regular meetings to discuss relevant jurisprudence?	0	1 2 3 4 5
		No	Partially Yes
66	Is there an internal process for discussing decisions that have been overturned on judicial review or appeal?	0	1 2 3 4 5
		No	Partially Yes
67	Is the number of challenges to Member decisions recorded and published?	0	5
		No	Yes
68	How do you rate [YOUR TRIBUNAL] overall professionalism and integrity?	0 1 2 3 4 5 6 7 8 9 10 Very poor —————> Excellent	

Notes and Guidance

An excellent tribunal will have a competency framework (question 58). A competency framework will inform the selection criteria for the open and transparent recruitment of members (question 59) and the basis of an induction and mentoring program (question 60).

The competency framework and a professional development program addressing those competencies will enhance the

quality of the work undertaken by the tribunal as a whole as well as responding to individual members' needs (question 61).

The competency framework will also facilitate the appraisal of tribunal members which will in turn facilitate a competency based approach to training to ensure that an individual's ongoing professional development needs are met (question 62).

An appropriately resourced and professional development program strategically focused to address the core competencies is required in order to deliver the following key outcomes:

- improved access to justice: to better meet the needs of all parties;
- improved effectiveness: by more efficient and consistent decision-making; and
- enhanced flexibility and efficiency: by ensuring that members have the skills to sit in a range of different jurisdictions within the tribunal.

Member appraisal provides important feedback to members about their performance and in particular about the manner in which they conduct hearings. Appraisal can also provide an opportunity to reinforce the Code of Conduct and the need to treat all parties fairly and respectfully.

Appraisal also provides a means of informing a member about any underperformance in meeting key competencies so that any issues can be addressed through further professional development.

Similar initiatives should be developed and implemented for tribunal staff.

Peer review is usually separated from the professional development and appraisal program in a tribunal but is an important part of the continuous improvement of Members' decision making skills. While peer review in the education or science sectors involves scrutiny of a written piece *before* publication, peer review in the tribunal sphere occurs after a judgment or decision is published to the parties. A review of a decision before publication by administrative staff to ensure formatting and typographical errors is not considered by COAT to be peer review and COAT considers any form of formal review of decisions by colleagues before publication risks offending the independent decision-making requirement (see question 8). Excellent tribunals will have a peer review program which accommodates these distinctions and values (question 63).

The integrity of the tribunal and its members is assured by the implementation of a Members' Code of Conduct (question 64). The Administrative Review Council has proposed principles of conduct for Australian federal tribunal members which can easily be adapted by any tribunal⁹.

The integrity of the tribunal is also enhanced by it delivering robust decisions. There are a number of measures (questions 65

Member appraisal provides important feedback to members about their performance and in particular about the manner in which they conduct hearings. Appraisal can also provide an opportunity to reinforce the Code of Conduct and the need to treat all parties fairly and respectfully.

– 67) designed to encourage lawful decision-making including regular meetings where relevant legislation and case law could be discussed (question 65); processes for discussing reviewed or appealed decisions (question 66); and the monitoring and reporting of challenges to members' decisions (question 67).

6. Accountability

About Accountability

Tribunals serve the public through the provision of accessible, fair and efficient dispute resolution services. In delivering that service they are accountable to the public. An effective complaints mechanism is an important means of ensuring that the public's expectations of members and staff are met.

Regular stakeholder and community engagement and reporting tribunal performance helps ensure that the tribunal is accountable to the public it serves.

⁹ A Guide to Standards of Conduct for Tribunal Members, Administrative Review Council, 2001

