



# Administrative Decisions Tribunal

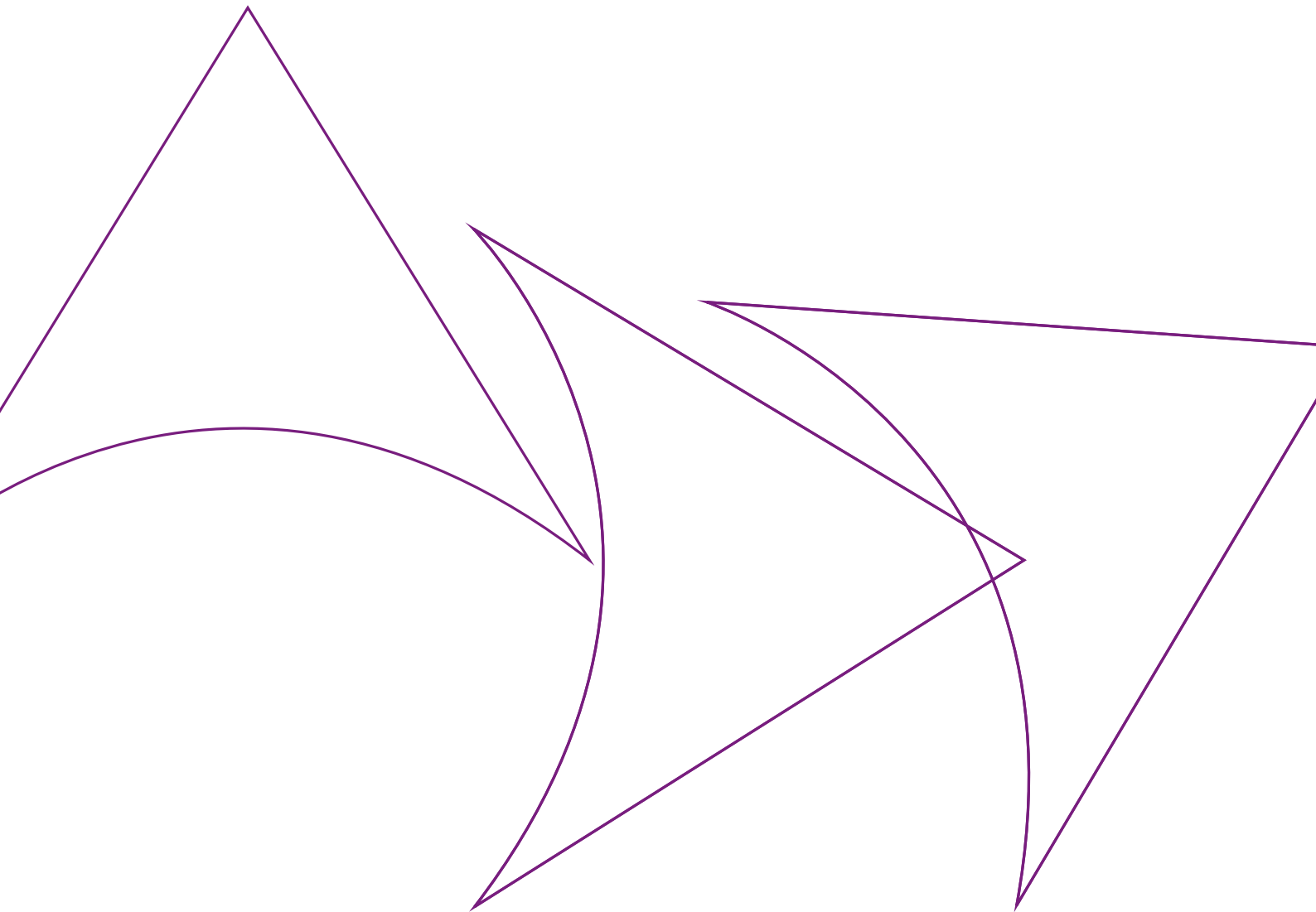
New South Wales

Annual Report  
2005-2006



# Administrative Decisions Tribunal

New South Wales





Administrative Decisions Tribunal  
New South Wales

The Hon. Bob Debus  
Attorney General  
Parliament House  
SYDNEY NSW 2000

Dear Attorney,

In accordance with section 26 of the *Administrative Decisions Tribunal Act 1997*,  
I am pleased to present the eighth annual report of the Tribunal, covering the period  
1 July 2005 to 30 June 2006.

