Submission to the Senate Economics Committee

through

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EXTRACT.

The Commonwealth introduced exceptional circumstance in response to drought and productivity drives in 1992. The legislation proved to be a cash cow for bankers and financiers as they collected interest subsidies and other provisions whilst failing to carry out the intentions of the scheme. State controlled Authorities fell short and the financiers gained control. The Commonwealth introduced exit payments avoiding bankruptcy in the first instance but then made the funds available to bankruptcy. in about 2005. History has shown this to be a fundamental mistake and rewarding failure to act within the intentions of the legislation by financial houses.

The productivity drives in rural industry are doubtful because whilst accounting support may show the value, the marketing and enterprise flexibility of the Australian farmer has been removed. Thus current productivity gains will need to be supported as farmers are locked into specialist situations with the various disadvantages of such enterprises.

Until such time as specialist rural bank or lender of last resort is found exceptional circumstances will eventually prove to be one of the limited options available to Government to maintain food security and retain social balance. It is noted that for the first time in many droughts that in the last 10 years Australia needed to import grain. It is for Government to now decide if losing production efficiency from land resources is a preferred loss to productivity per capita and Exceptional Circumstances and ever increasing social disruption in the search for production value per industry participant.

CONTENTS.

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INTRODUCTION.

This submission traces a brief history of Exceptional Circumstances to the current situation. Where Government became the agent of change by funding artificial productivity in rural industry through financiers and state authorities to oversee and distribute this funding. The objects of the scheme were lost and so exceptional circumstances became the method to redistribute the wealth in rural industry to other parts of the economy.

With the 2007 world financial crisis (WFC) the artificiality surrounding this process became evident and now a ever increasing group of Australian farmers are even more needy of support. These farmers are increasingly aware of the fixed value of interest payments against their variable returns and as Government seeks to have a larger input in resource management and the aftermath of the WFC reduces asset values a crisis may be looming.

It is now time to establish parameters for funding any exit payments as financiers move against customers and establish new methods of default to exit farmers who may be efficient but unviable to financier returns, and below average productivity and so will be sacrificed to refinance facilities for preferred customers. As part of this legislation it may be a suitable time to consider the parameters of individual social circumstances, legal obligations of financiers and administrative processes against the objects of the exceptional circumstances legislation. This submission endeavours to supply some of those parameters.

HISTORICAL SKETCH.

In 1992 the Commonwealth introduced the Exceptional Circumstances Schemes including Drought/ Productivity for Farmers. These schemes including the Dairy Exit and Cane Growers Schemes gave Australian Farmers the opportunity to grow their productivity or exit the industry. The schemes eventually involved exit payments avoiding bankruptcy. The farm financiers made representations to farmers about the packages and encouraged participation. The opportunity for the financiers was to advance the subsidy on funds provided to maximum scheme interest values and then abandon the customer and recover the funds and any default payments. Estimates of the number of exiting farmers were made and proved deficient.

These schemes replaced the previous farmer schemes (PIBA) and it was not until 2001 that a judgment[1] under the previous scheme where payment had been flexible established the aspects of the forgiveness of payments when due and related interest as simple interest only on unpaid payments. At about the same time a judgment.[2] in bankruptcy established that farmer scheme payments belonged to the farmer not his financier. The financiers then lobbied to have the funds become theirs through bankruptcy and this the Government granted.

In 2005 the Commonwealth at the Council of Australian Governments in Darwin, reduced the Queensland allocations for farmer schemes by $36M and transferred certain benefit distribution and supervision to Centrelink It established funding for a computer overseeing program to control wayward subsidy payments and costs. The Commonwealth made particular claims about illegalities in distribution of benefits [3] At about the same time EC claims in Victoria were being disallowed and established as acceptable for the same claimants in New South Wales.[4] In Victoria it was sought to establish bankers selling money to customers and promising exceptional circumstances support were misleading and deceptive.