The accountability questions

Accountability measures		Rating									
69	Does [YOUR TRIBUNAL] have a customer service charter?	0					5				
		No					Yes				
70	Does [YOUR TRIBUNAL] provide an effective and transparent complaints mechanism?	0	1	2	3	4	5				
		Never		Sometimes				Always			
71	Is there regular reporting of [YOUR TRIBUNAL's] complaints to the public, users and stakeholders?	0	1	2	3	4	5				
		Never		Sometimes				Always			
72	Is there regular reporting of [YOUR TRIBUNAL's] performance against its established benchmarks to the public, users and stakeholders?	0	1	2	3	4	5				
		Never		Sometimes				Always			
73	Does [YOUR TRIBUNAL] undergo regular community / stakeholder engagement?	0	1	2	3	4	5				
		Never		Sometimes				Always			
74	Are [YOUR TRIBUNAL] decisions publicised (not necessarily published)?	0					5				
		No					Yes				
75	Does [YOUR TRIBUNAL] have “open days” to provide an opportunity for the community to visit [YOUR TRIBUNAL] or does your tribunal otherwise engage with the community?	0					5				
		No					Yes				
76	Does [YOUR TRIBUNAL] produce a publicly available annual report which includes an audit of its financial accounts?	0	1	2	3	4	5				
		Never		Sometimes				Always			
77	How do you rate the overall accountability of [YOUR TRIBUNAL]?	0 1 2 3 4 5 6 7 8 9 10									
		Very poor —————> Excellent									

Notes and Guidance

A customer service charter setting out the tribunal's commitment to provide particular services is a hall mark of an excellent tribunal (question 69). It should be displayed (at the tribunal's premises) and made available on line and staff should be trained and made aware of it.

A documented complaints handling and reporting process (questions 70 and 71) are also necessary. Reporting would usually occur in an annual report and / or on the tribunal's website.

Reporting the tribunal's performance against established benchmarks is another mark of an excellent and accountable tribunal (question 72). Note that the requirement to develop performance benchmarks is a part of the efficiency measure (questions 78 and 79).

Engaging with and reporting to stakeholder groups is a mark of an excellent tribunal (question 73). The regularity of engagement is important and will often vary depending on

the size and nature of the work undertaken by the tribunal. A small tribunal with a stable jurisprudence may not need to meet with stakeholders as often as a larger tribunal with varying workflow and regular legislative changes or frequent judicial pronouncements that affect the jurisdiction.

Question 74 asks about the publication of decisions. Some tribunals are prevented from publishing some or all of their decisions due to the sensitive nature of the substance of the dispute. Others publish on their website or through external websites such as Austlii. A tribunal that is prevented from publishing individual decisions but which publicises important decisions by de-identifying them or publicising summaries or case notes may still attract a score of 5.

Open days may not be feasible for small tribunals (question 75), but excellent tribunals may participate in community forums or visit schools for example to explain the jurisdiction or operation of the tribunal which would also attract a score of 5.

Embedded tribunals may have difficulty with question 76, as the ability of the tribunal to report on its activities and finances may be dependent upon the host department.

7. Efficiency

About efficiency

Tribunals should provide an efficient dispute resolution service in the sense that the tribunal is affordable and resolves disputes in an appropriate and timely way. Many tribunals have within their enabling legislation the object of facilitating the just, quick and cheap resolution of disputes. It is the speed of the tribunal that is the heart of this measure.

The costs incurred by the parties and the tribunal resources allocated to a proceeding must be reasonable and proportionate to the complexity and importance of the issues and the amount in dispute.

Efficiency is also reflected in the fair distribution of workload across tribunal members and staff and the percentage of Members' time spent in hearings as opposed to the time spent on administration.

Timeliness reflects a balance between the time required to properly obtain, present and weigh the evidence, law and arguments, and unreasonable delay due to inefficient processes and insufficient resources.

Access to Alternative Dispute Resolution (ADR) can provide an efficient, more flexible and cost effective alternative to traditional litigation. ADR is an umbrella term for processes, other than case determination, in which an impartial person assists the parties to resolve the issues between them. ADR encompasses processes such as mediation, compulsory conferences, conciliation and facilitation, where parties can resolve their dispute and agree to a settlement that makes sense to them, without incurring significant transaction costs.

