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COAT SA News - April 2025 (Issue 24)



April 2025
Issue 24

Convenor's Report

Dear everyone

This is the first newsletter for 2025. Our last newsletter was sent to members in September 2024, and so quite a bit has happened since then.

Family violence seminar

In particular, we were very pleased with the positive response to the seminar on Family Violence, which was provided by the National Judicial College of Australia, at our request and which took place at The Hilton on 29 November 2024. Presenters included Professor Heather Douglas from the University of Melbourne, Jess Hill, Educator, journalist, author and speaker; Magistrate Jay Pandya (from South Australia); Judge Kate Hughes, Justice Liz Boyle and Judge Dina Lioumis all of the Federal Circuit and Family Court. I am confident when I say that I am sure all present found that the insights of the presenters were invaluable, and their engaging and thoughtful presentations were of a very high standard. In particular, I was impressed by the work they had done to tailor the presentations to Tribunal work.

The presenters have identified resources which will be referred to later in this newsletter which I expect will be useful for us all.

AGM and Committee for 2025

We conducted our AGM on 31 October 2024 at the SAET. There was no formal presentation, but the meeting was well attended, and there was a constructive discussion about our plans for 2025. We were grateful for the excellent Halloween decorations provided by Amy Brett, which helped to bring a lighter note to the evening.



I am always grateful to our Committee who are invariably enthusiastic, easy to work with and willing contributors to the efforts of COATSA. For the 2025 year, the Committee members working with me will be:

Jodie Carrell	Vice Convenor
Elle Spyrou	Secretary
Peter Kassapidis	Treasurer
Kate Millar	Committee Member
Anne Lindsay	Committee Member
Kath McEvoy	Committee Member
Marten Kennedy	Committee Member

Professional development plans for 2025

You will be aware that our first seminar is planned for 22 May 2025. The topic is **Collateral Challenges**. The principal presenter is Justice Hughes, President of the SACAT. Her Honour's presentation will be followed by a panel discussion with participants from the ART and the SAET. This presentation will focus on the gnarly problem of identifying issues arising in the context of a tribunal hearing which are not central to the principal issue(s) on which you are required to make a decision – and how you deal with those issues.

We are planning a seminar later in the year on the topic of **Communicating with First Nations People**. Alex Bowen has agreed to present at this seminar. Alex is a PhD candidate in the School of Languages and Linguistics and a Research Fellow with the Indigenous Law and Justice Hub at the University of Melbourne. He has practised law in Victoria and the Northern Territory, particularly working in circuit courts in East Arnhem Land with Yolngu and Warnindilyakwa people. He is an engaging presenter, and we are planning for this session to also involve local presenters with expertise in this area.

We are hoping to provide another one or two seminars – on developments at the ART; and also about the area of pseudo law/sovereign citizens.

We will provide further information about those seminars when we have finalised arrangements.

Newsletters and Bulletins for 2025

We are aiming to provide members with at least 3 newsletters this year, and bulletins as topics arise which we consider are likely to be of interest for members, and which require some quick form of communication (such as employment opportunities).

If you have any suggestions for our Committee, please do not hesitate to email governance@sacat.sa.gov.au. We would be very pleased to hear from you.

Barbie Johns

Convenor

On behalf of the COAT SA Committee

Upcoming Events

COAT SA Seminar – Collateral Challenges – 22 May 2025

The Hon Justice Judy Hughes, President of the SACAT, will speak on the topic of Collateral Challenges (i.e. challenges about decisions/orders which are incidental to the decision in question), followed by a panel discussion with Deputy President Kate Millar (ART) and Deputy President Judge Brian Gilchrist (SAET).

The presentation will be held at the SACAT – Level 8, 100 Pirie Street, Adelaide. **Drinks and nibbles will be provided from 4.45pm, with the seminar to start at 5.15pm.**

Please RSVP to Elle Spyrou, Secretary at governance@sacat.sa.gov.au

Please also note that for those of you who are legal practitioners, CPD points are likely to be applicable.

There is no charge for attending this event – the cost will be covered by COAT SA.

COAT National Annual Conference

The COAT National Annual Conference is being held in Melbourne from 5-6 June in 2025. The theme of the conference is *“Staking Our Claim – Defining Tribunal Values and Embracing Our Role in a Modern Justice System”*. The conference will highlight and celebrate what distinguishes tribunals from courts, and how those differences enable tribunals to offer more efficient, cheaper and efficient justice.