Yours sincerely,

Judge KEVIN O'CONNOR AM

President

23 October 2006

# Contents

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The Year in Review	4
Our Objectives	6
Service to Users and Community Relationships	7
Practice and Procedure	9
The Divisions and the Appeal Panel	12
<i>The 'Administrative' or 'Public Law' Sector</i>	
General Division	14
Guardianship and Protected Estates List	16
Revenue Division	17
Community Services Division	19
Legal Services Division	20
Other Professional Discipline Jurisdictions	21
<i>The 'Civil' or 'Private Law' Sector</i>	
Equal Opportunity Division	22
Retail Leases Division	24
<i>Appeals</i>	
Appeal Panel	26
Supreme Court and High Court	29
Membership	33
Registry and Budget	35
<b>Appendices</b>	
Appendix A List of Members	36
Appendix B Legislation	39
Appendix C Financial Information	41
Appendix D Statistics	42
Appendix E Case Load, Time Standards	51
Appendix F Rule Subcommittee Membership	52

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# The Year in Review

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President Kevin O'Connor

This is the Tribunal's eighth annual report. The case load of the Tribunal has increased steadily over the years, from a base of 633 applications (including appeals) in the first year (1998-99) to 1068 applications (including appeals) in the latest year. Since the first year, one further Division has been added to the Tribunal, the Revenue Division (commenced 1 July 2001).

The jurisdiction of the Appeal Panel has been extended to hear external appeals against the decisions of certain external tribunals, principally the Guardianship Tribunal (commenced 28 February 2003).

The profile of the first instance filings in the Tribunal has shifted over the years. As at the end of year one, 38% were applications for review of reviewable administrative decisions. Now, the proportion belonging to that category is 63%. The major decrease over the years has been in the number of Equal Opportunity Division (EOD) filings – 181 on hand at the beginning of year one (transferred from previous tribunal) to 97 at the end of the present reporting year. In terms of the proportion of overall business in the Tribunal, EOD filings at the end of year one represented 45% of the Tribunal's business versus 10% now.

The Attorney General is presently completing a review of the *Administrative Decisions Tribunal Act 1997* to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate, as required by section 147 of the Act. The Tribunal was avowedly created as a multi-jurisdictional tribunal, integrating a number of small tribunals and having jurisdiction connected with merits review transferred to it from the courts.

I have reported over the years on the progress being achieved around Australia and in the United Kingdom in relation to the integration of tribunals into single structures.

In April 2006 the new head of UK Tribunals, Sir Robert Carnwath, Lord Justice of Appeal, visited Australia. Sir Robert outlined the major features of the new Tribunals structure in that country. He spent time in Sydney visiting tribunals, including ours, and gave a number of public presentations, one of which was republished in the *Australian Law Journal* (July 2006 issue).

Deputy President Hennessy and I participated in an international tribunals workshop held in conjunction with his visit. It had participants from the UK, Canada and New Zealand.

The striking feature, for me, of the information presented was the contrast that now exists as between UK, on the one hand, and Australia, NZ and Canada, on the other, around core issues to do with the independence, administration and operation of tribunals.

In the UK membership of tribunals is aligned in significant ways with membership of courts. For example the new UK Judicial Appointments Commission and the new Judicial Appointments and Conduct Ombudsman (opened in April 2006) have jurisdiction over both judges and tribunal members. There is a commitment to independent and transparent appointment processes and long-term tenure. In the UK tribunal members must be appointed by way of a merit selection process administered by the JAC giving rise to a recommendation to the Minister. The Minister is restricted to a right of veto of a recommended appointment. Members, whether legally qualified or lay, are tenured until the applicable statutory retiring age.

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The Judicial Studies Board provides sophisticated training and induction programs for judges and members of tribunals. Tribunals send selected members to these programs. The Board also provides kits and the like for tribunals to use for their internal training. Their programs include ones directed specifically at heads of jurisdiction on topics such as 'judicial leadership'. In contrast in New South Wales, a somewhat equivalent structure - the Judicial Commission - is confined in its role to judges and magistrates.

The first phase of integration of UK tribunals is taking place - the bringing together into a single organisation of the administration and registry functions of tribunals. There will be a single point of entry into the tribunal system for persons wishing to lodge disputes or claims. The Tribunals themselves will remain untouched for the time being, but it is expected in the medium term that there will be a reduction in the number of separate tribunals, and their consolidation into, perhaps, a small number of multi-divisional tribunals.