The efficiency questions

Efficiency measures		Rating					
78	Is it possible to determine the total number of incoming, pending and decided cases in a given period?	0			5		
		No			Yes		
79	Have appropriate performance benchmarks been established for case disposition (by case type)?	0	1	2	3	4	5
		No		Partially		Yes	
80	Has a performance benchmark been established for the delivery of judgments and reasons?	0			5		
		No			Yes		
81	Have standard directions been implemented, where appropriate, to minimise transaction costs?	0			5		
		No			Yes		
82	Does [YOUR TRIBUNAL] provide timely and appropriate access to ADR in appropriate cases?	0	1	2	3	4	5
		Never		Sometimes		Always	
83	Are Members taught ADR techniques (such as mediation, conciliation)?	0	1	2	3	4	5
		Never		Sometimes		Always	
84	Is there a system to monitor the effective utilisation of each Member?	0	1	2	3	4	5
		No		Partially		Yes	
85	Is there the flexibility to assign Members to particular areas of [YOUR TRIBUNAL] jurisdiction in order to meet changes in demand?	0	1	2	3	4	5
		No		Partially		Yes	

Efficiency measures		Rating										
86	Have the parties the opportunity to request priority treatment of the case if there are legitimate reasons to do so?	0 5										
		No Yes										
87	Are measures taken to speed up delayed cases and to reduce backlogs?	0 1 2 3 4 5										
		Never			Sometimes				Always			
88	Is there a system for measuring whether [YOUR TRIBUNAL] hearings start on time?	0 1 2 3 4 5										
		No		Partially				Yes				
89	Does [YOUR TRIBUNAL] maintain efficient case files and records systems?	0 1 2 3 4 5										
		No		Partially				Yes				
90	[Your Tribunal] successfully balances the workload of members and staff.	0 1 2 3 4 5										
		No		Partially				Yes				
91	How do you rate the overall efficiency of [YOUR TRIBUNAL]?	0 1 2 3 4 5 6 7 8 9 10										
		Very poor —————> Excellent										

Notes and Guidance

In order for efficiency to be measured, the tribunal needs to know the facts and statistics about the work that it does and the work on hand (question 78).

The tribunal will need to determine performance benchmarks which might include timeliness, the lifecycle of matters, finalisation ratios and so on (question 79). The tribunal might also need to determine appropriate timeframes for the delivery of judgments and reasons (question 80). Monitoring these is a measure of leadership (question 23) and reporting on them is a measure of accountability (question 72).

If a tribunal has precedents, templates and standard directions in paper form or available electronically for members to access, this is likely to result in improved efficiency (question 81).

Questions 82 and 83 concern the implementation of ADR in the tribunal and are important as alternatives to the determination of disputes by hearing (such as conciliation or negotiation) can lead to resolution of disputes in a more timely and cost effective manner. Question 82 requires there to be access to ADR 'in appropriate cases'. An excellent tribunal should not only offer ADR but have appropriate screening mechanisms in place for determining if an ADR process is suitable to the matter in dispute.

Question 84 requires there to be a system that monitors the effective utilisation of each Member. If a number of members

have too much paid 'down time', the efficiency of the tribunal may be affected. A large tribunal that can move members around between divisions will score well in question 85, as will a smaller tribunal that has access to sessional members.

Question 86 is closely aligned to the measures of accessibility and fair treatment however, it concerns the tribunal's ability to be flexible and react to individual circumstances of a particular case. A tribunal needs to have a system of monitoring delayed cases and backlogs (questions 78 and 79) and strategies to deal with any delays or backlogs (question 87).

An excellent tribunal will be able to measure whether hearings start on time (question 88). A tribunal does not have to have a computerised case management system to rate well in question 89 but there does need to be an efficient system in place for handling files and recording relevant data from those files.

Tribunal members are appointed for their subject matter expertise and decision-making abilities and the tribunal needs a high return on the investment in that subject matter expertise by ensuring tribunal members are devoting the maximum time to that activity and not, for example, spending a large part of their time on administrative matters (question 90). Tribunals may not be able to employ associates or may require members to undertake all their own typing of reserved judgments and orders, in which case, the tribunal may need to consider providing touch typing training or transcription / dictation software to improve efficiency.

8. Client Needs and Satisfaction

About Client Needs and Satisfaction

Public trust and confidence in the administration of justice are essential for the acceptance by users of an individual decision that affect them. Therefore for a tribunal to be effective its users have to be satisfied that the procedures and processes adopted

by the tribunal are fair. The tribunal needs to know what its users think about its procedures and processes.

Therefore, in addition to measuring the results of various actions to improve tribunal performances, user satisfaction should be measured.