As in previous years, the conference will be held in a hybrid format, allowing for both in person and online attendance. You can find more information at: [COAT National Conference](#)

COAT National – Professional Development Courses

In 2025, COAT National will offer, in addition to its usual programs, several new professional development programs. You can access a list of upcoming events and courses from COAT National [here](#).

COAT National Conference Ballot is Open

The COAT SA Committee has agreed to provide financial assistance to up to three COAT SA Members for the cost of **three** early bird online registrations (the value of \$550 per registration).

The Committee will give preference to applicants who have not received financial assistance to attend the conference in previous years.

By submitting an application, the applicant agrees that if they are employed by a Tribunal which is also providing financial support to its members to attend, and the applicant receives such assistance from that Tribunal, then the applicant will relinquish the financial assistance which would otherwise have been provided by COATSA.

The Committee has a discretion as to the selection of applicants to whom financial assistance will be provided. If an applicant has a particular reason for wishing to attend the conference, the applicant should mention that in their request.

The Committee would like successful applicants to provide a brief summary of some aspect of the conference which they found particularly useful or interesting, for us to include in our newsletter.

Entry

If you would like to participate in the ballot, please respond via return email to: governance@sacat.sa.gov.au by midday **Tuesday 29 April 2025**. The ballot will occur on 30 April 2025 and applicants will be informed shortly after the ballot has occurred.

If you are not currently a COAT SA member, please enquire about becoming a member at: governance@sacat.sa.gov.au before submitting your expression of interest for the ballot.

Resources for Tribunal Members

COAT SA Resources

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

Most recently, participants of the Family and Domestic Violence training conducted by the National Judicial College of Australia were provided with access to a number of resources through the online NJCA learning portal.

One resource identified through that training is that is publicly available is the [National Domestic and Family Violence Bench Book](#). The bench book is

produced by the Australasian Institute of Judicial Administration and is updated annually with new information and decisions. Members may find it useful in finding information about the impact of domestic and family violence on different vulnerable groups, or guidance on conducting hearings or dealing with evidence in matters involving family and domestic violence.

The Next Conversation – Argue Less, Talk More by Jefferson Fisher

From communication expert Jefferson Fisher, the definitive book on making your next conversation the one that changes everything.

The Next Conversation is a recently published book which we think may be particularly useful and relevant to Tribunal members. The author gives you immediately actionable strategies and phrases that he says will forever change how you communicate. The author is trial lawyer and communications expert Jefferson Fisher who has gained millions of followers online through short, simple, practical videos teaching people how to argue less and talk more. The book offers a tried-and-true framework that may will show you how to change your approach to difficult conversations.

The author deals with issues common in a hearing room setting such as handling a heated conversation, dealing with a difficult personality, or standing your ground with confidence. If you don't want to invest in the book, you may want to have a look at his videos on YouTube: [The Next Conversation Starts Here](#)

Legislative Update

Conversion Practices Prohibition Act 2024

The [Conversion Practices Prohibition Act 2024](#) commenced operation on **1 April 2025**.

The Act passed Parliament last year and amends the [Equal Opportunity Act 1984](#) through the insertion of s 86A which makes it unlawful for a person to provide or deliver a “conversion practice” to an individual, or arrange for a person to do so.

SACAT may now receive referrals from the Commissioner regarding complaints about conversion practices; however, we do not anticipate that this change will bring a significant increase in the number of referrals to SACAT.

Statutes Amendment (South Australian Employment Tribunal) Act 2024

The [Statutes Amendment \(South Australian Employment Tribunal\) Act 2024](#) came into operation on 1 December 2024.

The Amendment Act amends the [Equal Opportunity Act 1984](#) so that employment-related discrimination and victimisation complaints will be heard at SAET rather than SACAT. Other amendments to the [Fair Work Act 1994](#), the [Magistrates Court Act 1991](#), the [Work Health and Safety Act 2012](#) and the [South Australian Employment Tribunal Act 2014](#) address technical and procedural issues to improve the efficiency of the Tribunal and the experience of litigants.

South Australian Civil and Administrative Tribunal (Miscellaneous) Amendment Bill

The [South Australian Civil and Administrative Tribunal \(Miscellaneous\) Amendment Bill](#) passed Parliament on 18 March 2025.

The Bill broadens the scope of Part 3A of the SACAT Act to allow SACAT to transfer matters to the Magistrates Court to deal with where SACAT is barred from dealing with that ‘federal matter’ under the Australian Constitution. This expands the existing Part 3A, which is limited to transferring matters involving federal diversity jurisdiction (where parties are resident in different states).

The Bill also expands the definition of **legally qualified member** for the purposes of determining which SACAT members are allowed to make certain types of decisions or orders at SACAT.