In Queensland the Guidelines for viability were not those as stated under the Act, Regulations and

1 CH Magill & 1 OR v National Australia Bank [2001] NSWCA 221 (13 August 2001).Meagher JA, Heydon JA, Ipp AJA.

2Blacker v National Australia Bank [2001] FCA 987 (26 July 2001) Conti J

3 Courier Mail , Brisbane April, 2005.

4 Productivity Commission Preliminary Report into Drought Strategy, 2008.

enacted Guidelines of 1992- 2004 where an entity if it could pay its interest with subsidy was viable. But viability was at the whim of the financiers involved who controlled viability reports by manipulating files. One such system;
was to refuse the interest subsidy by the bank provisionally, and
issue demand for a lesser amount,
then forcing the customer to make default interest payments until contract renewal,[5] [6]
from other resources,
weakening their risk position, by
contrived default, and
bad credit history.

A consultant would then state the farmer was unviable using the contrived position. The question is when the farmer paid the interest for the 12 months,
the financier said he could not, and
the financier accepted the funds, after
a consultant verified the farmer unviable,
was the act a fraud or wilful default on behalf of the financier and /or the consultants' position?

FAILED PROCESS of ASSESSMENT

In Queensland the process of establishing need; was followed by having assessors from various financial institutions employed in the Queensland Rural Adjustment Authority. The claims were placed on a table and the various assessors accepted the duty of assessing a claim by deciding their own identified files. This did not control the process so that particular financial institutions' customers could be assessed by a past employees of that organisation. This situation could still exist and did during the Commonwealth actions against Queensland in 2005.

New South Wales appears to have accepted all claims and Victoria may be similar to Queensland in possible contrived defaults in some instances to refuse subsidy and establish unviability[7].

5 *NAB past refund activities* at refunds of default interest identified in 2005 refunds paid 26 September 2006 back to 1999..
6 Kay v National Australia Bank Ltd [2010] NSWSC 1116 (30 September 2010). Rothman J.
7 Productivity Commission Draft Report into Government Drought Support 2008. P.143.

SHOULD THE GOVERNMENT ACCEPT RESPONSIBILITY.

Clearly the Commonwealth has accepted responsibility for exceptional circumstances conditions at least in part by paying subsidy. The Commonwealth needs to make legislation for all Australians so where conditions in one state show a problem then legislation in all states must follow. Thus where farmers have been identified as unviable by the processes under the Exceptional Circumstances viability conditions, with subsidy included in the viability test without other interference, no further action is required. The changes are for granting of the $150,000 clear of bankruptcy but subject to taxation is appropriate and may be justified socially and legally..

WHEN SHOULD FINANCIERS REFUND THE FARMER AND / OR THE SUBSIDY PROVIDER INTEREST – CONTRIVED?

One Australian Bank has admitted and refunded 33 possible breaches to its' customers. One of these breaches,is

- *during the period between a particular contract being out of time and its renewal, the bank had charged default interest,*
- it refunded the interest but not to all customers affected.
- This practice of charging default interest had been carried out by the bank for many years and was directly involved with the circumstances quoted above.

These above situations outline some circumstances where financiers misuse of the interest subsidy funds of the scheme helped dispossess farmers after encouraging the use of the financiers facilities by the farmer to the advantage of the financier (best interest return in town) with guaranteed support to dispossess the customer at the financiers will.

This process helped support the Australian Banking system to its' 2007 WFC position where credit growth relied on farm debt reduction. It is noted the Reserve Bank purchased bundled mortgages from Australian Financial Institutions during 2007 and beyond to service the economy at a time of cash shortfall. Thus the domestic housing and bank investments financed by the funds of the Commonwealth and the banished farmers were turned over again to the benefits of the whole community.