The Client Needs and Satisfaction questions

Client needs and satisfaction measures		Rating										
92	Has [YOUR TRIBUNAL] established user groups that meet regularly and provide feedback in respect of each jurisdictional area?	0	1	2	3	4	5					
		No	Partially			Yes						
93	Does [YOUR TRIBUNAL] regularly survey parties in order to measure user satisfaction?	0		5								
		No		Yes								
94	Does [YOUR TRIBUNAL] regularly meet with key stakeholders?	0	1	2	3	4	5					
		Never	Sometimes			Always						
95	How do you rate the responsiveness of [YOUR TRIBUNAL] to issues or concerns raised by users and stakeholders?	0	1	2	3	4	5	6	7	8	9	10
		Very poor —————→ Excellent										

Notes and Guidance

Question 92 would be answered with a 5 if the single issue tribunal (such as a Mental Health Tribunal) had a single user group that met monthly. A large tribunal with several different divisions (such as Guardianship, Tenancy, Professional Regulation and Administrative Law) might rate 3 if some of those divisions have a user group but others do not. It is also important not just to have a user group but for that group to meet and to meet regularly.

Question 93 enquires about user satisfaction surveys. The question requires a yes or no answer and is qualified by the word 'regularly'. This will of course be a matter of some subjectivity, but a tribunal that surveyed users once ten years ago might

attract a 0 whereas a tribunal that has surveyed users once every 3 years for the last 9 years would attract a 5.

Question 94 asks about stakeholders. Stakeholders often constitute a different group to users of the tribunal. Users or 'clients' are generally synonymous with parties before the tribunal. For example a Mental Health Tribunal's user would be the mental health patient who comes, as a party, before the tribunal. It is also likely that the treating clinician, family members and carers of the party would also be considered users or clients of the tribunal. In that tribunal's forensic matters, stakeholders might include the Police and/or Corrective Services departments as well as the departments of Justice and Health.

Implementing the Framework – a proposed methodology

Self-assessment and evaluation

The first step is for the tribunal to have a look at how it is currently performing. Essentially this involves the administration of the questionnaire to a group of people involved in the tribunal.

Undertaking the assessment and completing the questionnaire will help identify those areas of the tribunal's current performance that requires attention and set a benchmark against which the tribunal can measure its subsequent performance.

The self-assessment questionnaire is a necessary first step to developing a strategic plan to close the gap between the current state and the future 'more excellent' state. It will also assist in

determining which issues must be prioritised and acted upon immediately and which need intermediate or long term planning.