A copy of the Bill is available [here](#) and you can find a copy of the second reading speech [here](#).

Decisions of Interest

Luca v Eckert (No 2) [2024] SASCA 136 [\[2024\] SASCA 136](#)

Justice Livesey, President, Justice S Doyle and Justice David

This decision considers an appeal from an order made by SACAT dismissing the applicant's internal review of orders made by the Tribunal under the *Guardianship and Administration Act 1993* and *Advance Care Directives Act 2013*. The Tribunal dismissed the applicant's application for internal review as the person subject of the application was deceased at the time of the hearing and as such there was no utility in hearing the application.

The Court of Appeal affirmed the Tribunal's approach in dismissing the appeal under section 48(1) of the *South Australian Civil and Administrative Tribunal Act 2013* following the death of the protected person.

The applicant also argued that the Tribunal was unable to hear his application for internal review as an issue of federal diversity jurisdiction arose, given that one of the applicants in the original matter resided interstate. Deputy President Johns determined in the internal review hearing that the Tribunal did have jurisdiction to hear the applications at first instance because the applications did not give rise to a federal diversity jurisdiction issue. The Court of Appeal did not make a determination on this point but noted that there is authorities in [Western Australia](#) and [Victoria](#) that have determined federal jurisdiction diversity does not apply to guardianship and administration matters.

Decisions from the Guidance and Appeals Panel (GAP)

GAP-AAA and GAP-AAB; Child Support Registrar (Guidance and Appeals Panel) [\[2024\] ARTA 1](#)

Justice Kyrou, President

Referral to GAP declined in absence of clear, material error

This matter involved an application for referral to the GAP under section 128(2)(b) of the *Administrative Review Tribunal Act 2024* (ART Act) of a decision of the Tribunal under the *Child Support (Assessment) Act 1989*. This concerned whether there was a mutual expectation of separated parents that their children would attend a specific private school.

The GAP provided general principles to assist parties who may be considering apply for referral to the GAP. These included:

- The *Administrative Review Tribunal (Guidance and Appeals Panel) Practice Direction 2024* states that application will be decided without an oral hearing unless a party seeks an oral hearing, and the President determines an oral hearing is necessary in the interests of justice. In this case, the Applicant's request for an oral hearing was denied as the written

submissions were considered sufficiently detailed, and the interests of justice did not require a hearing.

- The request for a stay of the underlying Tribunal decision was also declined, with the Tribunal emphasising that a stay will only be granted where its absence would result in irreversible harm.
- The meaning of the phrases ‘the Tribunal decision may contain an error of fact or law in and ‘materially affecting the Tribunal decision’ in s 128(2)(b) of the ART Act were considered together with the discretionary consideration that may inform a decision on whether to grant an application for referral to the GAP.
- An error of fact may involve an objective fact, such as a person’s age. Inferences or matters which are question of degree on which reasonable minds may differ may not be errors of fact.
- In considering whether a decision may contain an error of act or law, a possibility just short of certainty is not required, nor will it be established on a fanciful possibility. There is a spectrum, and the stronger the possibility of error, the greater the prospect that the requirement that the Tribunal decision may contain an error of fact or law will be established.
- An error is material when, if the error had not been made, there is a realistic possibility the outcome of the proceeding would be different.
- In exercising the discretion to refer, it is relevant for the president to consider the nature and volume of cases waiting to be heard at first instance and the fact that every referral to the GAP will diminish to some extent the capacity of the tribunal to undertake first instance reviews with the degree of expedition required by its statutory objective.
- In this application, despite the applicant identifying potential legal errors, the Tribunal exercised its discretion not to refer the matter to GAP, noting that such referrals are not automatic but subject to broader discretionary considerations, including the availability of alternative appeal pathways (such as to the Federal Court) and current Tribunal caseload.

This decision considers the principles for GAP referrals and underscores that the Tribunal will refer to the GAP only where alleged errors meet the criteria for further review.

Bunnings Group Limited and Privacy Commissioner (Guidance and Appeals Panel) [\[2024\] ARTA 42](#)

Justice Kyrou, President

Adjournment request denied—no compelling justification provided

This matter involved a joint application by the parties for adjournment of a scheduled directions hearing in a case concerning the use of facial recognition technology by Bunnings. The Tribunal made the following determinations:

- The adjournment was sought due to the complexity of the case and pressures on document filing due to the upcoming holiday period.
- The Tribunal declined the request, noting that under section 9 of the ART Act, there is a statutory obligation to resolve matters quickly and fairly.
- It cited the GAP Practice Direction 2024 (para 7.2–7.3), which requires parties to be prepared for directions hearings and discourages adjournments without compelling reasons.
- The Tribunal noted that both parties were large, well-resourced organisations that should have been capable of meeting filing obligations within the expected timeframe.