In 2005 the Commonwealth adopted a policy to assist in dealing with access to justice through the Model Litigant Obligation.[8] The Commonwealth Attorney General made the following observations " It also aims to enhance Australia's justice system by introducing an overarching obligation on the Court, litigants and their legal practitioners," He went on to state his department was conducting relevant reviews of administrative decisions and how the Government takes seriously its' responsibility to ensure the administrative system works efficiently, *"and recognises the way agencies behave within the system is an important aspect of achieving this."*[9]

He then defined the Commonwealth and its agencies obligations;

- act honestly and fairly;
- deal with claims promptly;
- pay legitimate claims without litigation;
- act consistently in the handling of claims and litigation;
- consider alternative dispute resolution.

A further undertaking was to keeping costs to a minimum and not taking advantage of claimants who lack resources to litigate a legitimate claim[10]

This Administrative Appeals Tribunal obligation framework if applied to the number of claims across the farming industry would block the system for many years. Consequently in the interests of good governance the Commonwealth is providing a realistic approach to provide a one size fits all to grant a specific sum to exiting farmers.

SHOULD THE FUNDS BE AVAILABLE TO BANKRUPTCY. ?

The Social Contract.

It has long been identified in Australia the vagaries of farming and Governments have long sought to facilitate equity between competing interests with regard to financing and maintaining farming entities. It is also recognised the contribution to Australia provided by the rural sector in necessities of life and economic impact. Firstly farmers are major contributors to clean food, clean air and clean water.. This means that any move by a supplying entity to farming needs to examine the risk factors and accept they are providing a service to a life sustaining industry and this is identified in

8 Canberra, 26 August, 2009 (Attorney General CTH)) The Obligation to Assist: Model Litigants in Administrative Appeals Tribunal Seminar.

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10 Canberra, 26 August, 2009 (Attorney General CTH)) The Obligation to Assist: Model Litigants in Administrative Appeals Tribunal Seminar. At Page 3.

the 3 way balance sheets of most Australian finance houses.

Government contributions to financier interest income.

The role of financiers is identified separately through the provision of market leading subsidised interest values and viability exercises guaranteeing payment of interest for any year. The financier agrees to carry the farmer in the original application for exceptional circumstances. Thus when a financier changes his input, he is changing his representation to the farmer and the interest subsidising authority.[11] With the subsidising authority supplying funds to assess viability and the financier restricting access to interest subsidy outside the Minister's Guidelines the Commonwealth needs to assess its and the financiers situation. The failure by the financier to accept the interest subsidy may be regarded as an illegality or unlawful act. In which case it could be a defence in Bankruptcy, under the principal in James (unlawful act). As the control of the exceptional circumstances provisions have now almost all been given over to financiers and lost to the subsidy paying authority and the financier gives an undertaking to carry the farmer or rural business but is changing its' representations a serious legal situation may appear in negligence as well.

In Blacker v National Australia Bank [2001] FCA 987 (26 July 2001) Conti J.
the Bankruptcy Court found the Dairy Exit Subsidy did not belong to NAB because NAB was not a farmer.

In McDonald v Holden[12] the Queensland Supreme Court in review ordered a review of McDonald's application under Native Vegetation Subsidy provisions because the Queensland Rural Adjustment Authority had made McDonald's unviable when receiving Exceptional Circumstances interest subsidy without including Mc Donalds' total assets and the subsidy.

It is considered that the facts the bank does not own the subsidy and may not have a right to reject its inclusion in viability or that total assets and income are not being included in viability decisions have not been applied generally to Exceptional Circumstances viability decisions. This being the case once again a further rejection of interest subsidy or farmer financial aid by a financier may be viewed as an illegality or unlawful act or the failure of the paying authority to advance the funds a similar situation. In any given situation it may not be difficult for any farmer being found unviable to show the financier has given incorrect information to the paying authority a separate offence under most applicable acts with penalty.

11 Ministers' Guidelines for the provision Exceptional Circumstances, 1992 and 1995.
12 Mc Donald v Holden [2007] QSC 54(15 March 2007) Mullins J.