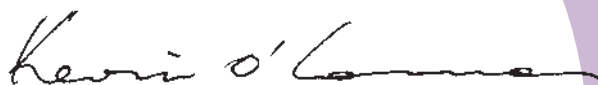
During the year a part-time Divisional Head was appointed to the Revenue Division, Jane Needham SC. Deputy President Needham was previously a judicial member assigned to various divisions. She is an experienced barrister, whose areas of practice include commercial law and Commonwealth revenue law.

In recent years Ms Cathy Szczygielski and Ms Karen Wallace filled the office of Registrar to the Tribunal on a job-share basis. Ms Szczygielski was the founding Registrar, initially full-time.

The Tribunal as it has developed owes very much to her establishment work.

They left the Tribunal in August 2005 to take up a well-deserved promotion to one of the new senior positions connected with the restructure of Local Courts and District Court administration, Assistant Director, Court Services, again on a job-share basis. The new Registrar is Ms Pauline Green, formerly Deputy Registrar, Supreme Court.

Finally, may I take this opportunity to pay tribute to the founding head of the Equal Opportunity Tribunal in New South Wales, Richard Barbour QC, a retired District Court judge, who died late in 2005 at the age of 81 years. The effectiveness of the Equal Opportunity jurisdiction in New South Wales, and its contribution to Australian equal opportunity law, owes much to its early heads, especially Richard Barbour.



Judge Kevin O'Connor AM  
President

# Our Objectives

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The Tribunal's objectives are set out in the objects clause of the legislation establishing the Tribunal, the *Administrative Decisions Tribunal Act 1997* (the ADT Act). Section 3 states:

### 3. Objects of Act

The objects of this Act are as follows:

- (a) to establish an independent Administrative Decisions Tribunal:
  - (i) to make decisions at first instance in relation to matters over which it is given jurisdiction by an enactment, and
  - (ii) to review decisions made by administrators where it is given jurisdiction by an enactment to do so, and
  - (iii) to exercise such other functions as are conferred or imposed on it by or under this or any other Act or law,
- (b) to ensure that the Tribunal is accessible, its proceedings are efficient and effective and its decisions are fair,
- (c) to enable proceedings before the Tribunal to be determined in an informal and expeditious manner,
- (d) to provide a preliminary process for the internal review of reviewable decisions before the review of such decisions by the Tribunal,
- (e) to require administrators making reviewable decisions to notify persons of decisions affecting them and of any review rights they might have and to provide reasons for their decisions on request,
- (f) to foster an atmosphere in which administrative review is viewed positively as a means of enhancing the delivery of services and programs,
- (g) to promote and effect compliance by administrators with legislation enacted by Parliament for the benefit of the citizens of New South Wales.

# Services to Users and Community Relationships

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The Tribunal is committed to providing a forum accessible to all users. This includes a commitment to ensuring that proceedings are efficient, effective, informal and fair.

## Open justice

'Open justice' is a core value of the legal system in a democracy. The Tribunal, being a public judicial body, sits and hears cases in public.

All hearings are notified in the daily law list, and open to the public unless special orders are made to close them. In principle, parties are entitled to know and test all the evidence and any other material taken into account by the Tribunal. On occasions, this principle can not be observed. This is most commonly seen in Freedom of Information (FOI) proceedings where the contents of the documents in dispute are only known to the agency and the Tribunal. This situation also sometimes arises in licensing cases where the administrator has relied on intelligence information.

The Tribunal's website is located at [www.lawlink.nsw.gov.au/adt](http://www.lawlink.nsw.gov.au/adt). The site provides links to ADT legislation and rules, the daily law list and all published decisions. It provides information about each Division and access to all Practice Notes, standard forms and brochures.

The Tribunal's policy is to publish all reserved decisions and selected *ex tempore* decisions (decisions given orally at the close of hearing). In this way the rulings of the Tribunal and hopefully, an understanding of the Tribunal's approach, can be disseminated widely. All of these decisions are published on the Attorney General's Department CaseLaw NSW website ([www.lawlink.nsw.gov.au/caselaw](http://www.lawlink.nsw.gov.au/caselaw)) and are also available from other publishers, most importantly AUSTLII (Australasian Legal Information Institute)([www.austlii.edu.au](http://www.austlii.edu.au)).

In the last year there were 411 reported decisions, compared to 368 in the previous year. The breakdown of published decisions for this year is: Appeal Panel, 62 (48 internal appeals, 14 external appeals); General Division, 167; Revenue Division,



41; Community Services Division, 19; Legal Services Division, 42; Equal Opportunity Division, 53; Retail Leases Division, 27.

