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ANNUAL REPORT 1998/99



ADMINISTRATIVE DECISIONS TRIBUNAL

New South Wales

The Hon. J W Shaw QC, MLC
Attorney General
Parliament House
SYDNEY NSW 2000

Dear Attorney

As required by s 26 of the *Administrative Decisions Tribunal Act 1997*, I am pleased to provide you with the first annual report of the Tribunal, covering the period 6 October 1998 to 30 June 1999.

Yours sincerely

Judge KEVIN O'CONNOR AM
President

17 December 1999

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Tribunals seek to deliver accessible, fair and specialised resolution of disputes. The creation of tribunals can often be traced to the increasing complexity of the Government's role in the life of the community and the need to redress imbalances faced by ordinary individuals in their various capacities - as citizen, as consumer, as employee, as tenant and so on.

We have seen a proliferation of specialist tribunals while the ordinary courts remain dominated by criminal proceedings, personal injuries actions and corporate litigation.

During 1998 and 1999 major initiatives were taken to rationalise the number of tribunals in New South Wales. The Administrative Decisions Tribunal replaces several previous tribunals as well as appeal rights exercisable in the court system. The Fair Trading Tribunal, which I also head, replaces three previous tribunals and some other dispute resolution systems. A third major tribunal, the Residential Tribunal has been restructured and streamlined.

The possibility of a further merger bringing together the Administrative Decisions Tribunal and the Fair Trading Tribunal will be re-examined by the government early in 2001.

Similar integration of tribunals has occurred in Victoria on a larger scale. There one Tribunal embraces the areas covered by the three tribunals in New South Wales already mentioned as well as a jurisdiction comparable to that exercised by the Land

and Environment Court.

The challenge for the large, integrated tribunal is to maintain the unique qualities of specialisation that marked the work of the smaller tribunals while providing the efficiencies in service delivery and lowering of unit costs that should flow from integration.

The most prominent feature of the Administrative Decisions Tribunal, one reflected in its title, is to be an external, independent forum for the merits review of government administrative decisions. This work is done in the General and Community Services Divisions of the Tribunal. The governing legislation seeks to draw on the best features of the Commonwealth and inter-state experience in this area. In many ways, the legislation is model legislation for the conduct of external merits review. Key influences in shaping it have been the Commonwealth Administrative Appeals Tribunal legislation and the Commonwealth Administrative Review Council's report, *Better Decisions* (1995).

In our first few months of operation the main categories of business dealt with in the General Division involved occupational licensing, schools registration (and course accreditation) and access to documents under Freedom of Information legislation.

We now have five Divisions in operation: two belong to our 'review' jurisdiction

(General Division, Community Services Division); the other three belong to our 'original' jurisdiction (Equal Opportunity Division, Legal Services Division and Retail Leases Division).

The first eight months have seen three very small registries merge into a small registry. Divisions have commenced operation at different times, and primary legislation connected to the General Division has been progressively commenced across the period. Interim rules have been developed and simple forms are in use. On day one, 6 October 1998, our web site with high quality links commenced operation.

May I thank the registry staff for their work in creating a cohesive organisation. May I also thank my Divisional Heads, Nancy Hennessy (Community Services), Judge Gay Murrell (Equal Opportunity) and Caroline Needham (Legal Services) for their support. May I also thank the Attorney General's Department for its assistance in relation to policy and legislation, accommodation, information technology and corporate communications.



DIVISIONAL HEADS



Divisional heads from 6 October 1998 to 30 June 1999: (from left) Judge Gay Murrell (Head of the Equal Opportunity Division), Nancy Hennessy (Head of the Community Services Division), Judge Kevin O'Connor (President of the Tribunal and head of the General Division) and Caroline Needham (Head of the Legal Services Division)

Judge Kevin O'Connor is the founding President. He is also Divisional Head of the General Division. Judge O'Connor was appointed a judge of the District Court in August 1998 and immediately appointed the President of the Administrative Decisions Tribunal. In March 1999 he was appointed Chairperson of the New South Wales Fair Trading Tribunal. Judge O'Connor has master's degrees in law from the University of Melbourne and the University of Illinois. For eight years from January 1989 to December 1996, Judge O'Connor was the first federal Privacy Commissioner and also a member of the Human Rights and Equal Opportunity Commission. In March 1997, he was appointed head of the Commercial Tribunal of New South Wales. His previous experience is diverse, including periods as Deputy Secretary for policy in the Victorian Attorney-General's Department, as a practising barrister in Melbourne, as a law teacher and as a research officer with the Australian Law Reform Commission.

Nancy Hennessy is Deputy President and Divisional Head of the Community Services Division of the Tribunal. Ms Hennessy graduated in law from the Australian National University and holds a master's degree from the University of Sydney. Ms Hennessy is also a lecturer at Sydney University and occasional consultant. Prior to her appointment as Deputy President, Ms Hennessy worked in private legal practice, managed the Legal and Policy Branch of the NSW Anti-Discrimination Board for seven years and was President of the former Community Services Appeals Tribunal.

Judge Gay Murrell is Deputy President and Divisional Head of the Equal Opportunity Division of the Tribunal. Judge Murrell was appointed a judge of the District Court in 1996 and in December 1998 was appointed as the Senior Judge of the NSW Drug Court. Previously Judge Murrell practised in Sydney as a solicitor (1977-1981) and barrister (1981-1996) and became a Senior Counsel in 1996. Judge Murrell is a graduate in arts and law from the University of New South Wales and in criminology from the University of Sydney.

Caroline Needham is Deputy President and Divisional Head of the Legal Services Division of the Tribunal. Ms Needham has practised at the Sydney Bar since December 1980. Her principal areas of practice include equity, professional negligence, construction law and commercial law. Ms Needham holds degrees in law from both Sydney and Oxford Universities. She has held lecturer and associate professor positions at the Universities of Sydney and British Columbia respectively as well as authoring numerous publications.

Parliament and the Government have, through the legislation, set the following goals for the Tribunals

- to provide a central focus for many statutory administrative processes
- to draw together many of the disparate functions of smaller review bodies
- to provide a clearly recognisable, publicly identifiable forum for review
- to minimise administrative error and stimulate administrative efficiency
- to achieve a balance between justice to the individual and the preservation of the efficiency of the administrative process
- to develop a uniform body of legal precedent and principles
- to achieve a reduction in formal legal procedures and in doing so to increase accessibility and reduce costs
- to foster mediation and other forms of alternative dispute resolution
- to provide an integrated tribunal service to the people of New South Wales.

The Tribunal is an independent statutory body established under the *Administrative Decisions Tribunal Act 1997*. There are several other Acts which form part of the establishment package. The Tribunal's enabling legislation and legislation which confers jurisdiction (known as 'primary legislation') can be found listed at Appendix A.

The Tribunal commenced operation on 6 October 1998. On that date the Equal Opportunity Tribunal, Legal Services Tribunal, Boxing Appeals Tribunal, Veterinary Surgeons Disciplinary Tribunal and the Schools Appeal Tribunal were abolished and their jurisdictions were transferred to the Tribunal forming that part of its jurisdiction known as its 'original' jurisdiction. In addition, the first of the Tribunal's 'review' jurisdiction, such as appeals under the Freedom of Information Act 1989, commenced.

On 1 January 1999 the majority of the Tribunal's review jurisdiction commenced. The Community Services Appeals Tribunal was abolished. Its work was transferred to the Community Services Division of the Tribunal.

Further legislation commenced on 1 March 1999. The new Retail Leases Division, with powers conferred by the Retail Leases Act 1994 as amended, commenced. That jurisdiction was formerly exercised by the Commercial Tribunal.

The Administrative Decisions Tribunal was officially launched on 25 February 1999 by the Attorney-General, the Honourable JW Shaw QC MLC. The Director-General of the Attorney General's Department, Mr Laurie Glanfield and the President, Judge Kevin O'Connor, also spoke at the launch.

As at 30 June 1999, the Tribunal is divided into five Divisions: General, Community Services, Equal Opportunity, Legal Services and Retail Leases.

A sixth Division, the Occupational Regulation Division, has yet to commence.

The Tribunal comprises a full-time President, three part-time Deputy Presidents who also are Divisional Heads, and numerous part-time members of whom about half are judicial members (who may preside) and half non-judicial members. Hearings in the General Division and the Retail Leases Division are normally conducted by a judicial member sitting alone. In the other Divisions and the Appeal Panel, three member panels including at least one non-judicial member are the norm. All Tribunal members can be found listed at Appendix B.

Each Divisional Head holds meetings with their members as well as communicating by occasional newsletter.

Two Styles of Decision-Making

The *Administrative Decisions Tribunal Act* (ADTA) divides the Tribunal's work, conceptually, into two categories, the 'review' jurisdiction, and the 'original' jurisdiction. This distinction gives rise to two styles of decision making.

The 'review' jurisdiction refers to the Tribunal's role in overseeing the quality of decision-making in the administration of government. In that role the Tribunal is seeking to ascertain, after a citizen has lodged an application for review of a decision, what the 'correct and preferable' decision is in the circumstances. If it agrees with the administrator, it will 'affirm' the decision. If it disagrees with the administrator, it will 'set aside' or 'vary' the decision. If it sets aside the decision, it may send it back ('remit it') to the administrator to have the dispute reconsidered in light of the Tribunal's views or substitute another decision for the administrator's decision.

This process is commonly referred to as 'external merits review'. Usually the decision under review will deal with a matter that has already had two levels of scrutiny by the administrator's agency. People are entitled to seek 'internal review' of the first decision, and normally the Tribunal will not consider an application if the facility of internal review has not been used. These tiers of decision-making are designed to support good quality decision-making.

When reviewing an administrator's decision

the Tribunal has before it all the material on which the administrator relied, the administrator's statement of reasons and hears submissions and any further evidence from the citizen and the administrator.

This is in the nature of a process of inquiry assessing the adequacy of a decision. The Tribunal assumes all the functions of the administrator in relation to the decision under review.