The Tribunal refused the request to adjourn the directions hearing.

Elmi and Australian Skills Quality Authority (Guidance and Appeals Panel) [\[2025\] ARTA 192](#)

Senior Member Harrowell

Application for stay refused—no evidence of irreversible harm

This matter involved an application for a stay under section 32 of the ART Act, in respect of ASQA's decision to cancel her childcare qualifications. The Tribunal made the following determinations:

- The Applicant was not currently working in a role that required the cancelled qualifications and had not provided evidence of any immediate and/or irreversible detriment that would result from the cancellation taking effect.
- Although the Tribunal accepted that Applicant had a reasonably arguable case for review—particularly due to ASQA's reliance on data from a student system introduced after her course was completed— this did not justify granting a stay.
- The Tribunal emphasised that stays are reserved for cases where there is a risk of detriment, and that the public interest in maintaining the integrity of vocational qualifications was a relevant consideration.

The interim stay previously granted was discharged, and the stay application was refused.

Baumgarten and eSafety Commissioner (Guidance and Appeals Panel) [\[2025\] ARTA 59](#)

Justice Kyrrou, President, Deputy President O'Donovan, Senior Member Manetta

This matter concerned whether a communication by the eSafety Commissioner submitted via X (formerly Twitter)'s Legal Requests Portal constituted a "removal notice" capable of review under the *Online Safety Act 2021* (OS Act). In separate decisions, the Tribunal, constituted by President Justice Kyrrou, Deputy President O'Donovan and Senior Member Manetta, made the following determinations:

- The complaint was submitted via a formal legal channel, and X removed the content within two hours, leading the applicant to argue the action was functionally a removal notice.
- Under section 220(2) of the OS Act, the Tribunal has jurisdiction to review a "decision" of the Commissioner under section 88. Although not explicitly labelled as a removal notice, the Tribunal found the objective effect was equivalent.
- The Tribunal applied the principle from *Collector of Customs (NSW) v Brian Lawlor Automotive Pty Ltd* (1979) 41 FLR 338, confirming that administrative decisions can be reviewable even if legally ineffective, provided they produce the effect.
- The use of the Legal Requests Portal and the immediate response from X created the appearance of an enforceable direction, sufficient to satisfy the statutory test for review.

The Tribunal found the respondent has made a reviewable decision in respect of which the Tribunal had jurisdiction.

Baumgarten v eSafety Commissioner (Guidance and Appeals Panel) [\[2025\] ARTA 153](#)

Justice Kyrrou, President, Deputy President O'Donovan, Senior Member Manetta

Merits Review Decision - Decision set aside and remitted

In the follow-up to the jurisdictional ruling, the Tribunal considered the merits of the eSafety Commissioner's decision. The Tribunal, constituted by the same panel, made the following findings:

- The parties agreed that the legal criteria for a removal notice under section 88 of the Online Safety Act 2021 (OS Act) had not been satisfied.
- The Applicant asked the Tribunal to substitute a new decision, but the Tribunal declined to exercise its discretion under section 105(a) of the ART Act.
- The Tribunal relied on established principles from *Commonwealth v Beale* (1993) 30 ALD 68, preferring remittal where an agency had not yet considered the relevant statutory question.

The decision was set aside and remitted to the Commissioner for reconsideration in accordance with the Tribunal's order that the Commissioner consider what action, if any, is required of the Commissioner under the OS Act in relation to the complaint lodged with the Commissioner on 31 May 2024, including whether a written notice under s 88(3) must be issued to the person who made the complaint under s 36.

Update from the ART

Systemic Issue Raised Regarding Agency Response to Tribunal Statutory Interpretation

On 16 December 2024 Justice Kyrou, President of the ART, issued Notice of Systemic Issue No. 1 of 2024 under section 193(i) of the ART Act. This is available at [President issues first notice of systemic issue | Administrative Review Tribunal](#).

The systemic issue identified was:

Whether a respondent agency should apply the Tribunal's interpretation of a provision of a statute in a case (primary case) in subsequent cases involving the same provision, rather than continuing to apply its own preferred interpretation of the provision, unless and until the Tribunal's decision in the primary case is set aside or varied?

