



SUBMISSION TO THE PRODUCTIVITY COMMISSION'S INQUIRY INTO ACCESS TO JUSTICE ARRANGEMENTS

The Administrative Appeals Tribunal (AAT) welcomes this opportunity to contribute to the Productivity Commission's Inquiry into Access to Justice Arrangements. The Commission's Issues Paper raises a number of issues relevant to the AAT, including:

- the balance between generalist and specialist tribunals;
- entitlement to, and the extent of, legal representation;
- use of alternative dispute resolution;
- accessibility of tribunals, particularly for self-represented litigants; and
- the use of technology to facilitate access to justice.

The first part of this submission deals generally with the role of merits review bodies in the Australian context and the issue raised by the Commission relating to generalist and specialist tribunals. The remainder of the submission sets out a range of information about the AAT and its processes which should help to inform the Commission's deliberations on the issues. The AAT would be happy to provide any further information that would be of assistance to the Commission.

1. The role of merits review bodies

Merits review is an integral part of ensuring good governance, accountability and transparency in public administration and contributes more broadly to better administrative decision making. Merits review is now probably better developed in Australia than in any other country.

Each year, while thousands of Australians seek judicial review, hundreds of thousands, perhaps millions of Australians, apply for one form or other of merits review. That merits review is more frequently accessed than is judicial review is well acknowledged.

The Commonwealth's independent merits review tribunals offer accessible, informal and relatively cheap processes where citizens can challenge the merits of administrative decisions. Merits review undertaken by skilled independent members allows these tribunals to reach the correct or preferable decision – not merely to set a flawed decision aside and send it back for reconsideration.

Under Commonwealth legislation, judicial review can set decisions aside, compel duties to be performed and prevent wrongs, but it cannot substitute a correct or preferable decision – that is a step which only merits review can undertake.

1.1 Generalist and specialist tribunals

The Commission's Issues Paper seeks comments on the principles to be used to determine the balance between generalist and specialist tribunals.

Particular areas of jurisdiction and/or types of applicant require tribunals with the relevant expertise, procedures and accommodation to ensure the efficient and effective determination of disputes. This can be accommodated through the establishment of specialist tribunals, as is the case of the Migration Review Tribunal/Refugee Review Tribunal, the Social Security Appeals Tribunal and the Veterans' Review Board, or the creation of divisions within a generalist tribunal, as is the case with the AAT. The AAT has divisions for dealing with National Disability Insurance Scheme appeals, security appeals, taxation appeals and veterans' appeals and a General Administrative Division for all other matters.

In 2012, the Australian Government decided that, except in exceptional circumstances, no new Commonwealth merits review body should be established and that any new merits review jurisdiction should instead be conferred on the AAT.

In principle, as the Administrative Review Council concluded in its [Report No 39, *Better Decisions: Review of Commonwealth Merits Review Tribunals*](#), the preferable model is a unified tribunal framework which is able to address any need for special expertise or for arrangements to accommodate the requirements of particular types of party through:

- the use of well-considered and appropriate case management procedures;
- the appointment of appropriately qualified and experienced members by processes independent of the decision-makers subject to review; and
- where the volume of cases or other factors warrant it, the establishment of divisions (including an appeals division if a second tier of merits review is considered appropriate).

The AAT notes that, in recent years, most State systems formerly with distinct specialist review bodies have brought their merits review tribunals together under a unified structure (eg Queensland Civil and Administrative Tribunal, Victorian Civil and Administrative Tribunal, NSW Civil and Administrative Tribunal). Whether that precedent should be followed at the Commonwealth level is a matter of policy beyond this submission.

2. The AAT and its role

The AAT was established by the *Administrative Appeals Tribunal Act 1975* (AAT Act) and commenced operations on 1 July 1976. The Act and the *Administrative Appeals Tribunal Regulations 1976* (AAT Regulations) set out the AAT's functions, powers and procedures.

The AAT provides independent merits review of a wide range of administrative decisions made under Commonwealth and Norfolk Island legislation. The AAT considers the material before it and decides what is the correct – or, in a discretionary area, the preferable – decision. It will affirm, vary or set aside the decision under review.

In carrying out its functions, the AAT must provide a review process that is *fair, just, economical, informal and quick*.¹ Proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of the Act and other relevant legislation and a proper consideration of the matters permit.²

2.1 Jurisdiction and workload

The AAT's jurisdiction to review decisions is conferred under more than 450 Commonwealth and Norfolk Island Acts and legislative instruments. Most of the AAT's workload arises from applications about decisions in the areas of:

- family assistance and social security;
- taxation;
- veterans' affairs; and
- workers' compensation.