Consequently many farmers may expect to be found outside of the provisions of the Bankruptcy Act 1966 (Cth) with the corresponding loss of resources and funds and social impacts caused by financiers jostling for the position of a preferred account (in Bankruptcy) but being responsible for the illegalities or unlawful acts. To illustrate this point in the case of the Australian Bank and its refunds to customers the Bankruptcy Limit is a $3000 debt yet the bank announced it was in contravention of its farmer package agreement by charging fees outside of the agreement. For the years quoted this amounted to over $5M per year. Some of these fees would have exceeded $3000 and the misapplication of the account could have commenced in 1994 with admission over 13 years later. The fees may be in some accounts $39,000 by the date of admission and refund by the Bank..

By relying on published figures of financing 25% about of farmers and the Australian Bank figures of 55, 000 accounts affected by overcharged package fees, for the period refunded the numbers affected would be about 13,750 farmers for the period refunded on 24 October 2006.[13] At the same time it announced 140,000 accounts had been illegally charged Debits Tax and announced refunds to 125,000 closed accounts and 15,000 current accounts. Corresponding to those figures it is possible that about 31,000 closed accounts were rural during the period of the debit tax refund. Many of these during the whole period are owed refunds depending on the circumstances of the closure .This gives a projected total of about 44.750 farmer accounts affected by illegality and unlawful acts in the Australian Bank alone.

CONCLUSION.

This process by the bank has shown that Australian financial houses are all vulnerable to account errors and those errors are unidentified to the courts by a process shown by the Joint Parliamentary Committee into Corporations and Securities “Shadow Ledgers” inquiry in August, 2000 where banks change the style and purpose of accounting, when accounts go into default and it is the information in this account that is relied on in banker recoveries. The accounts move from a for value bank statement to a not for value account without statement. Thus in bankruptcy mistakes in accounts may be unidentified by intentional bank process not to provide account statements to customers.

For the above reasons it is most appropriate for the Commonwealth to treat farmers as being disadvantaged as a class and to provide subsidy **outside bankruptcy**; because

13 National Australia Bank to reimburse overcharged customers – 28 July 2005 (NAB press release 28 July, 2005.

- farmers are ruled unviable without subsidy, but viable with EC subsidy,
- financiers agree to carry the farmer and accept the increased risk;
- financiers in order to force the farmer out, may unlawfully refuse to accept subsidy;
- financiers supported by the subsidy paying authority decide the subsidy recipient is unviable by factors outside of the Ministers' Guidelines irrespective of representation and current law,
- Australian Banks have been shown to vary account practices to the banks' advantage irrespective of changed practices, advised bad practices and incorrect accounting and represent these facts as proper practices in law and rely on these incorrect facts in Bankruptcy and other circumstances such as trial and mediation.[14]

The Commonwealth requires legal fairness to all, even if impecunious, with model litigant obligations. These obligations effect the Commonwealth and its agents, consequently all facets of Exceptional Circumstances provisioning and exit.

14 National Australia Bank past refund activities commencing investigation 2004 available from (nab web site).

D3

force to liaise with Australia Zoo after a 2003 planning stand-off, said yesterday the council was disappointed and felt "betrayed".

"Council supports the taskforce and the actions to date of our planning officers," he said.

"The taskforce has operated under the philosophy of respect, co-operation and trust to get the best outcome for the community. This trust has been destroyed."

Beerwah residents who support the zoo, but oppose the helicopter flights because of noise and environmental pollution concerns, have been lobbying the council petition objecting to the plan when it was presented to the council earlier this year.

One protester, John Weeks, condemned the zoo's use of indigenous spiritualism and culture to attempt to justify and promote the flights.

"In reality they are nothing more than scenic flights and it's an insult to our intelligence," Mr Weeks said.

"Steve's idea is to create an entertainment area as distinct from a zoo. He's diverging away from being a zoo, which is very successful."

scribed the appeal move as "undemocratic".

She said the council would now not be able to explain its decisions for rejecting the tourist flights and the appeal effectively took the council, councillors and the community out of the decision-making process.