The issue arose in the context of income apportionment under the *Social Security Act 1991* (SS Act). Prior to legislative amendments in December 2020, the income test in 1067G-H23 in section 1067G ('point H23') of the SS Act required income to be taken into account in the fortnight in which it was "first earned, derived or received." From 2022, the Department of Social Services applied an interpretation that allowed income to be assessed in the Centrelink fortnight when it was received, even when evidence suggested it had been earned over a different period. This approach could affect the calculations of entitlements, including the calculation of a debt.

The Tribunal considered this issue in a test case: *Secretary, Department of Social Services and FTXB [2024] AATA 3021* (FTBX), with the Tribunal constituted by the President, SM Marten Kennedy and SM Susan Trotter. The Tribunal stated at [160] of the decision that 'the SS Act does not allow the Secretary to apply his preferred construction of point H23,' and that point H23 requires income to be taken into account when the recipient first becomes legally entitled to the income rather than when it is first received.

The Applicant appealed this decision, and the Secretary filed a notice of contention that the decision should be affirmed based on the Secretary's preferred interpretation of the point H23. One month later, the Secretary issued a public statement that the Department would continue to apply its preferred interpretation in unresolved cases until the outcome of the appeal was known.

The matter has been referred to the Administrative Review Council with a proposal that it inquire into and report on the systemic issues contained in the notice.

Australia Day Honours

A significant cohort of tribunal members have recently been awarded in the Australia Day Honours List for their services to the law and the legal profession. It heartening to see that the work of Tribunals and Tribunal Members have been recognised through these awards:

- The **Honourable Duncan James Kerr SC**, awarded Officer of the Order of Australia (AO) in the General Division, was ***President of the Administrative Appeals Tribunal*** (2012-2017) and ***Chair of the Council of Australasian Tribunals*** (2014-2017)
- Mrs **Anne Coghlan**, awarded Member of the Order of Australia (AM) in the General Division, was ***Inaugural National Convener of Social Security Appeals Tribunal*** (1988-1994), ***Executive Member National***

Council of Australasian Tribunals (2002-2012), Senior Member and ***Deputy President Victorian Civil and Administrative Tribunal*** (between 1998 and 2020), ***Member Victorian Administrative Appeals Tribunal*** (1994-1998), and ***Deputy President, Anti-Discrimination Tribunal*** (1996-1998)

- **Judge Christopher Nigel Kendall**, awarded Member of the Order of Australia (AM) in the General Division, was ***Deputy President Administrative Appeals Tribunal*** (2015-2018)
- The **Honourable Alan Robertson SC**, awarded Member of the Order of Australia (AM) in the General Division, was ***Deputy President Administrative Appeals Tribunal*** (2015-2020), and ***Deputy President Australian Competition Tribunal*** (2016-2020)
- **Emeritus Professor Gillian Doreen Triggs**, awarded Companion of the Order of Australia in the General Division, was ***President and Member of the Asian Development Bank Administrative Tribunal*** (2012-2019)
- **Mr James Christopher Simpson**, awarded Officer of the Order of Australia (AO) in the General Division, was a Legal Member and ***Senior Member of New South Wales Civil and Administrative Tribunal*** (1990-2022), ***Presiding Member of New South Wales Mental Health Review Tribunal*** (2002-2016), and ***Deputy President of Community Services Appeals Tribunal of New South Wales*** (1994-1997)
- The **Honourable Ann Margaret Ainslie-Wallace**, awarded Member of the Order of Australia (AM) in the General Division, was ***Principal Member Occupational Division NSW Civil and Administrative Tribunal*** (2022), and ***Deputy President Mental Health Review Tribunal New South Wales*** (2022)
- **Mr Kevin Sidney Anderson**, awarded Member of the Order of Australia (AM) in the General Division, was ***Chair New South Wales Public Service Promotion Appeals Tribunal*** (1977-1979)
- The **Honourable John Howard Day**, awarded Member of the Order of Australia (AM) in the General Division, is ***Member Salaries and Allowances Tribunal*** (since 2021)
- The **Honourable Richard Christopher Refshauge**, awarded Member of the Order of Australia (AM) in the General Division, was ***Deputy President of the Appellate Tribunal of the Anglican Church of Australia*** (2017-2022)

- Mr **Jim Magee**, awarded Medal of the Order of Australia (OAM) in the General Division, was ***Tribunal Member South Eastern Cricket Association***, and Member of the Independent Tribunal Southern Football and Netball League

Emeritus Professor Anthony Ronald Moon, awarded Medal of the Order of Australia (OAM) in the General Division, was a ***Member of the AUSTUDY Tribunal*** (1984-1989)



Your COAT SA Committee

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

Something to share?

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