The AAT also reviews decisions in areas such as bankruptcy, child support, citizenship and immigration, civil aviation, corporations and financial services regulation, customs, freedom of information, industry assistance, mutual recognition of occupations, passports and security assessments by the Australian Security Intelligence Organisation. On 1 July 2013, jurisdiction was conferred on the AAT to review decisions made under the National Disability Insurance Scheme.

In 2012–13, the AAT received 6,176 applications and finalised 6,042 applications.³

2.2 Participants in AAT reviews

The principal users of the AAT are the parties to applications lodged with the AAT – individuals, organisations and government departments and agencies – and their representatives.

Given the diversity in the types of decisions that come before the AAT, there is also significant diversity in relation to the types of persons who apply to the AAT. The overwhelming majority of applications are lodged by individuals but in a number of circumstances they can also be lodged by companies, public interest organisations and a range of other entities. Individual applicants come from diverse socio-economic groups and a wide variety of cultural and linguistic backgrounds and reflect contemporary Australia.

The person or body who made the decision to be reviewed is always a party to the review. This may be a Minister or a government department or other authority. It also includes private corporations authorised to make decisions under Commonwealth laws such as employers granted self-insurance licences under Commonwealth workers' compensation legislation.

¹ Section 2A of the AAT Act.

² Section 33(1)(b) of the AAT Act.

³ Further information about the AAT's workload is contained in [Chapter 3](#) and [Appendix 4](#) of the AAT's *Annual Report 2012-13*.

Other persons whose interests are affected by a decision may automatically be a party to an application or apply to be joined as a party to a review.

Parties in the AAT are entitled to be represented by another person.⁴ Levels of representation vary significantly in the AAT according to the type of decision that is being reviewed. There are also differences in the types of representation.

For example, in the AAT's Taxation Appeals Division, applicants in smaller matters are frequently represented by tax agents, whereas in larger matters often involving many millions of dollars in dispute it is not uncommon for both parties to appear by Senior or Queens Counsel.

The following table provides information on representation for individuals who were parties to cases finalised in 2012–13.⁵ The table set out information for each of the major areas of the AAT's jurisdiction as well as overall figures.

Representation of individuals for all cases finalised in 2012–13

Jurisdiction	Self-represented	Represented (by type of representation)			
		Private Lawyer	Community Legal Centre or Legal Aid	Accountant/ Tax Agent, Migration Agent or Other Advocate	Friend/Relative/ Other
Citizenship & Immigration	51%	22%	5%	6%	15%
Social Security	74%	3%	12%	1%	10%
Taxation	40%	25%	0%	30%	4%
Veterans' Affairs	18%	56%	8%	15%	3%
Workers' Compensation	19%	77%	0%	2%	2%
Other	67%	19%	0%	7%	7%
Total	50%	30%	5%	8%	6%

Source: AAT case management system

The majority of applicants in the veterans' affairs and workers' compensation jurisdictions are legally represented. This reflects the fact that there is greater access to legal aid in relation to veterans' affairs cases and costs awards can be made in workers' compensation cases.

In the social security area, most applicants represent themselves.

⁴ Section 32 of the AAT Act.

⁵ The data reflects representation status when the application was finalised. It does not include information about the representation of parties who were not individuals (ie companies, associations or other organisations).

Representation may be provided by a lawyer or by a non-legally qualified advocate. Applicants may also be represented by a family member or friend.

The diversity in types of representation extends to decision-makers. They may be represented by external lawyers, in-house lawyers, or in some cases, by specially trained non-legal staff.

3. The AAT review process

The AAT's review process is designed to assist the parties try to reach an agreed outcome, where possible, while ensuring that appropriate steps are taken to prepare for hearing those matters that do not settle. The AAT makes extensive use of alternative dispute resolution (ADR) to promote agreement.

Below is an overview of the way in which most applications are handled. The flow chart in Attachment A illustrates the progress of an application from lodgement to decision.

3.1 Making an application

When a decision-maker makes a decision that the AAT can review, the decision-maker must advise the person of their right to seek review.⁶ The notice of review rights must be given in accordance with the [Code of Practice for Notification of Reviewable Decisions and Rights of Review](#).⁷

An application for review of a decision must be in writing and contain a brief statement of reasons for the application.⁸ Applicants can use the AAT's application form but it is not mandatory. Applications are commonly made by way of a simple letter or email.