Suzelie Connolly, the chairwoman of the taskforce acting on the zoo's behalf, said because the council had not met the April 11 deadline, the Planning and Environment Court was the next appropriate step.

Ministers agree, disagree

Steven Wardill

AUSTRALIA's primary industries ministers have failed to reach agreement on a Commonwealth proposal to offer grants instead of interest rate subsidies to drought-stricken farmers.

But the ministers have agreed on a national monitoring system that will streamline drought assistance under the exceptional-circumstances scheme.

The meeting in Darwin yesterday, which farmers hoped would yield breakthrough reform on drought policy, failed to reach agreement on key aspects of a six-point plan proposed by federal Agriculture Minister Warren Truss.

"While it was disappointing that we did not get a final agreed outcome today, we have at least got, at long last, an agreed set of principles to move forward on delivering a fairer, more efficient and equitable drought support system," Mr Truss said.

AT odds . . . Henry Palaszczuk, *left*, and Warren Truss.

Under the Truss proposals, which were backed by farmers, interest rate subsidies of up to $100,000 a year would become grants to pay for "drought-related and recovery expenses".

The proposal would have allowed debt-free producers to join other farmers and access the scheme to pay more pressing bills.

But Queensland Primary Industries Minister Henry Palaszczuk told *The Courier-Mail* he believed the current system was working well.

"When it comes to grants the problem is what size grant is really worthwhile," he said.

"There wouldn't be many farmers who didn't have an interest bill."

But Mr Palaszczuk said the new monitoring scheme would take the politics out of drought aid.

The ministers committed to spending $700,000 on a steering committee to bring the computerised monitoring system online.

Mr Truss was also forced to give ground on a new cost-sharing proposal for exceptional-circumstances business support.

He had proposed the states boost their share from 10 per cent to 50 per cent in the second year of any new agreement, but the states successfully argued to be credited for other drought spending.

Also in Darwin, the nation's environment ministers met to discuss a state-based carbon trading scheme and economically efficient moves to increase mobile telephone recycling.

Slend

Beth Hale

FOR years the has been tryin

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With genero fashion and bo way out, many wanting a littl their shape.

And accordi manufacturer knickers could Jennifer Lope

Rather than the Contour P gives it all a lift perfect shape

04

Attorney General (Cth)

Model Litigant Obligation

THE OBLIGATION TO ASSIST: MODEL LITIGANTS IN ADMINISTRATIVE APPEALS TRIBUNAL SEMINAR

Canberra

Wednesday, 26 August 2009

CHECK AGAINST DELIVERY

First, may I acknowledge the traditional owners of the land we meet on – and pay my respects to their elders, both past and present.

- Mr Stuart Pilkinton, President ACT Bar Association
- Justice Garry Downes AM, President Administrative Appeals Tribunal
- Colleagues and friends

Thank you very much for the warm welcome.

It is a pleasure to be in such esteemed company.

The topics being discussed today are essential elements of the Australian Government's goal of providing all Australians with access to justice through our system of courts and tribunals.

Today, I'd like to speak on some key issues.

Firstly about the Commonwealth's obligation to assist the Tribunal pursuant to the AAT Act. And secondly, about the Commonwealth's model litigant obligation, as found within the Legal Services Directions.

Both these mechanisms are intended to ensure that the AAT is able to efficiently and effectively review the merits of administrative decisions.

I'd also like to briefly touch on the obligations introduced last year to the Directions.
These oblige parties to consider means of alternative dispute resolution prior to initiating legal proceedings.

Access to Justice

Before I speak on these issues, I'd like to set the scene and consider the overarching theme of improving access to justice. And in particular, of the Australian Government's reforms and plans to improve access to justice for all Australians.

The Australian Government is well aware of the need for efficiency in the operation of our current administrative law system. The costs and complexities of government regulation are increasing and in some cases hampering access to justice.

Such inefficiencies can also adversely impact on individuals when they are subject to a government decision or review proceedings.

A Taskforce in my Department has been working to develop a framework to improve access to justice, including with respect to administrative law.