On the other hand when sitting in its 'original' jurisdiction, the Tribunal is making the first decision in relation to a dispute, one usually of a private character. That is the case for example in relation to cases in the Equal Opportunity Division, and the Retail Leases Division. In the 'original' jurisdiction, the usual focus of the Tribunal is whether the evidence produced by the applicant is sufficient to establish contravention of the law applicable to the relationship between the parties, and in turn whether a remedy should be granted to the applicant to redress the harm which the applicant has suffered. In this work, the Tribunal remains an umpire seeking to find the truth within the parameters set by the parties. It does not stand 'in the shoes' of one of the parties for the purposes of what it can do, as occurs in administrative review.

This description of the difference between the 'review' and 'original' jurisdiction is less apt in the case of the Legal Services Division or other professional conduct jurisdictions exercised by the Tribunal (for example, veterinary surgeons discipline). In

these instances the applicant is a body which has had powers conferred on it by statute to deal with complaints alleging professional misconduct or other breaches of professional standards. These proceedings are of a public character, though they fall on the 'original' side of the line because the Tribunal is making the first decision on the charges laid against the practitioner.

Checks on Quality of Decisions

The ADTA seeks to foster good decision-making in the Tribunal in two ways.

Where the Tribunal gives its decision in writing, the written reasons must set out the findings on material questions of fact, including references to the evidence or other material on which they were based,

the Tribunal's understanding of the applicable law, and the reasoning processes that led the Tribunal to the conclusions that it has made (see s 89 of the ADTA). These requirements mirror those applying to administrators in respect of their decisions (see s 49 of the ADTA).

In addition, a disappointed party may appeal to an Appeal Panel of the Tribunal in relation to any question of law. If the disappointed party wishes to review the merits of the first decision made by the Tribunal, he or she must obtain the leave of the Tribunal to extend the appeal on a question of law to an appeal on the merits.

There remains a further right of appeal to the Supreme Court, but only on a question of law.



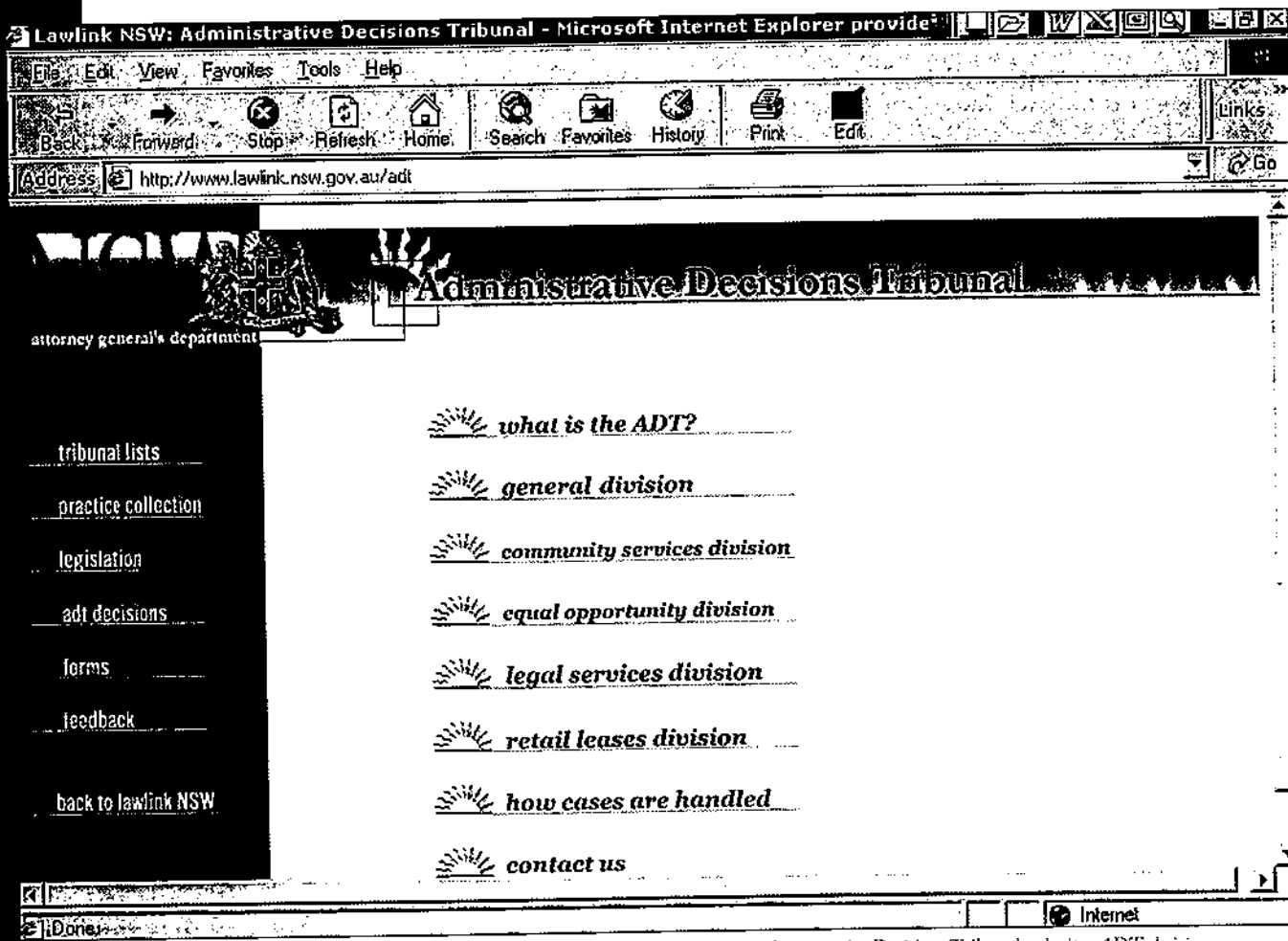
Introduction

The objects of the ADTA include ensuring that the Tribunal is accessible and that proceedings are determined informally and quickly. The ADTA also says that the Tribunal should minimise formality and legal technicalities. It also says that Tribunal members should explain to the parties what is happening and the effect of any ruling or decision. Disputes are not always resolved in the adversarial style which is common in courts. The Tribunal may "inquire" into the matter, rather than relying solely on the

information volunteered by the parties. The ADTA encourages the use of alternative (or 'additional') dispute resolution processes such as mediation.

Accessibility

Accessibility is promoted by low filing fees (generally \$50.00) and the ability to waive the fee if a person is experiencing financial hardship. Preliminary hearings are conducted by phone when parties find that more convenient. The Tribunal travels to rural and regional locations to hear matters.



During the 1998/99 financial year, a total of 69,065 pages were viewed on the Administrative Decisions Tribunal web site. ADT decisions are available electronically via CaseLaw NSW where decisions are published as they are handed down. It has been operational since 1 January 1999 and was launched on the Internet in May 1999. Over 70,000 decisions are viewed per month on Caselaw NSW. The ADT Caselaw service also delivers Tribunal decisions via an e-mail subscription list to all major commercial publishers.

Proceedings are not as formal as those in a court and the rules of evidence are not strictly applied. All parties are asked whether they need an interpreter (language or signing) and whether they require any special facilities because of a disability.

Unrepresented parties

In a large proportion of cases heard by the Tribunal, at least one party, generally the applicant, is unrepresented. Tribunal members make sure that parties who are not represented understand what they need to do to present their case and the effect of the Tribunal's rulings and decisions. Registry staff also play an important role in assisting unrepresented parties.

In 1995, the then Equal Opportunity Tribunal obtained a grant from the Law Foundation to pilot a 'duty solicitor' scheme to provide assistance to unrepresented parties in that Tribunal. The provision of legal advice in the pre-hearing stage was piloted during 1996. The scheme was so successful that the Attorney General's Department has since agreed to fund the Legal Aid Commission to provide a solicitor for this purpose on a regular basis. The availability of legal aid for representation during a hearing must be the subject of a separate application.

Flexible procedures

The Tribunal comprises Divisions which can adopt their own procedures by way of rules or informally, through directions or guidelines. In some cases, particularly where both parties are legally represented, a traditional adversarial style of proceedings may be appropriate. But because the Tribunal may "inquire into and inform itself on any matter in such manner as it thinks fit" it does not have to play the traditionally passive role of a judge. Some of the inquisitorial features of the Tribunal include the fact that it can determine its own procedure, depart from the rules of evidence and summons witnesses to give evidence or produce documents.

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GENERAL DIVISION

Head: Judge Kevin O'Connor
(President of the ADT)

COMMUNITY SERVICES DIVISION

Head: Nancy Hennessy
(Deputy President of the ADT)

EQUAL OPPORTUNITY DIVISION

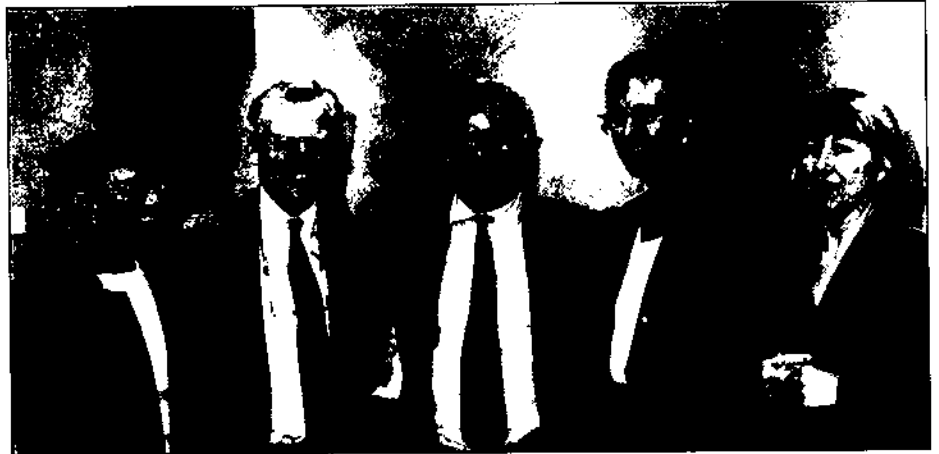
Head: Judge Gay Murrell
(Deputy President of the ADT)

LEGAL SERVICES DIVISION

Head: Caroline Needham
(Deputy President of the ADT)

RETAIL LEASES DIVISION

Head: Yet to be appointed.