An application must be lodged within the prescribed time limit. In most cases, the AAT can extend the time for lodging an application if it considers it is reasonable to do so.⁹

An application fee is required only in relation to some applications. Whether a fee is payable depends on the type of decision to be reviewed and the circumstances of the applicant. More information about fees is set out in Section 6.3 below.

3.2 Provision of documents relevant to the review

Once the AAT is satisfied it has a valid application, the AAT notifies the decision-maker that the application has been received. This triggers the requirement for the decision-maker to send to the AAT and the applicant within 28 days the following documents which are referred to as the Section 37 documents:

- a statement of reasons for the decision under review; and

⁶ Section 27A of the AAT Act.

⁷ Section 27B of the AAT Act.

⁸ Section 29(1) of the AAT Act.

⁹ Section 29(7) of the AAT Act.

- every document in the decision-maker’s possession or control that is relevant to the review.

3.3 Pre-hearing process

Following receipt of the Section 37 documents, most applications are referred to a conference. Conferences are the central component of the AAT's pre-hearing process and the type of ADR process used most commonly at the AAT. They are usually conducted by Conference Registrars, legally-qualified ADR specialists, but may also be conducted by a Tribunal member.

The first conference provides an opportunity for the AAT and the parties to:

- discuss the decision that has been made and define the issues in dispute;
- identify any further material that will be obtained – eg witness statements, expert reports – and set a timetable for lodging further material;
- explore the prospects for settling the matter; and
- discuss the future conduct of the matter.

One or more further conferences will be held as necessary to review progress, discuss additional material that has been obtained, and seek to resolve the matter.

If an agreed outcome is not reached during the conference process, the AAT may refer the application to one of the other ADR processes used by the AAT. In addition to conferencing, the AAT Act provides for:

- conciliation;
- mediation;
- case appraisal; and
- neutral evaluation.¹⁰

These processes may be conducted by a Tribunal member or Conference Registrar.

3.4 Hearings

If agreement is not reached during the pre-hearing process, the Tribunal – constituted by one, two or three members – conducts a hearing and makes a decision.

Most hearings are conducted by single-member tribunals. However, multi-member panels are constituted where including a member with specialist knowledge, expertise or experience would be beneficial. The AAT’s membership includes persons with expertise in a wide range of areas, including aviation, engineering, environmental science, medicine, pharmacology, military affairs and public administration.

The AAT is not bound by the rules of evidence and may inform itself on any matter as it thinks appropriate, subject to the requirements of procedural fairness.¹¹ Material relevant to the matters to be determined will generally be admitted during the course of

¹⁰ Section 3(1) of the AAT Act (definition of “alternative dispute resolution processes”).

¹¹ Section 33(1)(c) of the AAT Act.

a hearing avoiding the need for technical arguments on admissibility. The issue then becomes the weight to be attached to the material. In this regard, the principles underlying the rules of evidence may well be of assistance in considering this issue.

4. Use of alternative dispute resolution

The use of ADR is an integral part of the AAT's case management approach. Table A.2 in Attachment A sets out the number of ADR processes conducted by the AAT in 2012–13 and in the two preceding financial years.

ADR contributes to the AAT's high rate of success in resolving applications without proceeding to a formal hearing. In 2012–13, 79 per cent of applications were finalised without a decision on the merits following a hearing. Table A.3 in Attachment A sets out the percentage of applications finalised without a hearing in the AAT's major jurisdictions over the last three years.

The AAT's use of ADR is a key way in which it seeks to make the review process economical, informal and quick. ADR processes lead to applications being finalised earlier than would otherwise have been the case and are a means of reaching an outcome that parties will prefer. They also provide an opportunity for the issues to be explored and discussed in detail in a forum that is less daunting for many parties than a formal hearing.

While the primary goal may be to attempt to reach an agreed outcome, ADR can also help to clarify and narrow the issues in dispute between the parties. The use of ADR can thereby reduce the costs incurred by the parties and the AAT by reducing the length of a hearing or avoiding the need for a hearing altogether.

The integration of ADR as part of the broader process for the independent review of government decisions also has distinct advantages. In most cases, applicants will have been dealing with a decision-maker through primary decision-making and internal review processes. The involvement of an independent ADR practitioner who is a member or officer of the AAT can help to address issues relating to actual and perceived imbalance of power between citizens and government. It also creates efficiencies by enabling an assessment to be made of the likelihood of an agreed resolution and, where this cannot be achieved, allowing a case to proceed more quickly to hearing and determination.

The AAT has taken a number of steps to provide clarity in relation to the ADR processes it offers and to ensure the quality of its processes.