The Access to Justice Taskforce is examining ways to implement a more strategic approach that enriches civil justice outcomes.

So far, several themes are emerging. These include the importance of improved information, communication, and early intervention strategies. And yes, effective primary decision making also plays a key part. This is because the best outcome for the aggrieved party is to avoid the need for litigation in the first place.

So of course, individual decisions must be sound. Equally as important is communicating the decision and its basis. This includes why an applicant may not be successful in having a decision set aside or replaced. It may also be necessary to explain what other options may be open to them to address their particular circumstances.

An enhanced commitment to these principles is probably the most effective strategy the Government can use to reduce the need for decisions to be reviewed.

The Government is also concentrating on simplifying the structural architecture of our federal civil justice system.

For example in June, I introduced the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009 into the House of Representatives. This Bill will improve the Federal Court's case management powers and allow for more effective and efficient use of court resources.

It also aims to enhance Australia's justice system by introducing an overarching obligation on the Court, litigants and their legal practitioners to,

facilitate the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible.[1]

This objective is clearly consistent with the objective and practices of the AAT.

I have also asked my Department to consider how our current means of reviewing the legality of administrative decisions is operating, and whether improvements could be made. I have also sought the expert advice of the Administrative Review Council on a range of related issues.

The aim of this work is to gauge whether this aspect of our administrative law system can be enhanced to improve access to justice for ordinary Australians.

The Government takes seriously its responsibility to ensure the system is working effectively and is accessible to people – and recognises that the way agencies behave within the system is an important aspect of achieving this.

The Legal Services Directions and the Model Litigant Obligation

Although I am sure you are all familiar with these terms – I think it's important to reflect on what the Legal Services Directions require from Commonwealth agencies as parties to Tribunal

proceedings.

And also the underlying values reflected in the model litigant obligation.

The Directions set out, in broad terms – the requirement that the Commonwealth and its agencies are to uphold the highest possible standards of fairness, honesty and integrity – going beyond the required ethical or professional standards of lawyers appearing before a court or tribunal.

Specifically, the model litigant obligation requires that the Commonwealth and its agencies:

- act honestly and fairly;
- deal with claims promptly;
- pay legitimate claims without litigation;
- act consistently in the handling of claims and litigation; and
- consider alternative dispute resolution.

The obligation also requires generally keeping costs to a minimum and not taking advantage of claimants who lack resources to litigate a legitimate claim.

This however does not require the Commonwealth to take a soft approach to legal proceedings. The Commonwealth is able to act firmly and properly to protect its interests.

The obligation also doesn't prevent the Commonwealth from legitimately seeking to recover its costs where appropriate.

Clearly, holding the Commonwealth and its agencies to a high standard is not a new concept.

Although the model litigant obligation was formally articulated in its current form in 2005 – reference is often made in courts and tribunals to the 1912 case of Melbourne Steamship v Moorhead, where Chief Justice Griffith made the following observation:

I am sometimes inclined to think that in some parts - not all – of the Commonwealth, the old-fashioned traditional, and almost instinctive, standard of fair play to be observed by the Crown in dealing with subjects, which I learned a very long time ago to regard as elementary, is either not known or thought out of date. I should be glad to think that I am mistaken.[2]

Almost a century later, this statement is still relevant to Commonwealth's obligation to act as a model litigant and participant in AAT proceedings.

The old-fashioned standard of fair play remains.

Maintaining a High Standard

As Attorney-General, I am ultimately responsible for ensuring that the Commonwealth maintains a high standard of conduct in proceedings before courts and tribunals.

This means making sure that the Commonwealth and government agencies are aware of, understand, and comply with, the model litigant obligations.

As a result, individuals who seek review of government decisions can be assured of the high standards of conduct of the Commonwealth, and this includes the provision of swift and effective

review.

And in line with this, the AAT has expressed its goals in these terms:

to provide a national high quality merits review process that contributes to community confidence in a system of open and accountable government.[3]

The Duty to Assist

Over time, reforms to the Directions have placed an additional obligation, in the duty to assist, on the Commonwealth when appearing before Tribunals, such as the AAT.