At the launch of the Administrative Decisions Tribunal on 25 February 1999, Attorney General Jeff Shaur (centre) with the Tribunal's divisional heads

General Division

The central feature of the new Tribunal, as reflected in its name, is its innovative role in the area of merits review of government administrative decisions. This is the role of the Tribunal which received the most emphasis when the government introduced the Bill in mid-1997. This function is mainly carried out by the General Division.

Divisional Head

The President of the Tribunal is at present also Divisional Head of the General Division.

Brief History

The introduction of the Bill on 27 June 1997 was an historic one, representing the culmination of demands for the creation of an external merits review forum which went back 25 years.

“[A] fragmented administrative appeals system is undesirable; there is little chance of any unifying influence entering the administrative process and decisions must lack consistency.” (New South Wales Law Reform Commission, 1972, Report LRC 16, ‘Right of Appeal from Decisions of Administrative Tribunals and Officers’, para 155.)

The Law Reform Commission recommended the creation of a Public Administration Tribunal reflecting the principle that -

Any person adversely affected by an official action should be able to question

the action simply, cheaply and quickly; and procedures should be available which are fair, impartial and wherever possible open.

Similar sentiments were echoed by the Government almost twenty-five years later when the Attorney General said to Parliament -

“[T]here is no clearly identifiable avenue for administrative appeals on the merits of decisions ... Clearly there is a need to provide a mechanism for administrative appeals on the merits of a decision and for these appeals to be conducted in an open and accessible forum, guided by principles of natural justice.”

Other key influences, also going back more than 20 years, which contributed to the shape of the legislation were: two Commonwealth reports, the *Administrative Review Committee Report* (the Kerr Report) PP No 144 of 1971 and the *Final Report of the Committee on Administrative Discretions* PP No. 136 of 1973 (Bland Committee Report); and a landmark New South Wales report, the *Interim Report Review of NSW Government Administration - Directions for Change* (The Wilenski Report) of 1977.

A more recent Commonwealth report of significance was the Commonwealth Administrative Review Council’s report, *Better Decisions* (1995).

Most importantly, the New South Wales policy makers now have available the wealth of experience in merits review accumulated by

the Commonwealth since the establishment of the Administrative Appeals Tribunal in 1977 and by Victoria since the establishment of a similar tribunal there in 1984.

The merits review function of the Tribunal is mainly performed by the General Division. There are also some roles given to the General Division which do not involve merits review, for example veterinary surgeons discipline. The Community Services Division also carries out merits review of a range of administrative decisions in the Community Services and Disability Services portfolio.

Significant Cases and Themes

In its first year, the main classes of administrative decisions reviewed by the General Division have been:

- decisions to refuse to grant, not to renew or to revoke occupational licences
- recommendations relating to the registration of schools and accreditation of courses of study
- decisions to refuse to grant access to documents.

Almost invariably, citizens seeking review of a decision have appeared without any legal assistance. On the other hand, almost invariably the administrator whose decision is under review has been competently represented.

Most of the review work relating to occupational licensing has arisen from changes to the law in relation to security industry licensing. Before July 1998, the Commissioner of Police, and, on appeal, the Local Court had discretion to grant a licence even if the applicant had committed certain offences. Now the Commissioner is required to refuse to grant or renew a licence if the applicant has committed an offence relating to property, an offence of violence or a prohibited drug offence. The categories are broadly defined and many very minor offences are covered. The Division's only role is to determine whether the Commissioner has classified the applicant's offence accurately as one requiring mandatory refusal. It has no discretion to grant a licence even if the offence is a minor one. In a decision in December 1998 the President described the new system as 'draconian'. The Minister for Police has foreshadowed a review after July 1999.

GENERAL DIVISION CASE STATISTICS: SUMMARY

A total of 200 matters including 4 transferred matters were filed in the Division of which 97 were disposed of (48%). The security industry licensing decisions formed the largest portion of the Division's work (52%), followed by freedom of information (19%) and passenger transport licences (7%).

Of the 48% disposed of by the Tribunal, the outcomes relating to the decision under review were to: affirm the decision (25%); set aside or vary the decision (14%); dismiss the application because it had been withdrawn or not pursued or settled by agreement (61%).

Other occupational licensing categories which have given rise to review applications include taxi drivers, tow truck drivers and commercial fishing. In these instances 'true' merits review has been possible.

The value of the 'unifying influence' of an external merits review tribunal can be seen strongly in the Freedom of Information (FOI) area. Before the Tribunal was established, FOI appeals were heard by the District Court. In 10 years it only gave a handful of written, reasoned decisions. As at 30 June the General Division had given reasons in 4 matters, with several about to go to hearing. It is likely that in its first full year of operation (to October 1999) the Tribunal will have given more written, reasoned decisions than emerged from review applications heard and determined by the District Court in over 10 years.

One aspect of the work of the General Division which may not have been anticipated relates to 'stay' applications. Once an administrator makes a decision it usually takes effect immediately. In occupational licensing cases this means that the individual cannot continue to pursue an occupation and is deprived of the ability to earn an income. Administrators usually do not have the power to stay (or postpone) the operation of their decision even where internal review has been requested and is being conducted. Consequently the citizen may prefer to apply urgently to the Tribunal for a stay of the decision pending the hearing. The Tribunal has dealt with dozens

of applications of this kind, most of which have not been opposed by the administrator.

Community Services Division

Divisional Head

The Divisional Head is Nancy Hennessy, a Deputy President of the Tribunal.

Brief History

In 1990 the Community Welfare Appeals Tribunal (CWAT) was established under the *Community Welfare Act 1987*. CWAT was administered by the Department of Community Services and was principally concerned with decisions made about children's services, guardianship and custody. CWAT's founding president was Ms Robin Gurr.

At about the same time developments were afoot in the disability sectors. On 30 July 1991 the Commonwealth and State and Territory governments signed the Commonwealth/State Disability Agreement (CSDA). Under the CSDA responsibility for employment services for people with disabilities remained with the Commonwealth. Responsibility for accommodation and other services was transferred to the States and Territories. In 1993 the Commonwealth government transferred approximately 330 disability services to the New South Wales government. The CSDA required States and Territories to enact legislation which was complementary to the *Commonwealth Disability Services Act 1986*. This occurred in NSW with the enactment of

the *Disability Services Act 1993*.

In 1992 a working party of representatives of various advocacy groups and officers of the Department of Community Services produced a report on complaints and appeal mechanisms relating to community services in New South Wales. The proposals in that Working Party Report were given considerable public exposure, as part of a wide consultation program. The *Community Services (Complaint, Appeals and Monitoring) Act 1993* was the product of that working party report and subsequent consultations. It revamped the CWAT by significantly extending its jurisdiction and renaming it the Community Services Appeals Tribunal (CSAT). The other part of the same legislative package was the creation of the Community Services Commission.

The early membership of the CSAT consisted of a President and Deputy President and a number of part-time members. CSAT members were appointed as a result of their experience in community services as parents of consumers, advocates, academics and consultants. Some have extensive experience with people with disabilities, others have expertise in child protection or other relevant fields.

On 1 January 1999, the CSAT became a Division of the Administrative Decisions Tribunal. The decisions reviewable by the Division include: certain decisions made under the *Disability Services Act 1993*, decisions about the guardianship and custody of children made under the *Children (Care and Protection)*

Act 1987, licensing decisions in relation to children's services, some decisions made under the *Adoption of Children Act 1965* and the *Adoption Information Act 1990*, as well as some decisions and recommendations made by the Community Services Commission. In 1996 new appeal rights relating to boarding houses were added by amendments to the *Youth and Community Services Act 1973*. This new jurisdiction was transferred from the District Court.

Significant Cases and Themes

During the 1998/99 year, the Tribunal encouraged the parties to resolve several outstanding applications relating to transition plans. These plans were prepared by disability services providers under the *Disability Services Act 1993* (DSA) and were subject to appeals by People with Disabilities NSW (PWD). PWD's main submission in relation to these appeals was that they did not comply with the principles outlined in the DSA. The Minister and the service providers submitted that they did comply. Two "test" case decisions, in the matters of Dunrossil Challenge Foundation and Greystanes Children's Home were handed down in early 1998. The Minister then appointed a working party comprising all stakeholders to develop proposals for the settlement of the outstanding appeals.

The working group developed proposals which were presented to the Minister on 22 September 1998. These proposals did not result in the settlement of the outstanding appeals. The parties agreed to an offer by the Tribunal to provide a mediator to help resolve each case.

COMMUNITY SERVICES DIVISION CASE STATISTICS: SUMMARY

Nine new matters were filed in 1998-1999 joining the 53 matters transferred from the former Community Services Tribunal, for a total of 62 matters.

Seventeen matters (27% of the 62 matters) were disposed of, four tribunal decisions affirmed the administrative decision under review (23.5%) and 13 applications were dismissed because they were withdrawn or settled by agreement (76.5%).

Several mediations were conducted but they did not result in the matters being resolved. The Community Services Division will continue with its efforts to resolve these appeals.

The Community Services Division heard several cases during the year involving care and protection issues. The kinds of issues addressed in these cases include: whether it is in the best interests of a child or children who are in foster care to be returned to the care of their natural parents; whether it is in the best interests of a child or children to be removed from the care of particular foster parents and whether it is in the best interests of children for certain individuals to be licensed to run child care services.

During this year the New South Wales Law Reform Commission conducted a five year review of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* and the DSA. The Tribunal made a detailed submission to the Commission setting out its view of the kinds of decisions which should be subject to review and recommending changes to procedures. The Commission's final report is due for completion before the end of 1999.