Balancing the interest in informing the public adequately of outcomes in the Tribunal, while according respect to the privacy claims of individuals about whom detail is published in Tribunal decisions, is becoming increasingly difficult in the age of the internet and sophisticated search engines.

The publication of identifiable information about parties, witnesses or other persons mentioned incidentally in reasons for decision is often not significant to meeting the goals of open justice and should be balanced against other considerations.

It is the practice of the Tribunal routinely to give pseudonyms to individuals who are applicants in privacy cases – applications for review of conduct of a public sector agency brought under the *Privacy and Personal Information Act 1998* – and in FOI cases where the issue relate to the amendment of personal records. There are statutory restrictions affecting publication of Community Services Division and Guardianship decisions, and pseudonyms are used in this Division.

Members are encouraged to exercise discretion in relation to the degree of detail given in connection with intrinsically personal matters in their reasons for decision, and in relation to the direct identification of persons under 18.



### **Location and Facilities**

The Tribunal is located centrally, at Level 15, St James Centre, 111 Elizabeth St, Sydney. There are four hearing rooms. Two are designed in a relatively traditional courtroom layout, but with all benches and tables at the same level. Two have a round-table design. The more traditional design is preferred for proceedings in the nature of trials and for Appeal Panel hearings. The other two rooms are mainly used for merits review hearings. There are three small rooms where planning meetings and case conferences are held, without transcript.

### **Remote Users and Regional Access**

The Tribunal seeks to be accessible to remote users by offering the following options (where appropriate):

- telephone conferencing;
- video links;
- conducting sittings in regional locations.

While the Tribunal does not keep specific statistics, it estimates that a telephone link is used by at least one party in about one-third of the business of the Tribunal at the directions and interlocutory stages. Often both parties are contacted by telephone. This facility is much welcomed by suburban and country practitioners. It is also used frequently by applicants representing themselves who live in the country.

Video links are rarely used by the Tribunal.

Where an applicant requests it, or it is otherwise convenient, the Tribunal will sit at a location that is more convenient than central Sydney. In the last year the Tribunal sat at 21 locations in regional New South Wales, most frequently Newcastle. Other locations where the Tribunal sat more than once included Gosford, Grafton, Cooma, Griffith, Dubbo and Coffs Harbour. Wherever possible the Tribunal sits at the local courthouse in regional centres.

### **Access by persons with disabilities**

Access by persons with disabilities is facilitated by:

- Ramp access via St James Arcade for persons with mobility disabilities
- Lifts in St James Centre equipped with braille lift buttons and voice announcements indicating the floors
- Waiting area and tribunal hearing rooms designed to optimise accessibility
- The following services:
  - Telephone Typewriter (TTY);
  - Infra-Red Listening System (Hearing Loop);
  - Auslan Interpreters.



# Practice and Procedure

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The dominant reality for the Tribunal is that most applicants are unrepresented litigants in person and many of them have specific disadvantages connected with language, literacy, capacity or other factors. On the other hand most respondents are government agencies or private businesses who have available to them good quality legal representation and are experienced in litigation.

The Tribunal is committed to ensuring that its practices and procedures are simple, user friendly and easily understood. They are intended to promote accessibility, avoid unnecessary formality and keep costs low. They seek to differentiate between jurisdictions.

The ADT Act, s 73, gives the Tribunal a wide discretion in relation to how it conducts its business.

The Tribunal has a relatively limited number of formal, usually universal, Rules. They are found in the *Administrative Decisions Tribunal (Interim) Rules 1998* contained in the *Administrative Decisions Tribunal Rules (Transitional) Regulation 1998*; and *Administrative Decisions Tribunal (General) Regulation 2004* (the latter dealing with such matters as oaths of office and a scale of allowances and expenses for witnesses).

The Rules do, however, deal in some detail with the practice and procedure to be followed in professional discipline matters before the Legal Services Division. The practice and procedure to be followed in the professional discipline matters brought before the General Division (veterinary practitioners, architects, accredited surveyors, registered surveyors) is the subject of a detailed Practice Note issued as a result of the work of the Professional Disciplinary Advisory Group, whose activities were covered in the last two annual reports.

The Tribunal has preferred, wherever appropriate, two other methods for conveying what is required of parties by way of procedure: the publication of relatively detailed Practice Notes; and the giving of advice through standard



*Directions Hearing, General Division  
Applicant in Person, Represented Respondent.*

form correspondence, or more informally, by staff of the Registry.