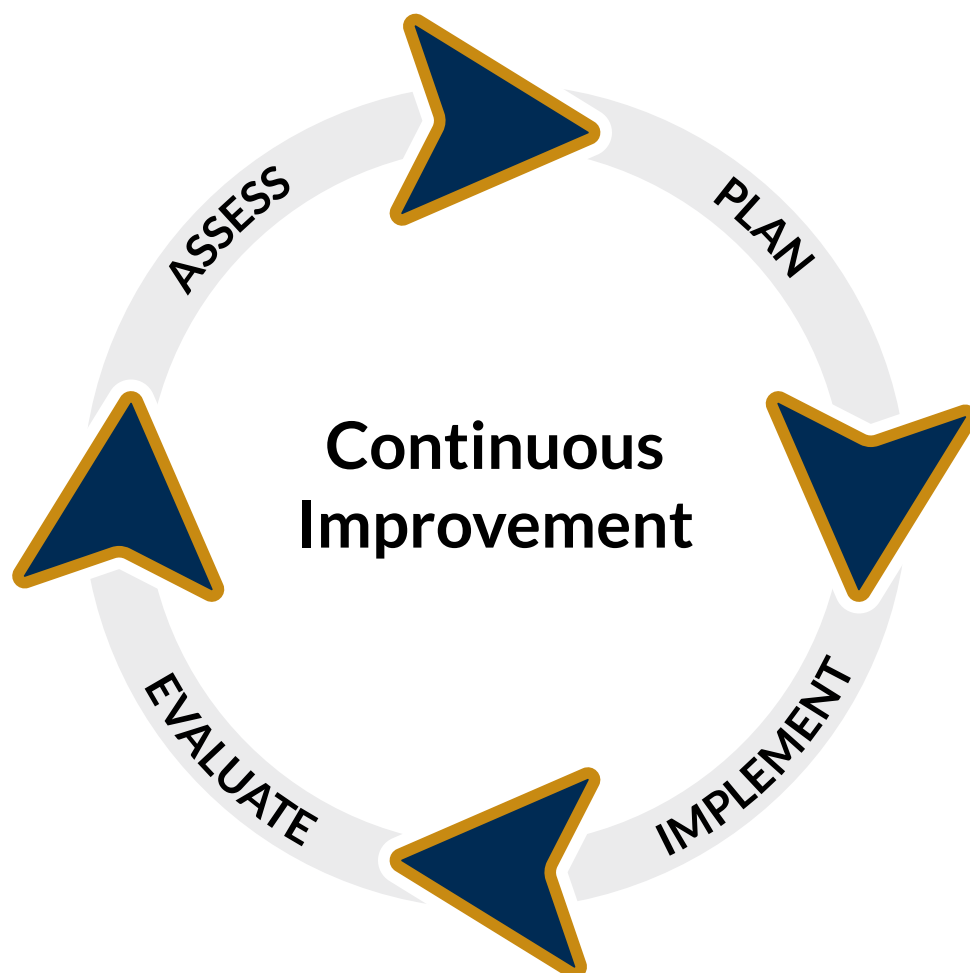
Scoring

The self-assessment questionnaire contains 95 questions worth either 5 or 10 points each and a maximum total of 505 available points.

The total weighted score provides an overall indication of the tribunal's performance based on a maximum score of 1,000 points.

The total weighted score is then compared with the Banding Table to give the tribunal's rating.

The weighted total score (or the scores for each of the eight areas) can be compared over time and with projects undertaken and goals achieved the rating of the tribunal should improve.



Indicative Weights

The detailed weights for the eight areas are as follows:

Areas	Raw score	Weighting multiplier	Weighted score
Independence	/ 80	multiply by 140/80	/ 140
Tribunal Leadership and Management	/ 55	multiply by 140/55	/ 140
Fair Treatment	/ 60	multiply by 140/60	/ 140
Accessibility	/ 105	multiply by 140/105	/ 140
Professionalism and Integrity	/ 60	multiply by 140/60	/ 140
Accountability	/ 50	multiply by 100/50	/ 100
Efficiency	/ 75	multiply by 100/75	/ 100
Client Needs and Satisfaction	/ 25	multiply by 4	/ 100
TOTAL SCORE:	/ 510	multiply by 1000/510	/ 1000

The weighting formula is indicative only and may vary depending on the historical context and particular priorities within a jurisdiction.

For example, if your tribunal has a substantial proportion of self-represented parties then you may wish to consider giving higher

weighting to the Fair Treatment and Accessibility measures, with corresponding lower weightings to other areas such as Efficiency or Independence. The particular weightings may also reflect the tribunal's current state of development and its priorities over the next 2 – 3 years.

Banding Table

Band	Score	Description
1	0	There is no approach or strategy in respect of the areas of tribunal excellence. There are no results, or results show no improvement trends, or have not met targets.
2	1-199	There is some approach and strategy in respect of the areas of tribunal excellence but it is reactive and not systematic. Poor results; or good performance and/or improvement trends are only present in a few key indicators; or results are not reported for most key indicators.
3	200-399	The direction for a strategic-based approach to the areas of tribunal excellence is set and has been implemented in some key areas of the organisation. Good performance and/or improvement trends in some key indicators.
4	400-599	A sound effective strategic approach is in place with evidence of implementation in most key areas of the organisation. Good performance levels and/or improvement trends in most key indicators; or there are favourable comparisons and/or benchmarks in some areas; or results are reported for most key indicators.
5	600-799	A proven and well-defined strategic approach with evidence of refinement through learning and improvement which is well integrated with organisational needs. The tribunal's strategic direction has been implemented in all key areas of the organisation and is practiced consistently by all levels. Current performance levels are good to excellent in most key indicators and/or improvement trends are sustained in most areas; or there are favourable comparisons or benchmarks in most areas; or results are reported for all key indicators.
6	800-1000	An exceptionally well defined, innovative and strategic approach, which is fully integrated with organisational needs and implemented consistently in all areas. Performance levels are excellent in most key indicators and/or there are exceptional improvement trends in most areas; or there are exceptional comparisons and benchmarks in

Methodology

If the tribunal is large with sufficient resources a consultant may need to be engaged to assist in the roll out of the questionnaire and the analysis of results, but it is not necessary.