At the end of 1997 Parliament enacted a new

Children and Young Persons (Care and Protection) Act. The legislation will come into force in July 2000. Because the legislation was passed without time for detailed consultation, the Department of Community Services developed a submission to government recommending several amendments. The Tribunal contributed to this submission by highlighting decisions in the new legislation which should be reviewable by the Tribunal. These suggested amendments are still under consideration by government.

Equal Opportunity Division

Divisional Head

The Divisional Head is Judge Gay Murrell, a Deputy President of the Tribunal.

Brief History

The history of the equal opportunity jurisdiction in NSW goes back to 1977 when parliament enacted the *Anti-Discrimination Act 1977* (ADA). Despite changes in the jurisdiction's identity over time, the business of the equal opportunity jurisdiction has remained constant: to hear and decide complaints of a breach of the

ADA after the Anti Discrimination Board has attempted to resolve that complaint through conciliation.

In 1977 the Anti Discrimination Board was given a quasi-judicial role, conducting inquiries into matters referred to it from the then Office of the Counsellor for Equal Opportunity. In 1981, amendments to the ADA transferred those functions to the newly created Equal Opportunity Tribunal. The Tribunal shared its budget and staff (a registrar) with the Anti Discrimination Board.

In 1992 the administration of the Equal Opportunity Tribunal (EOT) was separated from the Anti Discrimination Board, thus strengthening its practical independence.

In 1998, the jurisdiction of the EOT was transferred to the Equal Opportunity Division (EOD) of the Administrative Decisions Tribunal. As was the case previously the EOD sits as a panel of three, made up of a presiding judicial member who has legal qualifications and two non-judicial members appointed because of an interest in and commitment to equal opportunity law and practice.

The EOT's senior judicial members since its foundation have been: Judge Barbour of the District Court, Judge Mathews, then of the District Court, Judge Graham of the District Court, Miss Helen Conway, Judge Patten of the District Court and Judge Murrell of the District Court.

Significant Cases and Themes

The New South Wales Law Reform Commission continued to conduct a review of the ADA during the 1998/99 financial year. This review has included consideration of the procedures of the Equal Opportunity Division. The Commission anticipates that a comprehensive report will be published before the end of 1999.

As in previous years, the vast majority of cases before the Equal Opportunity Division settle or are withdrawn before hearing. Of those which are heard many relate to discrimination and harassment on the basis of sex, race and disability in the workplace. Discriminatory conduct which arose in cases during the year included the failure to provide appropriate toilet facilities for women, sexual taunts, the display of pornographic material, racist name calling and failure to accommodate employees with a disability, including those with a mental illness.

The limit on damages is still \$40,000. During the year awards of damages ranged from \$2,000 to over \$43,000 (for two complaints against the same person). Costs are rarely awarded.

The following are several examples of cases decided during the reporting period.

In *Tanase v South Eastern Sydney Area Health Service* [1999] NSWADT 39, T was awarded \$12,500 for race discrimination and victimisation in employment. The Tribunal

held that the victimisation and harassment started from the very first meeting between T and another employee when personal questions were asked and unacceptable remarks made relating to T's race, religion and marital status. Three employees in particular made her life very unpleasant. On one occasion when T complained about her shifts another employee attacked her, twisting her head and pulling her hair saying: "What do you think? You get everything you want here." While management were aware of the situation they did not do enough to stop it.

In the case of *Hadfield v Bentan Pty Ltd t/a Thompson and Sons Bakery* [1999] NSWADT 3 the complainant was awarded \$5,000 because of her employer's failure to provide an appropriate toilet for use by women. She and other female workers were required to use facilities designated for male workers.

In *Cvetkovski v Cleary Bros (Bombo) Pty Limited* [1999] NSWADT 34 the applicant was successful on a number of grounds. A total of \$43,651.91 was awarded for race discrimination, disability discrimination and victimisation. The complainant was a truck driver who was racially abused by fellow workers. After he married a Filipino woman workers continued abusing him. This decision is currently on appeal to the Tribunal's Appeal Panel.

In *Carr v Opera Australia* [1998] NSW EOD 9 December 1998 a trumpet player with the Opera Australia Orchestra was required to take leave without pay because of problems he had with his back and because he occasionally suffered from fits. The Tribunal found that Opera Australia had discriminated against C on the ground of his disability and that there were no occupational health and safety requirements which excused this discrimination.

EQUAL OPPORTUNITY DIVISION CASE STATISTICS: SUMMARY

The number of matters transferred from the Equal Opportunity Tribunal to the Division in October 1998 was 181. A further 90 matters were filed before 30 June 1999, for a total of 271 matters received during the reporting period.

The largest subject categories of complaint of alleged discrimination were on the bases of: disability (18.4%); victimisation (17.6%); race (17.6%); and sexual harassment (13.6%). The remaining 32.8% of complaints fall into 13 other categories. A number of complaints involve more than one head of discrimination.

Of the 271 matters, 40 were referred to mediation (15%). Of these 40 matters, 12 were settled at mediation (30%), 6 settled after mediation (15%) and 3 proceeded to hearing (7.5%). The remaining 19 were pending at the end of the reporting period (47.5%).

Of the 90 matters disposed of: 66 were withdrawn (including those resolved as a result of mediation or private settlement), discontinued or dismissed without hearing (73%); 5 were dismissed as either frivolous, vexatious, misconceived or lacking in substance (6%); 7 were dismissed after hearing (8%); and 12 were upheld with orders made (13%).

Compensation was calculated to be in excess of \$59,000, however because the limit on damages in the Equal Opportunity Division is \$40,000, C's compensation was limited to that amount. The Tribunal also ordered that C be reinstated to his previous position and that Opera Australia provide him with a letter stating that his absence from the orchestra is not a reflection on his ability to perform effectively as a trumpet player. This decision is also currently on appeal to the Tribunal's Appeal Panel.

Legal Services Division

Divisional Head

The Divisional Head is Caroline Needham, a Deputy President of the Tribunal.

Brief History

Prior to 1988 the *Legal Practitioners Act 1898* regulated discipline of legal practitioners. Complaints were heard and determined, in the case of solicitors, by the Solicitors Statutory Committee (administered by the Law Society) and in the case of barristers by the Court of Appeal upon information filed by the Prothonotary of the Supreme Court.

In 1997 the *Legal Profession Act* repealed and replaced the *Legal Practitioners Act*.

From 1 January 1988 to 30 June 1994 there were three bodies which had ultimate responsibility for determining complaints concerning the conduct of legal practitioners. These were the Legal Profession Conduct Review Panel, the Legal

Services Disciplinary Tribunal and the Legal Profession Standards Board.

Members of the public who complained in relation to the conduct of a legal practitioner to the Bar Association or the Law Society and had their complaint dismissed could seek review of that outcome by the Legal Profession Conduct Review Panel. The other two bodies were responsible for dealing with informations laid against practitioners by the Councils of the Law Society or the Bar Association. The Legal Profession Disciplinary Tribunal was created to deal with charges of professional misconduct, with the rules of evidence being strictly applicable. The Legal Profession Standards Board was created to deal with charges of unsatisfactory professional conduct, a process which was conducted less formally and in a confidential way and to which the rules of evidence were not strictly applicable.

From 1 July 1994 to 5 October 1998, a unified Legal Services Tribunal dealt with the jurisdictions previously exercised by the Legal Profession Disciplinary Tribunal and the Legal Profession Standards Board. The dichotomy that applied as between charges of professional misconduct and charges of unsatisfactory professional conduct was maintained. The last President of the Legal Services Tribunal was Mr Frank Riley.

Since 1 July 1994 the Legal Services Commissioner has exercised the functions previously undertaken by the Legal Profession Conduct Review Panel.

LEGAL SERVICES DIVISION CASE STATISTICS: SUMMARY

A total of 59 matters were transferred to the Division in October 1998. A total of 23 new matters were registered prior to 30 June 1999 bringing the overall total to 82 matters.

Of the 23 new matters, 21 concerned solicitors (91%) and 2 concerned barristers (9%).

Twenty-six of the 82 matters were disposed of (32%). In relation to outcomes: 9 were removed from the Roll (34%); 8 were reprimanded and fined (31%); 3 were dismissed (11.5%); 2 were reprimanded (8%); 2 were withdrawn (8%); one had a practising certificate restricted (4%); and one had an order made relating to practising with a disqualified person.

Significant Cases and Themes

In the past, determinations of unsatisfactory professional conduct have not been published in view of the direction in s. 170 of the *Legal Profession Act* that the hearing of such complaints be conducted in closed court. The Tribunal is considering the question of whether some form of publication should occur to foster professional and public awareness of what constitutes unsatisfactory conduct.

The Tribunal awaits the outcome of two matters involving appeals to the High Court of Australia from decisions of the New South Wales Court of Appeal.

The first matter which has been granted leave to appeal by the High Court is that of *Walsh v Law Society of New South Wales* (S136/1998). Mr Walsh has appealed against the Court of Appeal decision which, on appeal to it, replaced the order of the Legal Services Tribunal fining him for misconduct with an order removing him from the Roll of Legal Practitioners. Issues relating to jurisdiction and procedural

fairness have been raised. (Appeals now go to the Appeal Panel, not the Supreme Court.)

The second matter in which an application for leave to appeal has been made to the High Court relates to the Court of Appeal decision in *Murray v Legal Services Commissioner and Anor* [1999] NSWCA 70 (30 March 1999). Mr Murray succeeded before the Court of Appeal on several bases of procedural unfairness. The Legal Services Commissioner's decision to institute proceedings against Mr Murray before the former Legal Services Tribunal was rendered void and was quashed by the Court and the Tribunal was restrained from proceeding to hear the matter. The Legal Services Commissioner has made the application for leave.

Retail Leases Division

Divisional Head

A Divisional Head is yet to be appointed. Pending an appointment, the President has

overseen the operation of this Division.