These reforms were echoed in the AAT Amendment Bill 2004, requiring Government decision-makers to use their best endeavours to assist the Tribunal to make its decision in relation to the proceeding.[4]

The obligation to provide extra assistance to the Tribunal when an applicant is self-represented is an excellent example of the high standard of conduct expected of the Commonwealth.

This was highlighted in the recent Federal Court matter of Kasupene v Minister for Immigration and Citizenship.[5]

Justice Flick recognised that in some cases, an unrepresented applicant to the Tribunal may be disadvantaged. They may not have advanced evidence within their control, or evidence of central relevance to the decision to be made, and may not have made submissions covering all the material before the Tribunal.

This places both the Tribunal and the unrepresented party at a disadvantage, and makes the task of the Tribunal in coming to the correct and preferable decision more difficult.

The extent of the obligation on the Commonwealth to assist the Tribunal when dealing with an unrepresented party will, of course, differ from case-to-case.

However, Kasupene presents a clear statement that the Commonwealth respondent is obliged to address available evidence that is centrally relevant to the matter, even where it is not advanced by the unrepresented applicant.

This facet of the obligation to assist plays an important part in ensuring access to justice and equality between parties. And it underlines that matters before the Tribunal should not be conducted in an adversarial manner.

Member Webb commented in the 2005 matter of Pitkin that:

it is expected that the model litigant policy will be upheld and that cases will be properly prepared, with due regard to issues of procedural fairness, in order to assist the Tribunal to come to the correct or preferable decision.[6]

I agree, and expect, along with members of the general public, that the Commonwealth must demonstrate model conduct in proceedings, and be assessed on its performance as a model litigant and as an assistant to the Tribunal.

Alternative Dispute Resolution

One way in which Commonwealth respondents can demonstrate model conduct is to pursue

alternative dispute resolution prior to commencing litigation.

As I have previously stated, I'm keen for ADR to be built into the fabric of our system of justice – and not simply be an add-on.[7]

And, I think one of the most important amendments to the Directions in recent times is the inclusion of an obligation on parties to consider ADR processes.

It's worth noting that this obligation does not cease if it appears that ADR is not possible or appropriate in the first instance.

Indeed, I believe that the Commonwealth should continually revisit the question of whether ADR can assist in resolving a dispute throughout the determinative process.

Without diminishing the importance of the effect on government decisionmaking of the Tribunal's published decisions, ADR is another proper way to achieve effective and legally rigorous outcomes.

In fact it is a proven way of narrowing the issues in dispute, increasing accessibility and saving time and money.

The AAT is an excellent example of a forum in which the Commonwealth can lead by example in resolving applications efficiently, in terms of time and cost, by conducting ADR.

The AAT already has in place a commendable practice of using ADR to narrow and limit the issues in dispute, increase accessibility, and attempt to resolve disputes as early as possible.

I understand that approximately 80 per cent of matters are resolved in the AAT without recourse to hearing.

I also understand the ADR Committee of the AAT has an ongoing role in studying different process models and monitoring and evaluating how they might continue to be applied to maximum effect in the Tribunal.

Conclusion

I would like to re-emphasise that the Government and the community expect courts and tribunals reviewing administrative decisions to work effectively and efficiently.

In order to achieve this, it is incumbent on the Commonwealth, and indeed all parties in the process, to demonstrate the highest possible standards of conduct in proceedings.

When I say 'all parties in the process', of course I also mean to include tribunal members themselves. The conduct of the members greatly influences how an institution operates, and the outcomes it achieves.

On that note, I would like to take this opportunity to bring to your attention the recent work of the Administrative Review Council to update its Guide to standards of Conduct for Tribunal Members.

As I have said in the Preface, the updated Guide reflects the evolving role of tribunals and changing public expectations of tribunal members.