The AAT has developed [process models](#) for each form of ADR that is used. Each process model sets out a definition of the process and then provides a range of information relating to the conduct of the process including:

- the stage of the proceeding at which the process is likely to be undertaken;
- a description of the way in which the process will proceed;

- the role of the person conducting the process as well as the role of the parties and their representatives; and
- what is likely to occur at the conclusion of the process.

The AAT has also developed a [set of guidelines](#) designed to assist Conference Registrars and Tribunal members determine when it may be appropriate to refer an application to a particular type of ADR process. The guidelines set out a range of considerations to be taken into account, including such things as:

- the capacity of the parties to participate and their attitudes;
- the nature of the issues in dispute;
- the likelihood of reaching agreement or reducing the issues in dispute; and
- the cost to the parties.

The guidelines identify factors that may make a particular form of ADR suitable for use. For example, mediation may be suitable where flexible options need to be explored or there will be an ongoing relationship between the parties.

The AAT is a Recognised Mediator Accreditation Body. All of the AAT's Conference Registrars and several members are accredited as mediators under the National Mediator Accreditation Standards. This supports the AAT's policy that mediations will be conducted only by accredited mediators. Conferences and conciliations are also ordinarily conducted by accredited mediators. Maintaining accreditation is a key measure to ensure quality and consistency in ADR practice within the AAT.

5. Assisting self-represented parties

Parties are assisted in the review process by advice and/or representation provided by competent legal service providers or other non-legally qualified advocates. However, a significant proportion of applicants at the AAT do represent themselves and the AAT has designed its processes to assist self-represented parties access the AAT and participate in the review process. The assistance provided relates not only to matters of procedure but also to the substantive issues in the case.

The AAT Act was drafted to ensure there are very few formal requirements for a person wanting to make an application to the AAT. While the application must be in writing, no particular form is required. In relation to the requirement for a statement of reasons, no detailed outline of the grounds for making the application must be provided. It is sufficient for an applicant to say they think the decision is wrong.

The AAT has developed a series of plain English brochures which explain how to apply for review and provide information about each of the key stages of the review process. These brochures have been translated into a range of community languages and are also available in large print.

The letter the AAT sends to an applicant acknowledging receipt of an application sets out basic information in relation to what will happen next in the review. Within the next few weeks, an AAT staff member contacts a self-represented party, usually be

telephone, to talk about the AAT and its processes and to answer any questions the applicant may have. This is known as Outreach.

Outreach provides an opportunity for the officer to:

- explain what the Section 37 documents are, what will happen next and any other relevant procedural matters;
- identify whether the person may need the assistance of an interpreter or has any particular needs because of a disability; and
- refer the person to organisations that may be able to provide advice or assistance in relation to the review.

The AAT has established legal advice schemes with the cooperation of legal aid bodies in most registries. A legal aid solicitor generally attends the AAT once each week or each fortnight. The AAT invites self-represented parties to make an appointment to see a solicitor who can provide advice and minor assistance, mostly in social security cases and occasionally in other types of cases. Further assistance, such as representation, may be provided if a person makes a successful application for legal aid. The AAT may also refer self-represented parties to community legal centres and other legal service providers that may be able to provide advice or representation.

Conferences provide a flexible and informal forum to assist self-represented parties in relation to the review. In addition to explaining the process, Conference Registrars discuss the substantive issues in the case. They will seek to ensure the applicant understands why the decision was made and the legal framework within which it was made. They can identify the kind of evidence the applicant needs to support his or her case and discuss how that material could be gathered. This may include requesting the decision-maker to obtain further evidence. In some cases, the AAT may itself issue a summons for the production of relevant documents.

If an application proceeds to hearing, an AAT staff member contacts a self-represented party in advance to remind them about the hearing and answer any questions the person may have. On the day of the hearing, a staff member will familiarise the person with the hearing room and what will occur.

Hearings involving self-represented parties are generally conducted in a smaller, more informal hearing room. The presiding member will usually modify the hearing procedure in various ways to assist the person to present their case. He or she will explain at the outset what will happen at the hearing and either outline the nature of the case and the issues to be decided or ask the decision-maker's representative to do so. The order in which evidence is given and submissions are made may also be changed.

The presiding member will often take responsibility for asking questions of the applicant and any witnesses in order to extract relevant material. The presiding member may also identify that particular further evidence is required and may adjourn proceedings so that this evidence can be obtained.