Brief History

This jurisdiction was exercised from 1 August 1994 to 28 February 1999 by the Commercial Tribunal of New South Wales. Upon the replacement of that Tribunal by the Fair Trading Tribunal the jurisdiction was transferred to the Administrative Decisions Tribunal. It commenced on 1 March 1999.

The transfer of jurisdiction took place in the context of a wide-ranging set of amendments to the primary legislation, the *Retail Leases Act 1994*. That Act sought to confer on lessees in retail shopping centres, and similar locations, protections greater than those available under the general law in relation to the conduct of lessors. The amendments sought substantially to strengthen those rights, in particular by conferring on the statutory

tribunal powers to grant interim relief and to make a much wider variety of final orders than had previously been the case.

Before proceedings can be brought to the Tribunal, disputants must have made an attempt to mediate. Mediation is undertaken by the Registrar of Retail Tenancy Disputes.

The Tribunal also has a new jurisdiction in relation to unconscionable conduct claims but the operation of the relevant provisions has not yet commenced.

Significant Cases and Themes

In the reporting period there were no significant cases decided. The legislation may be the subject of further amendments arising from inter-government consideration of the Commonwealth Parliamentary Committee's Fair Trading Report.

RETAIL LEASES DIVISION CASE STATISTICS: SUMMARY

Between 1 March 1999 and 30 June 1999, 10 disputes were referred to the Tribunal post-mediation. 4 were finalised (ie 40%) as follows: 2 were discontinued and therefore dismissed (20%), 1 was withdrawn and therefore dismissed (10%) and 1 was settled with Tribunal orders being made(10%).

The Appeal Panel of the Tribunal

Constitution of Appeal Panel

The President is responsible for constituting an Appeal Panel. It must comprise, firstly, either the President or one of the Deputy Presidents who belongs to the Division from which the appeal arises; secondly, one other judicial member, who can be drawn from any part of the Tribunal; and thirdly, a non-judicial member, who must be drawn from the Division from which the appeal arises.

In the case of the 'review' jurisdiction of the Tribunal, there is a general right to appeal to the Appeal Panel. In the case of the 'original' jurisdiction of the Tribunal, the law which gives the Tribunal jurisdiction must expressly provide that the first decision is appealable to the Appeal Panel. A disappointed party can appeal to the Appeal Panel in relation to a question of law and that appeal may extend, with the leave of the Panel, to the merits.

Appeals

As at 30 June 1999, two matters had been heard and decided by Tribunal Appeal Panels. Both were appeals under the *Anti-Discrimination Act 1977* from decisions of the Equal Opportunity Division.

The first was *Mayben v A* [1999] NSWADTAP 1 decided on 10 March 1999. This appeal related to a sexual harassment decision which found against M. The appeal was dismissed on the basis that no error of

law was revealed.

The second, decided on 30 June 1999, was *R v A and B* [1999] NSWADTAP 2. This appeal concerned a directions hearing decision relating to discovery and inspection of documents. The Tribunal's original order was affirmed in part and substituted in part by new orders. The Appeal Panel dealt with the important issue of the applicability of sexual assault communication privilege to pre-hearing discovery of confidential health records in a sexual harassment case.

As at 30 June 1999, four additional appeals had been lodged but not heard; one from a decision of the General Division, one from a decision of the Legal Services Division and four from decisions of the Equal Opportunity Division.

Supreme Court

Two decisions of the Tribunal were appealed to the Supreme Court.

The first related to an ex tempore ruling in a veterinary surgeon's discipline matter heard in the General Division relating to media coverage of the proceedings. The Court of Appeal declined to deal with the appeal, remitting it to the Appeal Panel of the Tribunal: *Lloyd v Veterinary Surgeons Investigating Committee* [1999] NSWCA 68 (25 March 1999). The Appeal Panel heard argument on 9 April 1999 and its decision was still reserved as at 30 June 1999.

The other appeal was *Carver v Administrative*

Decisions Tribunal (Supreme Court, Bell J, unreported 22 June 1999) which arose from proceedings in the Legal Services Division. C sought a number of declarations prohibiting the Tribunal from hearing matters concerning him pursuant to the Legal Profession Act. The basis for the application was a claim of apprehended bias on the part of two members of the Tribunal. The Supreme Court dismissed the appeal.

Overview

In the early stages of transition with several independent Tribunals merging into one, each jurisdiction maintained its practices and procedures as far as possible within the new statutory framework. The view taken was that with experience general Tribunal practices and procedures would emerge and develop, with special jurisdictional practices being maintained or developed as appropriate.

The development of the best possible practices and procedures for the Tribunal will be an evolutionary process. The early stages of this process will rely largely on the experience and expertise of Registry staff, Tribunal Members and user feedback.

The *Administrative Decisions Tribunal Rules (Transitional) Regulation 1998* sets out Rules for the Tribunal for its transitional period. These are known as the Tribunal's 'Interim Rules' and principally address requirements relating to documentation, commencement and conduct of proceedings and appeals. They came into force on 6 October 1998.

The *Legal Profession Tribunal Rules 1995* which applied specifically to the practice and procedures of the former Legal Services Tribunal were repealed by the Regulation. The same rules however can now be found forming part of the new Interim Rules in the Regulation.

As well as internally monitoring and reviewing its own procedures, with the intention of continuous improvement in its

operations and particularly case management, the Tribunal also intends to establish several 'user groups' in order to consult with Tribunal users such as departments, agencies, community organisations, practitioners and individuals in order to better inform such review.

Rule Committee

The Tribunal is empowered to make rules with respect to its practices and procedures generally, and for each Division and different classes of matters. The Act requires that these Rules be made by a Rule Committee.

The Tribunal established a Rule Committee which met for the first time on 26 May 1999.

Its members are the Tribunal President, Judge O'Connor who also chairs the Committee, Tribunal Deputy Presidents Hennessy, Murrell and Needham, Justice Alwynne Rowlands, Professor Margaret Allars and Mr Mark Robinson.

Justice Rowlands is currently a Judge of the Family Court of Australia based in Sydney and a Presidential Member of the Federal Administrative Appeals Tribunal. Justice Rowlands was formerly the founding President of the Victorian Administrative Appeals Tribunal (between 1984 and 1987) and a Judge of the County Court of Victoria.

Professor Allars teaches in the Faculty of

Law at Sydney University at both undergraduate and postgraduate levels. She is the author of several administrative law textbooks and chapters and numerous published articles. Professor Allars is also a Fellow of the Australian Academy of the Social Sciences.

Mark Robinson is a barrister from the Sydney bar specialising in administrative law. He is also the current author of the New South Wales Administrative Law looseleaf service; and a Member of the Tribunal assigned to the General Division.

Forms and Procedures

The Tribunal has developed a series of forms for each type of matter in order to initiate Tribunal proceedings or certain procedures. Currently separate forms are used for Applications for Review, Applications For Urgent Stays, Applications for Waiver of Fees, Summonses, Notices of Appeal, Applications under the Retail Leases Act and Replies in the Legal Services Division.

Forms initiating proceedings are to be completed and lodged by all applicants. On receipt, the Tribunal writes to all parties and advises them of the Tribunal's proposed procedure for managing the matter, including dates where appropriate.

In relation to Equal Opportunity Division matters parties are also provided with an invitation to have their matter mediated, by

way of a 'consent to mediate' form. If both parties are willing to have the matter mediated, it is referred for mediation as soon as possible.

Regular 'Directions days' are used in the General, Equal Opportunity and Legal Services Divisions. In the Legal Services Division these Directions days are held at intervals of 6-8 weeks, in the Equal Opportunity Division Directions days are scheduled once every 4 weeks and in the General Division once every 2 weeks.

On these days Divisional Heads normally preside and seek to set a timetable for a process that prepares the matter for hearing. The Tribunal may again explore with the parties whether they wish to seek to resolve the matter by mediation or preliminary conference. If not, the Tribunal may give directions to the parties about the necessary steps they need to take to prepare the matter for Tribunal hearing. (The Equal Opportunity Division often uses standard directions.)

In the review jurisdiction increased by the General Division, the practice is for one judicial member (or the Divisional Head) to hear the matter. The Community Services Division on the other hand as required by law sits as a three member panel with a judicial member (or the Divisional Head) presiding.

In the case of original jurisdiction, matters are heard by three member panels as required by law in the Equal Opportunity and Legal Services Divisions. One member hearings are the norm in the Retail Leases Division.

The Community Services Division has maintained the comparatively informal procedures of the former Community Services Appeals Tribunal. Community services cases frequently involve people who are significantly disadvantaged in accessing the legal system such as children, people with disabilities and people with few financial resources. To increase accessibility for these groups, the Division seeks to operate with a minimum of formality. For example, the parties and the Tribunal members sit around a table to hear the case and lawyers are not normally involved.

In classes of matters where three member panels sit, they include routinely two members with a non-legal specialist interest in the relevant area. For example, the expertise of members includes care and protection issues, disability issues and licensing of children's services. The panel might include indigenous members or members from a non-English speaking background if the case involves these issues.

Lawyers are not needed in most cases and the rules of evidence are not strictly applied. This gives the people involved in the case the opportunity to express their thoughts and feelings without the usual restrictions of a court-like environment.

The Community Services Division's process is more inquisitorial than other Divisions. Features of this approach include obtaining evidence from a psychiatrist or psychologist appointed by the Tribunal and appointing a guardian ad litem to represent the interests

of any children (and in some cases for people with a disability) involved in the hearing. Their role is essentially to represent the interests and views of that person. Children are encouraged to participate in the proceedings if they want to. These procedures make the Tribunal much more accessible to people who cannot afford the cost of a lawyer or expert reports.

Practice Notes

The Tribunal has not issued practice notes for any Division. To date it has relied on the Rules, case-specific directions and advice contained in standard Registry correspondence.