## **Practice Notes**

The President issued two further Practice Notes this year. These are:

PN 19: Equal Opportunity Division: Practice & Procedure

PN 20: Retail Leases Division: Appointment of a specialist retail valuer.

Practice Note 19 sets out the procedure that the Tribunal will follow in dealing with complaints of unlawful discrimination. This note replaces Practice Note 2 which was repealed on 30 June 2004.

Practice Note 20 sets out a procedure under which appointments of a specialist retail valuer may be made quickly and cheaply and, so far as possible, without it being necessary for the parties to attend any hearings at the Tribunal. This Practice Note was issued after consultation with the portfolio Department, the Retail Tenancy Unit and industry groups.

## **User Groups**

User Groups provide one means by which the Tribunal obtains feedback in relation to its practice and procedure. Since 1999 the Tribunal has had a Freedom of Information User Group. The President chairs this User Group and membership includes a Deputy President, a

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Judicial Member of the General Division, and representatives from the Crown Solicitor's Office, the NSW Ombudsman, the NSW FOI and Privacy Network and the Public Interest Advocacy Centre.

The Tribunal has recently established a Privacy User Group with representation from Privacy NSW and peak consumer interest organisations.

The Professional Discipline Advisory Group was established in 2003 with representation from the surveying, architecture and veterinary science professions and nominees of peak consumer representative bodies. The group met regularly over 2004 and established a Professional Discipline Working Party to develop uniform practices and procedures for professional discipline matters in the General Division.

In early 2004 the Tribunal established the Guardianship and Protected Estates User Group as a forum in which to discuss and develop policies and practices in relation to the class of matters dealt with in the Guardianship and Protected Estates List in the General Division and those in relation to external appeals before the Appeal Panel. Representatives of this group include the President, Judge O'Connor, Deputy President Hennessy, a non-judicial member of the Tribunal and representation from the Offices of the Protective Commissioner and Public Guardian, the Guardianship Tribunal, the Mental Health Review Tribunal, the Chief Magistrates Office, the Crown Solicitor and representatives from consumer and advocacy bodies such as Legal Aid NSW, Intellectual Disability Rights Service and The Aged Care Rights Service.

Divisional Heads, as part of their responsibilities, maintain regular contact with key groups and agencies. Over the last two years, for example, Deputy President Chesterman along with Judicial Member, Mr Robbert Fox have participated in the Government working party dealing with amendments to the *Retail Leases Act 1994*. Deputy President Hennessy regularly liaises with the Anti-Discrimination Board.

### **The Rule Committee**

The Rule Committee did not meet during the current year, as there were no matters requiring its attention. Rule Subcommittees have been established in respect of the General, Community Services, Equal Opportunity, Retail Leases and Legal Services Divisions. The Divisional Head, a Judicial and Non-Judicial Member from the Division and three persons who represent community and other relevant special interests in the area of the Division's jurisdiction constitute the Rule Subcommittees. Their membership is set out in Appendix F.

The most active Rule Subcommittee has been that of the Equal Opportunity Division. Following the amendment of the *Anti-Discrimination Act 1977* in May 2005 it developed new Practice Note 19 issued in July 2005.

### **Alternative Dispute Resolution**

Mediation is one of two forms of alternative dispute resolution specified for use in the Tribunal by the ADT Act. The other form, neutral evaluation, is not currently in use.

Mediation is available in appropriate Equal Opportunity, Community Services, Freedom of Information and Privacy matters. The objective of referring a matter to mediation is to provide a quick and effective mechanism for resolving or partly resolving applications that are before the Tribunal.

The Tribunal provides trained mediators, who to date have been drawn only from Tribunal members, at no cost to the parties. The mediator takes no part in the hearing of the matter if mediation is unsuccessful.

As noted in last year's report, in the Division where formal mediation is mainly used, the Equal Opportunity Division, the success rate, as measured since 1998, has been 82% - being the number of matters that at mediation or after mediation were resolved without a hearing being commenced.

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This year the Tribunal conducted mediations in 69 matters - 60 in the Equal Opportunity Division, 5 in the Community Services Division and 4 in the General Division. 58% settled at or after mediation; 2% were still pending a further mediation and 40% were listed for hearing. Based on past experience, it can be reasonably expected that a number of these matters will resolve prior to hearing.

The planning meeting is used in all FOI and Privacy matters. As noted elsewhere in this report, approximately 51% of these matters are resolved at the planning meeting stage.



# The Divisions and the Appeal Panel

The ADT Act divides the matters heard by the Tribunal into two categories:

- Applications for review of *reviewable decisions*; and
- Applications for *original decisions*

The first category refers to disputes with a government administrative decision that has been declared by Parliament through an enactment to be reviewable by the Tribunal.