The procedural assistance provided by the AAT ensures self-represented parties have all the information and help to enable them to participate as fully as possible in the process. The AAT's approach in relation to the substantive issues is consistent with the AAT's role as an administrative decision-maker that must make the correct or preferable decision on review. The AAT will seek to ensure that, as far as possible, relevant material is available to consider. Providing self-represented applicants with assistance that helps them to understand and present their best case contributes to the fairness and justice of the review process.

6. Timeliness of the AAT's review process

The AAT aims to finalise applications within 12 months of lodgement and has set specific targets for each of the major jurisdictions. In relation to the Small Taxation Claims Tribunal (STCT), the AAT's goal is to finalise applications within 12 weeks of lodgement.¹²

The AAT's performance in relation to timeliness in 2012–13 and the two previous reporting years is set out in the table below.¹³

Percentage of applications finalised within time standards

Jurisdiction	Target	2010–11	2011–12	2012–13
	%	%	%	%
Social security	90	91	93	93
Veterans' affairs	80	66	66	70
Workers' compensation	75	68	70	68
Taxation				
Taxation Appeals Division	75	47	65	67
Small Taxation Claims Tribunal	–	40	41	27
All	–	72	78	76

Timeliness varies across jurisdictions and relates closely to the nature and complexity of the issues in dispute.

One of the key features of the *de novo* merits review process is the opportunity given to the parties to provide new evidence that is relevant to the decision to be reviewed. The

¹² See Part IIIAA of the AAT Act. The AAT's Taxation Appeals Division is known as the Small Taxation Claims Tribunal when reviewing certain tax decisions, including where the amount of tax in dispute is less than \$5,000 and decisions about tax debt release (irrespective of the amount).

¹³ Further information about the AAT's performance in 2012–13 is contained in [Chapter 3](#) of the AAT's *Annual Report 2012-13*.

additional material helps the parties to reach an agreed outcome and assists the AAT to make the correct or preferable decision in relation to applications when they proceed to hearing.

The pace that applications progress through the pre-hearing stage is heavily influenced by the time the parties need to obtain expert evidence, undertake other investigations and gather relevant material. Jurisdictions in which significant additional evidentiary material is routinely provided are more likely to take longer to finalise. For example, the procurement of expert medical reports in workers' compensation and veterans' affairs cases adds considerable time to the review process.

There are a range of other reasons why an application may not be finalised within the AAT's time standards. Some applications are delayed pending a decision by a decision-maker on a related matter or the decision of a court in a test case, or by criminal proceedings. There are matters where additional time is required to allow the parties further opportunities to resolve the dispute without a hearing.

Delays also occur when parties cannot proceed because of illness or other adverse circumstances. The AAT's ability to list hearings in a timely manner is affected generally by the availability of parties, representatives and witnesses for the hearing. Delays in the delivery of decisions following a hearing can also contribute to delays in finalising applications.

The STCT was established with a view to providing quick and inexpensive review of certain tax decisions, particularly where the amount of tax in dispute is low. The AAT's experience over time is that the 12-week time standard for finalising cases can be difficult to achieve. While the amount of tax in dispute in the case may not be large, the issues in dispute can be complex and additional time is required to gather relevant material and resolve the dispute.

The AAT monitors closely the timeliness of the review process and works with stakeholders on identifying strategies for minimising avoidable delays.

The AAT seeks feedback from parties and representatives about the timeliness of the review process in user satisfaction studies. The most recent survey was undertaken with individuals and representatives who were involved in applications for review finalised in 2011.¹⁴ Among individuals, 56 per cent considered the review took about the right time or less time than expected. While 44 per cent expressed the view that the review took too long, this can be seen in the context that more than half thought the review would take less than three months and, overall, 80 per cent of applicants thought the review would take less than six months. Among representatives, 89 per cent considered that reviews take about the right or less time than expected. The AAT's Practice and Procedure Committee is currently drafting a practice direction to formalise the entitlement of a party to seek an expedited hearing.

¹⁴ Administrative Appeals Tribunal User Satisfaction Study Final Report – June 2012.

6. Other aspects of practice and procedure in the AAT

The Commission's Issues Paper notes a number of factors that affect the accessibility of courts. This section of the submission provides information on some of those factors in the AAT context.

6.1 Case management

Given the diversity in the types of decisions the AAT reviews, the different types of people involved in applications for review and variations in the level of complexity of the factual and legal issues that may be in dispute, flexibility is the key to the AAT's approach to case management. The AAT must have flexible processes that ensure each application is dealt with in the most appropriate manner.