Regional Services

Even after the various mergers the Tribunal remains a small one. It has one location in central Sydney. It has sought to deal with matters arising in the country areas by

- regular use of telephone conferences particularly for directions hearings
- video conferencing where appropriate (eg. mediation with parties located in Broken Hill and in Lightning Ridge)
- deciding matters on the papers without the need for parties to attend.

If these options are not appropriate it has

- sent members to the region to hear the case or
- appointed, with the approval of the

Chief Magistrate, a Magistrate to sit as the Tribunal (a similar facility exists in relation to the District Court and the Supreme Court but it has not needed to be used).

Alternative Dispute Resolution

The Tribunal is empowered to explore a number of forms of dispute resolution in addition to its decision making role. These options include: making decisions on the papers; use of assessors; early neutral evaluation; preliminary conferences; and mediation. So far mediation, preliminary conferences and decisions on the papers have been used.

Mediation conferences form part of the routine arrangements of the Equal Opportunity Division, carrying on the practice of the former Equal Opportunity Tribunal. Parties are encouraged to consent to a mediation conference. Its mediations are conducted by trained mediators from among the legally qualified members of the Tribunal. Mediations and preliminary conferences have also been used in the General and Community Services Divisions. There is no mandatory mediation undertaken by the Tribunal; however any matters in the Retail Leases Division are required to have been to mediation before being referred to the Tribunal.

Publications and Presentations

In late 1998 the Tribunal published a Brochure which included brief details about the Tribunal including its functions, processes and contact information.

The Tribunal's maintains an internet homepage and website found at www.lawlink.nsw.gov.au/adt. People are able to access information about the Tribunal, its decisions, hearing lists, legislation and procedural forms and fees at the website. The website also allows users to provide feedback on the Tribunal's services.

Presidential members of the Tribunal have spoken at numerous conferences and sessions about the Tribunal and its work. A list of these presentations can be found at Appendix C.

Member Training

An Information Session was held on 14 April 1999 for new Members joining the Tribunal's General Division. The Session was conducted by the Tribunal President, Judge Kevin O'Connor and included information on:

- ethics and conflict
- assignments
- decision preparation
- remuneration
- the Registry.

Mediation training was offered to Tribunal

members and a course was specifically designed by Dr Gregory Tillett, a consultant specialising in conflict resolution, mediation and facilitation. Training took place over a series of three weekends in May and June 1999. Ten members and staff attended.

Future Training

The Tribunal has conducted some preliminary research into Members' training needs and has developed a Members Professional Development Program. The first module of the program is to be the presentation of a seminar in October 1999 on Good Decision Writing.

Registry

The Registry has a Registrar, two Deputy Registrars and seven clerical staff. The registry is organised into the following teams:

- client services which provides enquiry and lodgment services
- hearings which provides support to the Tribunal in relation to the conduct of hearings and mediations
- post hearings which maintains the Tribunal's decisions database and provides general administrative services to members.

The Registrar and Deputy Registrars work closely with the President and Deputy Presidents in the management of the Tribunal.

Accommodation

The Tribunal's principal registry is located at Level 15, 111 Elizabeth Street Sydney. The Tribunal also has premises at Level 4, 128 Chalmers Street, Surry Hills (formerly used by the Community Services Appeals Tribunal) which it intends to vacate late in 1999.

The Elizabeth Street premises contain one very large hearing room and one small hearing room and very limited facilities for conferences and mediations. As the Tribunal will remain at this location in the short term improvements will be made in January 2000

to ensure better access for people with disabilities, and to improve the use of the available space including reconfiguring the hearing rooms, to create three reasonably-sized rooms and to provide conference rooms.

The Attorney General's Department and the Department of Fair Trading have agreed to develop a plan for the long-term co-location of the Administrative Decisions Tribunal with the Fair Trading Tribunal, in line with a Government decision of March 1998.

Case Management Database

Prior to the establishment of the Tribunal, the Legal Services Tribunal had commenced developing a database for case management purposes in conjunction with the New South Wales Judicial Commission. That database was completed in March 1999 and is now used to manage matters in the Legal Services Division of the Tribunal.

During 1999 that database was being assessed for its suitability for the other Divisions with a view to developing an integrated system for the whole Tribunal.

Reference Collection

The Tribunal maintains a small reference collection containing relevant statutes and regulations as well as key reporters bearing on its various jurisdictions. A number of additions to the reference collection have

been made, but it remains a basic collection. For the more complex legal research required for major decisions, the Tribunal relies for professional library support on external liaison with Departmental and Court librarians.

Staff Development

The Attorney General's Department has a Corporate Training and Development Unit that offers a variety of training courses that are accessible to Tribunal staff. A number of staff have attended the Unit's training sessions. In the coming reporting period the Tribunal intends to focus its training on the areas of customer services and quality.

During the early stages of establishment, the Tribunal conducted in-house training aimed at preparing staff for the changes brought about by the amalgamation of the former registries and new jurisdictions. This training included on-the-job training, and short presentations by in-house and external experts in the various divisions of the Tribunal. Presentations were made by the New South Wales Anti-Discrimination Board, the Ombudsman's Office and the Registrar of Retail Tenancy Disputes.

Budget and Financial Information

The Tribunal is an independent statutory body which for budgetary purposes is a cost centre within the Attorney General's Department. Detailed financial information

relating to the Tribunal can be found in the Attorney General's Department's 1998/1999 Annual Report.

The general position is that the budget of the Tribunal has two components. All Divisions except the Legal Services Division are supported by Government funds. The Legal Services Division is supported by non-government funding from the Statutory Interest Account (interest earned on solicitors' clients' funds held in compulsory trust account deposits) under the *Legal Profession Act 1987*.

Appendix D provides a basic picture of expenditure incurred by the Tribunal for the reporting period. Table I deals with the overall position of the Tribunal, showing a saving against budget of \$740,961 in respect of the Government funded Divisions.

Table II provides a comparison of Divisional operating costs. It will be seen that the level of expenditure incurred by the Legal Services Division, when compared against its levels of business (as to which see the case flow statistics in the next section), is considerably higher than the other Divisions where three-member panels sit. The basic per-day costs for a Legal Services Division hearing are approximately \$3400 (\$2490, members' fees, and \$810 transcript fees). This compares with comparable per-day costs of approximately \$2000 (\$1177, members' fees, transcript costs same) in the Equal Opportunity Division.

GENERAL DIVISION 6 OCTOBER 1998 - 30 JUNE 99

1. Case flow 1998-99

Matters transferred from District Court on 6/10/98	Applications filed	Disposed	Pending
4	196	97	103

2. Applications by type 1998-99

Number of applications for review of a decision	Original Decisions
195	1

3. Applications by subject 1998-99

<i>Subject by Act</i>	
Freedom of Information Act (release)	3
Freedom of Information Act (access)	37
Freedom of Information Act (amend)	5
Security Industry Act	103
Education Act	2
Passenger Transport Act	13
Home Building Act	5
Tow Truck Act	5
Fisheries Management Act	6
Pawnbrokers & Second Hand Dealers Act	7
Veterinary Surgeons Act	2
Motor Dealers Act	1
Firearms Act	6
Nó jurisdiction	1
Total	196

4. Outcomes*

Decision under review affirmed	Decision under review set aside/ Recommendation made/ Decision varied	Application withdrawn Dismissed/ No appearance Dismissed/ Agreement reached Dismissed
24	14	59

**(61% of applications disposed of were dismissed or withdrawn without determination)*

5. Mediation

No. of Mediations conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing	Pending
3	0	0	0	3

6. Timeliness - time from date of application to date of determination/disposal

No. disposed of in less than 6 months	97
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7. Appeals to Appeal Panel

No. of Appeals lodged	1
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8. Outcome of Appeals

Orders made	Withdrawn/ Discontinued	Pending
0	0	1

9. Supreme Court Appeals

No. of Appeals lodged	1
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10. Outcome of Appeals

Orders made	Dismissed	Withdrawn/ Discontinued
0	1	0

COMMUNITY SERVICES DIVISION 1/1/1999 - 30/6/1999

1. Case flow 1998-99

Matter transferred from Community Services Appeals Tribunal on 1/1/999	Applications filed	Disposed	Pending
53	9	17	45

2. Applications by type 1998-99

Number of applications for review of a decision	9
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3. Applications by subject 1998-99

Subject	Number
Child care licence	1
Custody	1
Disability funding	4
Guardianship	1
Powers of Community Services Commission	1
no appellable decisions	1

4. Outcomes*

Decision under review affirmed	Decision under review set aside/ Recommendation made/ Decision varied	Application withdrawn Dismissed/ No appearance Agreement reached	Dismissed/ Dismissed
4	0	13	

*(76 % of applications disposed of were dismissed or withdrawn without determination)

5. Mediation

Settled at Mediation	Settled after Mediation	Proceeded to Hearing
0	0	0

6. Timeliness - time from date of application to date of determination

No. disposed of in less than 6 months	6
No. disposed of in less than 12 months	3
No. disposed of in more than 12 months	3
No. disposed of in more than 2 years	5

7. Appeals to Appeal Panel

No. of Appeals lodged	0
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8. Outcome of Appeals

Orders made	Dismissed	Withdrawn/ Discontinued
0	0	0

9. Supreme Court Appeals

No. of Appeals lodged	0
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10. Outcome of Appeals

Orders made	Dismissed	Withdrawn/ Discontinued
0	0	0

STATISTICS

EQUAL OPPORTUNITY DIVISION 6/10/1998 - 30/6/1999

1. Case flow 1998-99

Matters transferred from Equal Opportunity Tribunal on 6/10/98	Applications filed	Disposed	Pending
181	90	90	181

2. Applications by type 1998-99

Number of applications for review of a decision	Number of applications for an original decision
1	89

3. Applications by subject 1998-99

Head of discrimination*	Number
Sex	8
Sex pregnancy	3
Sexual Harassment	17
Race/ race by association	22
Racial vilification	3
Marital Status	4
Homosexuality	4
Homosexuality vilification	1
Age	6
Compulsory retirement	1
victimisation	22
Transgender	3
Transgender vilification	2
Disability	23
Aiding and Abetting	4
Indirect sex discrimination	1
Review of decision	1