Most tribunals should, with the assistance of this document, be able to implement the Framework within their operations.

The following is a recommended methodology:

- Form a tribunal excellence project or steering committee which may include the head of the tribunal, the registrar and a few key tribunal personnel (members and administration);
- Ensure all members of the committee:
 - Understand the Tribunal Excellence Framework and are aware of the Court Framework;
 - Review the questionnaire to identify any problematic questions for the tribunal;
- Consider gathering an information pack or folder of relevant documents and policies to minimise the 'don't knows'; and
- Determine the procedure and logistics.
- Set a date for the roll out of the questionnaire. Ideally a meeting should be held for the evaluators, that is, those people who will complete the questionnaire. At the meeting, those attending should be briefed on the framework, the questionnaire and queries can be addressed (again to minimise the 'don't know' responses). Generally a 30 minute to one hour briefing should be sufficient with participants given 30 minutes to an hour to complete the questionnaire.
- Gather the completed written questionnaires and record the results onto an 'excel' or similar spread-sheet.
- Determine the consensus score for each question by determining the average taking care with the 'don't know' responses, the values for which should not be included in any average scoring.

Ideally the questionnaire should be completed by a broad section of the tribunal including the leadership team, full time members, part time members, sessional members, registry and case management staff.

6. Analyse the results:
 - a. Identify the 'don't know' areas to determine where the tribunal needs to improve communication and information about the tribunal, what it does and how it does it.
 - b. Identify in which of the eight areas the tribunal scored well, and those areas where the scores reveal a deficiency.
 - c. The areas of deficiency will form the basis of the tribunal's improvement plan which should inform a number of projects or activities for the tribunal.
 - d. When analysing consider the differences in responses between members compare to staff; full time as opposed to part time; or divisions within super tribunals.
7. Consider publicising the results to some or all of the following and certainly the participants should be advised even if in general.
 - a. The minister
 - b. The staff
 - c. Stakeholders
 - d. The public

How often should the Framework be implemented?

When a tribunal has evaluated its performance by implementing the framework the first time, that is not the end of the journey to excellence as the Framework is designed to encourage ongoing evaluation and continuous improvement.

How often the Framework is implemented is a matter of resourcing and common sense. If a tribunal is required to submit a three year business plan to its host department, then repeating the Framework every three years in advance of the submission would be useful in helping the tribunal to identify the areas to address and perhaps matters for which funding could be sought.

Who should complete the questionnaire?

This is a matter for the tribunal excellence project committee and will depend on the size of the tribunal, the membership of the tribunal, the location of the tribunal and so on. For a small tribunal it may be feasible to provide the questionnaire to all

staff and members however a larger tribunal with regional locations may be unable to achieve this. A tribunal with a small number of permanent members and staff, and a large number of sessional members might have difficulties getting sessional members to attend a meeting to be briefed which might mean a large number of 'don't know' responses.

Ideally the questionnaire should be completed by a broad section of the tribunal including the leadership team, full time members, part time members, sessional members, registry and case management staff. The questionnaire asks participants to identify their role in the tribunal without disclosing their name to preserve confidentiality.

The tribunal should consider analysing the results by group (e.g. members separately from registry staff) as this might reveal areas for dissemination of information or help prioritise projects for the coming year(s).

Should stakeholders be included?

The questionnaire is all about the tribunal undertaking a self-examination, so generally stakeholders should not be included in particular the first time the questionnaire is deployed. Outsiders will generally not have the knowledge of the internal workings of the tribunal and so their responses might not assist. However members of the tribunal's user groups could be included after attending a briefing to ensure informed responses to the questions are provided.