The AAT's case management process works well because of its flexibility. It is a process that applies regardless of the complexity of the issues raised by the decision under review and whether or not the parties are represented. It ensures there is a focus on what is at issue and can be tailored to ensure the most effective and efficient manner for resolving the application is pursued.

The AAT seeks to ensure that each review proceeds to finalisation in a way that is fair and just but also makes the most efficient use of the resources and time of the parties and the AAT. This is consistent with the AAT's overarching statutory objective. The AAT has a wide discretion to determine its procedure and the power to direct parties as to how a review will proceed.¹⁵

The AAT's view is that there would be value in making explicit in its governing legislation not only the responsibilities of the AAT but also the responsibilities of parties and their representatives to help facilitate a review process that is fair, just, economical, informal and quick. There would be benefit in referring explicitly to the types of directions that may be made and other powers that may be exercised to support this approach.

Provisions of the kind set out in Part VB of the *Federal Court of Australia Act 1976* provide a model that could be adapted for the AAT.¹⁶ They include a statement of the overarching purpose of the civil practice and procedure provisions with the identification of some specific objectives that fall within the scope of this purpose. The parties and their lawyers are required to conduct the proceeding in a way that is consistent with the overarching purpose. The kinds of directions that may be made and options for dealing with a failure to comply are set out.

The AAT Act currently specifies that decision-makers must use their best endeavours to assist the AAT to make its decision in relation to the proceeding before it.¹⁷ This is an important and valuable requirement that reflects the particular role of a decision-maker in administrative review proceedings. It is supported by the Australian Government's

¹⁵ Sections 33(1)(a), (2) and (2A) of the AAT Act.

¹⁶ See sections 37M, 37N and 37P of the *Federal Court of Australia Act 1976*.

¹⁷ Section 33(1AA) of the AAT Act.

Model Litigant Obligations which also include a specific reference to it.¹⁸ The introduction of a broader set of provisions which addresses the responsibilities of all parties to a review would supplement this existing obligation and clarify the role and powers of the AAT to pursue its statutory objective.

6.2 Expert evidence

A broad range of expert evidence can be relevant to applications in the AAT. By far the most common form is expert medical evidence which is relied on principally in veterans' entitlements cases, workers' compensation applications and certain types of social security matters.

The AAT explores with the parties what expert evidence will be obtained in the context of the particular issues in dispute in a case and will discuss whether a joint report may be suitable. The norm, however, is for parties to seek their own expert report if they consider this necessary. Given the cost and time involved in obtaining expert evidence, the AAT believes there would be value in considering the powers that should be available to regulate the expert evidence to be lodged in a case.

In relation to the way in which expert evidence is given at hearing, the AAT has used the concurrent evidence procedure over many years. Having two or more experts give their evidence at the same time allows areas of agreement and disagreement and the reasons for any disagreement to be identified clearly. In a [study](#) into the use of the procedure conducted by the AAT in 2005, members reported that the use of the concurrent evidence procedure improved the quality and objectivity of evidence and that as a result the decision-making process had been enhanced. In relation to the impact of the procedure on the length and cost of hearings, the AAT's experience is that the concurrent evidence procedure can save significant amounts of hearing time, particularly in cases where the parties seek to call a large number of expert witnesses to give evidence.

In 2011, the AAT issued two sets of guidelines to articulate the expectations of the AAT in relation to [expert evidence](#) and [concurrent evidence](#), which are available on the AAT website.

6.3 Fees and costs

An application fee is payable at the AAT only for certain types of applications. Where it is payable, the standard application fee is \$816. The application fee for the STCT is \$81. As set out in the AAT Regulations, these two fees are revised every two years to take into account changes in the Consumer Price Index.¹⁹ The next fee increase will take place on 1 July 2014.

Many applicants are exempt from paying a fee or are eligible to pay a reduced fee. For example, applications in the social security, veterans' entitlements and workers'

¹⁸ Sections 3 and 4 of Appendix B to the *Legal Services Directions 2005*.

¹⁹ Regulations 19A and 19B of the AAT Regulations.

compensation jurisdictions are fee exempt.²⁰ The standard application fee can be reduced to \$100 if:

- the applicant has been granted legal aid, holds a health care card or other card that certifies entitlement to Commonwealth health concessions, is in prison or otherwise lawfully detained, is under 18 years of age or is receiving youth allowance, Austudy payment or ABSTUDY benefits; or
- the AAT is satisfied that paying the full fee would cause the applicant financial hardship.²¹

Where an application fee is payable, the application cannot proceed until the fee is paid. The AAT may dismiss an application if the application fee is not paid within six weeks of lodging an application.²²

At the conclusion of an application, if the AAT certifies that the proceedings terminated in a manner favourable to an applicant who paid a standard application fee, the person is entitled to a partial refund (ie the standard application fee less \$100).²³

Information about the amount of fees collected is in the AAT's *Annual Report 2012–13*.²⁴ The fees collected by the AAT are paid into consolidated revenue.