*NB: a number of complaints have been referred to the tribunal under more than one head of discrimination

4. Outcomes*

Orders made	Dismissed after hearing	Withdrawn/ Discontinued/ Dismissed without hearing	Dismissed under section 111
12	7	66	5

*(73% of applications disposed of were dismissed or withdrawn without determination- this includes those applications resolved by mediation)

5. Mediation

No. of Mediations conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing	Pending
40	12	6	3	19

6. Timeliness - time from date of application to date of determination

No. disposed of in less than 6 months	12
No. disposed of in less than 12 months	29
No. disposed of in more than 12 months	34
No. disposed of in more than 2 years	15

7. Appeals to Appeal Panel

No. of Appeals lodged	6
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8. Outcome of Appeals

Orders made	Dismissed	Withdrawn/ Discontinued	Pending
1	1	0	4

9. Supreme Court Appeals

No. of Appeals lodged	1
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10. Outcome of Appeals

Orders made	Dismissed	Withdrawn/ Discontinued	Pending
1	0	0	0

LEGAL SERVICES DIVISION 6/10/1998 - 30/6/1999**1. Case flow 1998-99**

Matters transferred from Legal Services Tribunal on 6/10/98	Applications filed	Disposed	Pending
59	23	26	56

2. Applications by type 1998-99

Number of applications for an original decision	23
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3. Applications by subject 1998-99

Type of Practitioner	Type of conduct*	Number
Solicitor	PM	17
Solicitor	PM & UPC	4
Barrister	UPC	1
S.48I & 48K Applications		1

*PM - Professional Misconduct UPC - Unsatisfactory professional conduct

4. Outcomes

Removed from Roll	9
Restricted Practising Certificate	1
Reprimanded and Fined	8
Reprimanded	2
Dismissed	3
No-Jurisdiction/Withdrawn	2
S.48I & 48K Orders	1

6. Timeliness - time from date of application to date of determination

No. disposed of in less than 6 months	10
No. disposed of in less than 12 months	5
No. disposed of in more than 12 months	5
No. disposed of in more than 2 years	6

7. Appeals to Appeal Panel

No. of Appeals lodged	1
-----------------------	---

8. Outcome of Appeals

Orders made	Dismissed	Withdrawn/ Discontinued	Pending
0	0	0	1

9. Supreme Court Appeals

No. of Appeals lodged	1
No. of Appeals pending as at 6/10/98	6

10. Outcome of Appeals

Orders made	Dismissed	Withdrawn/ Discontinued	Pending
0	1	0	6

RETAIL LEASES DIVISION 1/3/1999 - 30/6/99

1. Case flow 1998-99

Applications filed 10*	Disposed 4	Pending 6
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**All retail tenancy claims. Unconscionable conduct provisions have not yet commenced.*

4. Outcomes

Orders made 0	Dismissed after hearing 0	Settled - Orders made 1	Withdrawn/ Discontinued/ Dismissed without hearing 3
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5. Mediation

Settled at Mediation 0	Settled after Mediation 0	Proceeded to Hearing 0
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6. Timeliness - time from date of application to date of determination/disposal

No. disposed of in less than 6 months 4
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7. Appeals to Appeal Panel

No. of Appeals lodged 0

8. Outcome of Appeals

Orders made 0	Dismissed 0	Withdrawn/ Discontinued 0
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9. Supreme Court Appeals

No. of Appeals lodged 0

10. Outcome of Appeals

Orders made 0	Dismissed 0	Withdrawn/ Discontinued 0
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Appendix A: Administrative Decisions Tribunal: Legislation

Principal Legislation

Administrative Decisions Tribunal Act 1997

amended to 30 June 1999 by:

Administrative Decisions Legislation Amendment Act 1997

Administrative Decisions Legislation Amendment Act 1998

Administrative Decisions Legislation Further Amendment Act 1998

Administrative Decisions Tribunal (General) Regulation 1998

Administrative Decisions Tribunal (General) Amendment (Fees) Regulation 1998

Administrative Decisions Tribunal Rules (Transitional) Regulation 1998

Primary Statutes

Adoption Information Act 1990

Adoption of Children Act 1965

Anti-Discrimination Act 1977

Apiaries Act 1985

Architects Act 1921

Births Deaths and Marriages Registration Act 1995

Boxing and Wrestling Control Act 1986

Boxing and Wrestling Control Regulation 1994

Charitable Fundraising Act 1991

Children (Care and Protection) Act 1987

City of Sydney Act 1988

Community Justices Centres Act 1983

Community Services (Complaints, Appeals and Monitoring) Act 1993

Community Services (Complaints, Appeals and Monitoring) Regulation 1996

Conveyancers Licensing Act 1995

Dangerous Goods Act 1975

Disability Services Act 1993

Education Act 1990

Employment Agents Act 1996

Entertainment Industry Act 1989

Environmental Planning and Assessment Act 1979
(as amended by Act No 152 of 1997)

Factories, Shops and Industries Act 1962

Fertilizers Act 1985

Firearms Act 1966

Firearms (General) Regulation 1997

Fisheries Management Act 1994

Food Act 1989

Forestry Act 1916

Freedom of Information Act 1989

Home Building Act 1989

Horticulture Stock and Nurseries Act 1969

Impounding Act 1993

Interpretation Act 1987

Legal Profession Act 1987

Legal Profession Regulation 1994

Local Government Act 1993

Motor Accidents Act 1988

Motor Dealers Act 1974

Motor Vehicle Sports (Public Safety) Act 1985

Mount Panorama Motor Racing Act 1989

Native Title Act 1994 s34

Non-Indigenous Animals Act 1987

Nursing Homes Act 1988

Occupational Health and Safety Act 1983

Ombudsman Act 1974

Passenger Transport Act 1990

Pawnbrokers and Second-hand Dealers Act 1996

Petroleum Product Subsidy Act 1997 s25

Plant Diseases Act 1924

Police Service Act 1990

Private Hospitals and Day Procedure Centres Act 1988

Public Health Act 1991

Public Lotteries Act 1996

Rail Safety Act 1993

Registration of Interests in Goods Act 1986

Retail Leases Act 1994

Retail Leases Amendment Act 1998

Road and Rail Transport (Dangerous Goods) Act 1997

Road Transport (Vehicle Registration) Act 1997
Security Industry Act 1997
Sentencing Act 1989
Stock (Artificial Breeding) Act 1985
Theatres and Public Halls Act 1908
Timber Marketing Act 1977
Tow Truck Industry Act 1989
Trade Measurement Act 1989
Trade Measurement Administration Act 1989
Travel Agents Act 1986
Veterinary Surgeons Act 1986
Veterinary Surgeons Regulation 1995
Vocational Education and Training Accreditation Act
1990
Weapons Prohibitions Act 1998
Workplace Injury Management and Workers
Compensation Act 1998
Youth and Community Services Act 1973

Appendix B: List of Members

The following list shows members of all Divisions who held appointments during the period of the Report. Many of the members had previous appointments to the former tribunals continued under the transitional provisions. Where the appointment was a fresh one to the Tribunal, that is shown together with the period of the term. The details of the appointments of the President and Deputy Presidents are shown.

President

Judge KEVIN PATRICK O'CONNOR,
from 3 March 1999 until 9 August 2001

General Division

Divisional Head

Judge KEVIN PATRICK O'CONNOR, President,
from 3 March 1999 until 9 August 2001

Judicial Members

from 23 February 1999, term 3 years

JILL PATRICIA ANDERSON

ROBERT BARNET DAVIDSON (also assigned to
Retail Leases)

BRUCE GEORGE DONALD (also assigned to
Retail Leases)

GABRIEL FLEMING

GERALDINE MAPLE MYRA HOEBEN (also
assigned to Retail Leases)

MARK ANTHONY ROBINSON

PETER MARK SKINNER

MATTHEW BRUCE SMITH

KIM WILSON

Non-judicial Members

from 14 April 1997, term 3 years

YOLANDE DUBOW

from 6 October 1998 until 30 March 1999

RICHARD JANE

from 23 February 1999, term 3 years

MARY ELIZABETH BOLT

**Non-judicial Members appointed to Tribunal
pursuant to the Veterinary Surgeons Act**
from 21 June 1999, term 3 years

BRIAN ROBERT HOPE FARROW

DAVID ROBERT HUTCHINS

GARTH ALEXANDER MCGILVRAY

MARILYN ANNE MCKENZIE

GEOFFREY ARTHUR REED

RUTH ROSEMARY THOMPSON

**Non-judicial Members appointed to Tribunal
pursuant to the Education Act**
from 1 November 1995 until 22 February 2002

KATHLEEN MCCREDIE

JOSEPH RIORDAN

from 6 October 1998 until 31 October 1999

WILLIAM NAY

Equal Opportunity Division

Divisional Head

Judge HELEN GAY MURRELL Deputy President,
from 10 August 1998, term 3 years, (also assigned to
General Division and Retail Leases)

Judicial Members

from 25 September 1996 until 4 October 2002

GRAEME GORDON INNES

from 30 October 1996 until 4 October 2002

SIMON JAMES RICE

from 16 July 1997 until 15 July 2000

CHRISSA TEREASA LOUKAS

KENNETH RAPHAEL

from 27 August 1997 until 15 July 2000

NARELLE PATRICIA BELL

NEIL ROBERT REES

from 21 January 1998 until 20 January 2001

DAVID LEE BITEL

PENELOPE HELEN GOODE (also assigned to
General Division)

from 27 January 1998 until 4 October 2002

MICHAEL CHARLES BIDDULPH

from 13 February 1998 until 4 October 2002

GRAHAM REGINALD IRELAND

from 1 March 1998 until 20 January 2001

REGINALD JAMES BARTLEY (also assigned to General Division)

