

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Program: 1.4 Justice Services

Question No. SBE16/124

Senator Macdonald asked the following question at the hearing on 12 December 2016:

CHAIR: Can you explain for the uneducated—as some of us have been called—what harmonisation means?

Dr Smrdel: Thank you for the question, Chair. As I said, we have the Administrative Appeals Tribunal, we have the social services appeals tribunal and the migration and refugee review tribunals. Each of those tribunals has different processes, different procedures. So rather than something that users would necessarily experience, it is really just looking more at back office-type reforms to see if there are things that one tribunal does that others could do as well—to have consistent processes across the board. There might be some good reasons for some different processes. This is part of what the review is all about—to map what the different processes are in train and to see if there are things that can be done to harmonise the process across the board. If it is the case that there are differences for good reason, then so be it. But I think it is a useful exercise to go through that all to see what can be achieved to streamline and to get some further efficiencies.

CHAIR: Is it the practice of the president, Justice Kerr, to get all of the commission's tribunal members together at various times to try to get some commonality and some consistency of decision-making? Is that something that happens as a matter of course?

Dr Smrdel: It is probably a question that would be more appropriately put to the tribunal itself. They have a leadership group. Across all the divisions—there are division heads in the migration area, in the social services and child support division, and other divisions, too—I am sure that they discuss practices, but I think it is a question better put to—

CHAIR: Yes. No, no—

Dr Smrdel: We can take that on notice.

Senator Brandis: I have a view about that, Senator Macdonald, and the answer to your question is, generally, yes—it is desirable. Although it has not attracted a very great public notice, the amalgamation of the various merits review tribunals into a uniform structure under the AAT, which took place from 1 July last year, was a very, very significant piece of law reform. The history of administrative law in the modern history of this country goes back to 1971 when the great Sir John Kerr at that time, in his capacity as a member of the judiciary, produced the Kerr report, which recommended there should be a single uniformed merits review body that would deal with Australian administrative law and that it should be a single system. The Kerr report was adopted, but, in the years since, a number of individual merits review tribunals outside the AAT structure, like the Social Security Appeals Tribunal, the migration and refugee review tribunals, and so on, grew up. The effusion of these separate tribunals with their separate cultures and different principles and attitudes and practices really violated the simplicity of Sir John Kerr's vision of a uniform administrative law structure in Australia. So what was achieved—and I do want to pay credit to Duncan Kerr's leadership in this regard—from 1 July last year was to integrate all of these into a single body. It is still a body with different divisions reflecting specialisms, but nevertheless the idea that administrative review should operate under a uniform body applying a uniform set of legal principles has been revived under this new structure.

CHAIR: Thanks for that.

The answer to the honourable senator's question is as follows:

The President of the Administrative Appeals Tribunal (AAT) holds a national conference every two years. The conference provides an opportunity for members and senior staff to come together to participate in professional development sessions relating to the competencies required for undertaking merits review and to discuss tribunal practices. Topics covered at the last national conference held in May 2016 included assessing credibility, exercising discretionary powers, statutory interpretation, recent cases and delivering oral reasons for decision.

The AAT also employs other mechanisms to foster a common approach to the review process and consistent decision-making. There is a comprehensive professional development program for members, which incorporates induction and mentoring for new members and an appraisal scheme. Other professional development activities and resources are made available, including ongoing training and professional development sessions on aspects of AAT practice and relevant case law, opportunities for discussions between members dealing with similar types of cases, procedural and substantive legal guides and manuals, and regular bulletins containing information about legislative developments and recent AAT and court decisions.