In relation to costs, the AAT does not have a general power to award costs and the usual position is that parties must bear their own costs. There are limited exceptions to this general rule. The decision-maker will usually be required to pay the costs incurred by an applicant who is successful when seeking review of decisions under the following Acts:

- the *Australian Security Intelligence Organisation Act 1979*;²⁵
- the *Military Rehabilitation and Compensation Act 2004* where the AAT is reviewing a reconsideration decision made by the Military Rehabilitation and Compensation Commission; and
- the *Safety, Rehabilitation and Compensation Act 1988* and the *Seafarers Rehabilitation and Compensation Act 1992*.

Unless the order states otherwise, the costs are assessed on a party/party basis and may include witness expenses at the prescribed rate, all reasonable and proper disbursements and 75 per cent of all professional costs, including counsel's fees, which would be allowable under the Federal Court scale.

²⁰ The decisions in relation to which no fee is payable are set out in regulation 19(2) and Schedule 3 to the AAT Regulations.

²¹ Regulations 19(6) and (6A) and 19AA(6) and (6B) of the AAT Regulations,

²² Section 69C of the AAT Act and regulations 19(6D) and 19AA(6E) of the AAT Regulations.

²³ Regulations 19(8) and (9) and 19AA(8) and (9). For more information about the AAT's application fees and refunds, see the [AAT website](#).

²⁴ [Appendix 6](#).

²⁵ See section 69B of the AAT Act.

The AAT has a more limited power under the *Freedom of Information Act 1982* and the *Lands Acquisition Act 1989* to recommend in certain circumstances that costs be paid by the Commonwealth.

The AAT does not keep a record of the amount of costs a respondent may pay – in most cases this amount is determined between the parties with no involvement of the AAT.

The absence of a power to award costs in most cases means that the AAT cannot generally use costs as a mechanism for regulating party behaviour.²⁶

7. Use of technology

Technology offers a range of opportunities for the AAT in relation to the delivery of its services.

7.1 Modes for conducting case events

The AAT Act provides specifically that the AAT may allow a person to participate in a directions hearing or hearing by telephone or any other means of communication.²⁷ The AAT makes extensive use of the telephone to conduct case events, including for parties and representatives who live outside the capital cities.

Conferences are generally held by telephone where both parties are represented and directions hearings are also often held by telephone. This leads to time and cost savings for the parties.

If an applicant is not legally represented, the AAT prefers to hold the conference in person. However, where attendance at the AAT's premises would not be convenient for geographic or other reasons, conferences are undertaken successfully by telephone. This also applies to other forms of ADR.

Hearings are generally conducted in person but a proportion of hearings are held by telephone. Taking evidence from witnesses by telephone occurs quite frequently in the AAT. In some registries, this has become the usual way in which experts give evidence. Evidence is occasionally taken by video link.

The AAT is currently investigating the use of web-based videoconferencing which will provide an enhanced level of service for its users.

7.2 Electronic service options

The AAT is committed to providing accessible and effective services to parties and the public, which includes developing online service options. In 2012–13, the AAT resolved to manage as a program the implementation of a suite of integrated systems to deliver

²⁶ It is noted that the AAT has the power to order a party to pay costs if it has acted unreasonably only in relation to applications for review of decisions under the *Mutual Recognition Act 1992* and the *Trans-Tasman Mutual Recognition Act 1997*.

²⁷ Section 35A of the AAT Act.

online services and manage information electronically. The program encompasses a range of projects, some already underway and others to be undertaken over coming years. They include the development of AAT Online, the AAT's platform for a suite of services that will enable more efficient information exchange and delivery.