PETER KING

from 23 February 1999 until 22 February 2002

PATRICIA JUNE O'SHANE

Non-judicial Members

from 25 September 1996 until 4 October 2002

SUEILLEN MITCHELL BULLOCK

STEVIE CLAYTON

KELLIE EDWARDS

SUSAN LEE HARBEN

LUCY TAKSA

from 27 October 1996 until 4 October 2002

LOLITA FARMER

TINA LOUISE JOWETT

LAWRENCE LAU

JANE STRICKLAND

from 30 October 1996 until 4 October 2002

ANTHONY NICHOLAS SILVA

from 16 July 1997 until 15 July 2000

RENIA D COX

KAREN GREENHILL

from 27 August 1997 until 15 July 2000

RICHARD FREDERICK JONES

LAURA CLARE MOONEY

LOUISE NEMETH DE BIKAL

DORLEEN TOLTZ

from 13 February 1998 until 20 January 2001

MILTON LUGER

from 4 June 1998 until 20 January 2001

MERILYN ALT

OWEN MCDONALD (also assigned to General Division)

from 6 October 1998 until 4 June 1999

WILLIAM BOWTELL

Community Services Division

Equal Opportunity Division

Divisional Head

NANCY HENNESSY, Deputy President, from 25 June 1997, term 3 years (also assigned to General Division, Retail Leases and Equal Opportunity Division)

Members

from 27 July 1994 until 27 July 2000

DEBORAH BRENNAN

BEN GELIN

LYLA ROGAN

from 1 February 1995 until 1 February 2001

CLARITA NORMAN

from 14 March 1998 until 1 February 2001

LINDA MONAGHAN-NAGLE

from 6 July 1998 until 17 July 2001

JAN MASON

from 24 August 1999 until 23 August 2002

JENNIFER GREEN

LYNN MARY HOULAHAN

MEREDITH MARTIN

JEANETTE MCDONALD MOSS

Legal Services Division

Divisional Head

CAROLINE ANNE NEEDHAM, Deputy President, from 1 October 1998, term one year (also assigned to General Division, Retail Leases and Equal Opportunity Division)

Barrister Members

from 27 October 1997 until 26 October 2000

THOMAS FREDERICK BATHURST

from 1 October 1998 until 31 March 2000

ANNABELLE CLAIRE BENNETT

ROBERT JAMES ELLICOTT

from 1 October 1998 until 30 September 1999

JOHN SEBASTIAN COOMBS

CHRISTOPHER GRENVILLE GEE
PETER ROSS GRAHAM
ROBERT BRUCE SCOTT MACFARLAN
JOHN ANTHONY MCCARTHY
PAUL MENZIES
LINTON MEARNES MORRIS
WILLIAM HENRIC NICHOLAS
DAVID PETER FORBES OFFICER
BRUCE CLIFFORD OSLINGTON
JOHN MILTON STOWE
BARRY MICHAEL TOOMEY
JOHN NORMAN WEST
ANTHONY GERARD WHEALY
from 1 October 1998 until 31 March 2000
LIONEL PHILIP ROBBERDS
from 1 October 1998 until 31 May 2000
MICHAEL JOHN FINNANE
from 5 October 1998 until 31 March 2000
SHARON NORTON
from 5 October 1998 until 31 May 2000
JENNIFER HERGEST HARLEY BLACKMAN
from 5 October 1998 until 30 September 1999
ROBERT JOHN BUCHANAN
from 5 October 1998 until 15 March 1999
VIRGINIA BELL
from 5 October 1998 until 30 September 1999
PETER CAPELIN
BRIAN DONOVAN
ELIZABETH LILLIAN FULLERTON
WENDY LOUISE ROBINSON

Solicitor Members

from 27 October 1997 until 26 October 2000
JOHANNA PHEILS
from 1 June 1998 until 26 October 2000
MICHAEL JAMES BARNES
NEA ROSETTA GOODMAN
IAN FRANCIS MCDONELL
HELEN ANN REED
ROY FREDERICK TURNER

from 1 October 1998 until 30 September 1999
ROSEMARY COX
CHRISTINE ANNE GAILEY
JULIA LOUISE GREENWOOD
SANDRA NERYL HALE
GRAHAM BRIAN MOLLOY
GERARD CONRAD STAFF
CEDRIC BORHRSMANN VASS
from 1 October 1998 until 29 February 2000
ROBERT JOHN FOX
from 1 October 1998 until 31 March 2000
JOHN WILLIAM FRANCIS BRENNAN
JOHN SYDNEY CURRIE
ANTHONY TURNER MARTIN
JENNIFER MARGARET MATTILA
from 1 October 1998 until 31 December 2000
JOSEPH JOHN CATANZARITI
ROGER JAMES CLISDEJ.J.
from 5 October 1998 until 30 September 1999
JENNIFER BOLAND
ANDREA DURBACH
GARRY FREDERICK FOSTER

Licensee Members

from 27 October 1997 until 26 October 2000
CHRISTINE EVA BARNES
from 1 June 1998 until 26 October 2000
MICHAEL JOHN REINHARD

Lay Members

from 27 October 1997 until 26 October 2000
MARK ANDREWS
LESHIA OLGA BUBNIUK
RAY GIETZELT
ELAINE HAYES
DEBORAH KLIKA
PETER OWEN MILLER
PAUL FRANCIS O'GRADY
from 1 June 1998 until 26 October 2000
GINA SARTORI

APPENDICES

from 1 October 1998 until 30 September 1999

BARRIE DRUMMOND DYSTER

LYN GAIN

JENNIFER ANNE GEDDES

DAVIES HOAREAU

ALAN KENNEDY

DENIS MAHON

ANN MARIE MARA

JOHN O'NEILL

from 1 October 1998 until 31 December 1999

MICHAEL EUGENE COSTIGAN

from 5 October 1998 until 30 September 1999

DAVID CHARLES BREHE

from 5 October 1998 until 31 March 2000

KERSTI ELLIOTT

Retail Leases Division

Divisional Head

No appointment as yet.

Members

No principal assignments to this Division as yet.

Members who sat in this Division during the reporting period are the President, Deputy President Hennessy, Mr Donald, Mr Davidson and Ms Hoeben.

*Appendix C: ADT Published Articles,
Speeches and Presentations by ADT
Presidential Members*

PRESIDENT JUDGE KEVIN O'CONNOR
Divisional Head, General Division

New NSW Administrative Decisions Tribunal
24 September 1998, NSW Young Lawyers

An Introduction to the Administrative Decisions Tribunal
October 1998, 'Judicial Officers' Bulletin' Vol.10 No. 1
9, Judicial Commission of New South Wales

Report from the ADT Equal Opportunity Division
29 October 1998, National Conference of Tribunals,
Melbourne

Administrative Decisions Tribunal: An Early Report
10 February 1999, Public Interest Advocacy Centre
Open Government Conference, Sydney

ADT Launch Speech
25 February 1999

Implementing Rights to Environmental Information
4 March 1999, 'Examining Government Processes
and Decisions' Workshop, Indonesia

*Administrative Decisions Tribunal: Jurisdiction and Early
Experience*
25 March 1999, NSW College of Law

Perspectives from a New Tribunal
29 April 1999, Australian Institute of Administrative
Law 1999, Administrative Law Forum, Canberra.

5 May 1999, NSW Law Society Government
Solicitors Committee, Government Legal Heads
Meeting

DEPUTY PRESIDENT
CAROLINE NEEDHAM
Divisional Head, Legal Services Division

*Professional Disciplinary Proceedings Against Legal
Practitioners*
27 February 1999, Wollongong and District Law
Society Annual Conference

*Legal Costs: Disclosure Obligations and Standards of
Conduct*
29 March 1999, College of Law Continuing Legal
Education seminar on Costs Assessment

The Disciplinary Process
13 May 1999, Law Society of New South Wales
Professional Standards Conference

*Appendix D: Financial information***TABLE I**

ADT (except LSD) - GOVERNMENT FUNDED				ADT ACTUAL EXPENDITURE INCLUDING LEGAL SERVICES DIVISION
	PROJECTED FULL YEAR			
	Actual	Budget	Difference	
Adv. & Publicity	4,276	84,000	79,724	6,790
Consultancy	23,800	28,000	4,200	53,800
Contractors	0	2,000	2,000	0
Fees (incl. Members)	186,442	433,000	246,558	368,012
General Expenses	3,656	5,000	1,344	4,128
Interpreters	4,830	4,000	-830	4,830
Postal	9,192	17,000	7,800	9,667
Printing	11,813	20,000	8,187	11,813
Publications	27,161	23,000	-4,161	28,443
Staff Expenses	8,549	9,000	50	11,351
Stores & Stationary	58,915	23,000	-35,915	59,203
Travel	21,745	58,000	36,255	25,580
Transcription	29,364	72,000	42,636	65,182
Total Operating	389,743	778,000	387,848	648,799
Capital (Acc & IT)	50,000	250,000	200,000	
Salaries & related	555,305	656,000	100,695	865,240
Property Items*	322,991	375,000	52,009	458,299
TOTAL	1,318,039	2,059,000	740,961	

* *Property Items - electricity & gas, insurance, rates, removal costs, rent, telephone, maintenance.*

TABLE II

DIVISIONAL SUMMARY OF OPERATING COSTS

	Actual	Budget
Equal Opportunity Division*	117,425	307,000
Community Services Division*	69,535	183,000
General Division and Retail Leases Division*	142,783	288,000
Legal Services Division**	259,056	571,000

* *Government Funded*

** *Funded by Statutory Interest Account*

Note: This Table does not include Capital, Salaries and Property Items. It deals only with the items falling into the "Total Operating" category in Table I.

Both tables are based on information provided to the Tribunal by the Attorney General's Department.

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Sydney, 1999

Administrative Decisions Tribunal

Level 15 St James Centre, 111 Elizabeth St Sydney

Tel: (02) 9223 4677

www.lawlink.nsw.gov.au/adt