In this publication the Council draws on core administrative law values - including fairness, independence, efficiency, integrity and accountability – to illustrate what is expected of tribunal members.

It is my pleasure to officially launch the revised Guide to Standards of Conduct for Tribunal Members, and to thank the Administrative Review Council for this work.

The strong interest in this seminar is itself encouraging.

I feel confident that we can continue to work together to develop our justice system to guarantee accessible, efficient and just outcomes that benefit all of us.

Thank you.

[1] Explanatory Memoranda – Access to Justice (Civil Litigation Reforms) Amendment Bill 2009, 2.

[2] *Melbourne Steamship Co Ltd v Moorehead* (1912) 15 CLR 333, 342 (Griffith CJ).

[3] Administrative Appeals Tribunal, *2009/2010 Organisational plan,* 2009. Available at: http://www.aat.gov.au/CorporatePublications/OrganisationalPlan.htm

[4] Section 33(1AA) *Administrative Appeals Tribunal Act 1975.*

[5] *Kasupene v Minister for Immigration and Citizenship* [2008] FCA 1609.

[6] *Re Secretary, Department of Family and Community Services and Pitkin* [2005] AATA 532.

[7] The Hon Robert McClelland MP, 'ADR in Government Forum', speech delivered at the ADR in Government forum, 4 June 2008. Available at: http://www.attorneygeneral.gov.au/www/ministers/RobertMc.nsf/Page/Speeches_2008_4June2008-AlternativeDisputeResolutioninGovernmentForum

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Past refund activities – undertaken more than 6 months ago

- Personal/
- Banking with us/
- Customer refund activities/
- Past refund activities - undertaken more than 6 months ago

To view information on a past customer refund activity undertaken over 6 months ago, please select the appropriate refund below.

Refund Activity	Date mailed
Debits Tax Refund - NAB Cheque Accounts	25 August 2005
Multi Funds Transfer Fee refund - Internet Banking	23 January 2006
National LoanCover Premium Refund	28 April 2006
Personal & Home Loan Service Fee Refund	17 August 2006
NAB Relationship Footings - Benefits Refund	22 September 2006
Home Loan Service Fee Refund	25 September 2006
Fixed rate Interest Only Loan - Interest Refund	28 September 2006
Package Fee Refund - Choice Package	24 October 2006
Credit Card Annual Fee Refund - Choice Package	31 October 2006
LMI Refunds Wave 1	13 April 2007
International ATM Fee (Personal Customers)	18 May 2007
Settlement & Discharge Fees - Wave 1	25 May 2007
NT Guarantee Stamping Fee Refund	31 August 2007
Application Fee Refund NAB Packages	4 October 2007
Settlement & Discharge Fee Wave 2	31 October 2007

BNZA Business - Overseas ATM Transaction Fee Refund	14 December 2007
NAB Business & Agribusiness - Overseas ATM Transaction Fee Refund	14 December 2007
Low Rate Visa Credit Card - Cash Advance Interest	29 February 2008
HomeSide - Default Interest Refund on Smart Accounts	31 March 2008
100% Offset Fix	30 April 2008
Portfolio Package - Credit Card Fees Refund	30 July 2008
NSW Real Estate Agent Statutory Trust Account Refund	31 Oct 2008
Wheat Advance Facility Interest Refund	17 December 2008
LMI Refunds Wave 2	30 March 2009
100% Offset Refunds	24 July 2008
Next Smart Under 18 Fee Refund	9 September 2009
NAB Investment Cash Management Account Refund	4 September 2009
Default Interest Refund - Business Account Customers	9 October 2009
Default Interest Refund - Personal Account Customers	14 December 2009
Exception Fee Refund	7 May 2010
Settlement and Lodgement Fee Refund	21 May 2010
Visa Debit Card – Reference Fee Refund	3 June 2010

For further information on other refund activities, please select a menu option below.

Current Refund Activities (last 3 Months)

Recent Refund Activities (3-6 months)

Additional Refund Information

Customer Refund Activities - Home Page