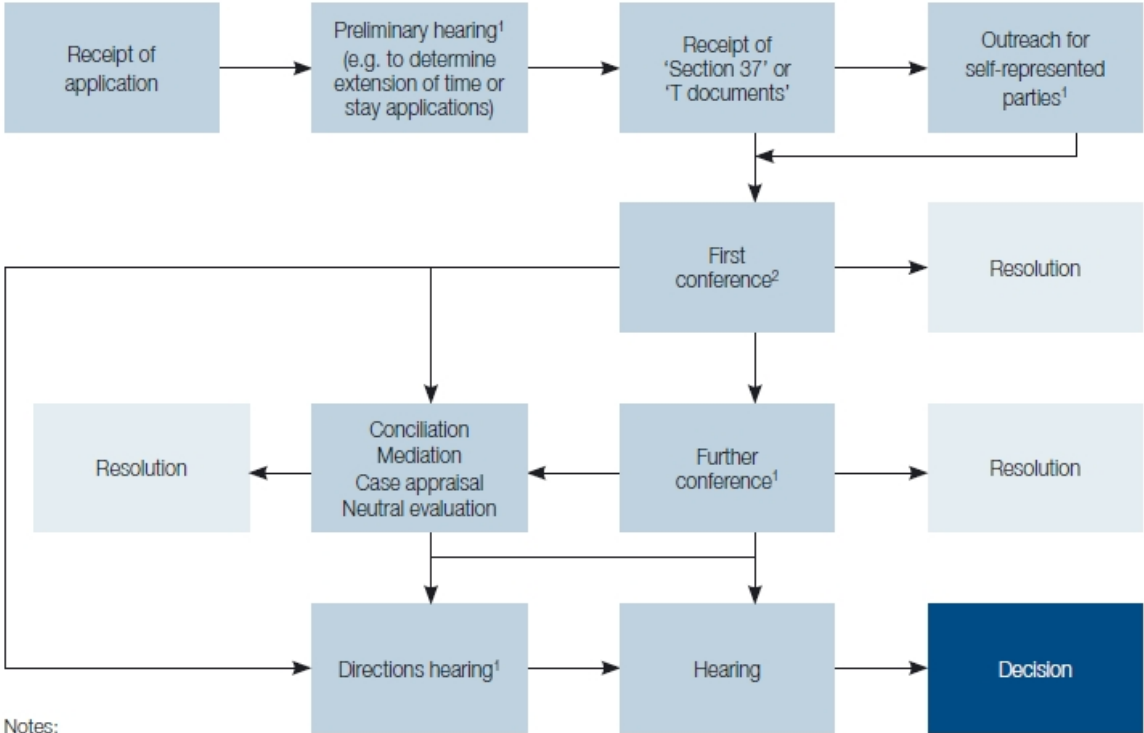
The first AAT Online service, [eCase Search](#), was launched by the AAT in March 2013. Accessible 24 hours a day, eCase Search allows parties, their representatives and the public to search for, and access, select information about most AAT applications lodged from 18 March 2013. Parties and representatives can check the date and time of the next listing in their case or whether another party has lodged a particular document without needing to contact a registry.

The AAT will work towards the development of a range of other online service options over time, including online application forms, electronic lodgement and exchange of documents, and enhanced online access to documents and other information relating to a case. This will enhance the efficiency of the review process and provide parties and representatives with a range of options for engaging with the AAT and each other.

8. Conclusion

The AAT has developed a set of practices and procedures designed to deliver fair and just review of a broad range of administrative decisions in a flexible and appropriate way for the diverse members of the Australian community, including those who do not have representation. The AAT's extensive use of ADR and the fact that the majority of cases do not proceed to a formal hearing also reflect a commitment to providing a process that is economical, informal and quick, while continuing to be fair and just. Hearings, when they occur, are conducted in a setting which is as informal as possible and focussed on ensuring the AAT has a sound basis on which to make the correct or preferable decision.

Chart A.1 Flow chart of the steps in the AAT review process



Notes:
 1. Where necessary
 2. Explore possibility of using other ADR process

Table A4.2 Alternative dispute resolution processes conducted by the AAT

Event type	2010–11	2011–12	2012–13
Conferences	6,897	6,761	7,606
Case appraisals	4	4	3
Conciliations	527	469	485
Mediations	38	49	42
Neutral evaluations	57	39	32

Table A.3 Percentage of applications finalised without a hearing²⁸

Jurisdiction	2010–11	2011–12	2012–13
	%	%	%
All	79	79	79
Social security	76	77	76
Veterans' affairs	73	73	71
Workers' compensation	87	87	87
Taxation			
Taxation Appeals Division	85	79	85
Small Taxation Claims Tribunal	82	90	73

²⁸ Applications finalised by the AAT without it completing the review and giving a decision on the merits under section 43 of the AAT Act. Includes applications finalised in accordance with terms of agreement lodged by the parties (sections 34D and 42C), applications withdrawn by the applicant (section 42A(1A)) and applications dismissed by the AAT (sections 42A and 42B).