The second category is less exact in its coverage. It covers any application to the Tribunal for relief in respect of a jurisdiction vested in the Tribunal where there has been no prior binding legal decision relating to the matter in dispute. The second category's description is based merely on the fact that the Tribunal is called on to make the first or 'original' decision in the matter. The applications heard in the Equal Opportunity Division and the Retail Leases Division fall into this category. They are analogous to civil suits. Applications for disciplinary orders also fall into this category. On the other hand some of the professional discipline work of the Tribunal falls into the 'review' category – cases where a professional practitioner is appealing against a decision of an internal professional body vested with the power to make disciplinary orders.

The ADT Act establishes six Divisions and an Appeal Panel.

Of the six Divisions, three have as their principal or only business 'review of reviewable decisions' (General Division, Revenue Division and Community Services Division).

Three Divisions have as their principal or only business the making of 'original decisions' (the Equal Opportunity Division, the Retail Leases Division and the Legal Services Division). Of these the Legal Services Division functions belong to the field of public law (like the three Divisions mentioned), in contrast to the EOD and RLD which are engaged, essentially, in the resolution of private disputes.

It is, perhaps, more informative therefore, to group the Divisions of the Tribunal primarily into those performing administrative or public law functions and those performing civil or private law functions. (In some similar multi-jurisdictional tribunals, e.g. the Victorian Civil and Administrative Tribunal, the equivalent of the EOD is placed in a 'human rights' stream as distinct from the 'administrative' and 'civil' streams.)



*Deputy Presidents Tom Kelly, Nancy Hennessy, President Kevin O'Connor, Deputy Presidents Angela Karpin and Michael Chesterman.  
Absent: Deputy President Jane Needham.*

### **Administrative or Public Law Divisions**

- *General Division:* operative 6 October 1998. Hears most applications by citizens for the review of administrative decisions or administrative conduct. Disciplinary matters (whether original application or review applications) not involving lawyers or licensed conveyancers are located in this Division.
- *Community Services Division:* operative 1 January 1999. Hears applications for review of various administrative decisions made in the Community Services and Ageing, Disability and Home Care portfolios; applications for original decisions for exemption from prohibition on being engaged in child-related employment.
- *Revenue Division:* operative 1 July 2001. Hears applications for review of various State taxation decisions.
- *Legal Services Division:* operative 6 October 1998. Hears complaints against legal practitioners and licensed conveyancers.

### **The Civil or Private Law Divisions**

- *Equal Opportunity Division:* operative 6 October 1998. Hears complaints of unlawful discrimination.
- *Retail Leases Division:* operative 1 March 1999. Hears claims by parties to retail shop leases.

### **Appeal Panel**

The Tribunal has an Appeal Panel. It hears internal appeals against decisions made by the Divisions of the Tribunal and external appeals against external decision-makers as prescribed.



*Revenue Division Hearing before Deputy President Needham.*

## The General Division

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### Structure and Functions

The President is also the Divisional Head of the General Division. The General Division is responsible for dealing with most of the applications for review of decisions or conduct filed in the Tribunal. It is also responsible for making original decisions in some categories of professional discipline.

Section 73 of the ADT Act gives the Tribunal a flexible charter in relation to the procedures that it may employ.

In the case of the General Division an application is first referred either to a directions hearing or to a planning meeting depending on the nature of the matter. The planning meeting is the method used in all Freedom of Information (FOI) and Privacy cases. The main aim of the planning meeting is to seek to ascertain the extent to which the dispute is capable of complete or partial resolution without hearing. The directions hearing is used for other matters.

### Case Load

This year's proportion of filings in the General Division as compared to the rest of the Tribunal remained identical with last year and comparable with recent years at 47% (461 out of 969).

*Freedom of Information Act 1989* filings increased markedly once again, from 96 to 125. Filings under the *Privacy and Personal Information Protection Act 1998* decreased a little from 34 to 27. For the first time the Tribunal received filings under the *Health Records and Information Privacy Act 2002* (3). The total filings in what might be called the 'information law' category was 155, constituting 16% of the first instance business of the entire Tribunal, and 33% of the business of the General Division. They are allocated on a rota basis to one of five members with relevant expertise. The first proceeding is a planning meeting. Every effort is made at the planning meeting to seek to resolve the dispute without going to formal hearing; or, at least, to reduce the scope of the dispute.

The Tribunal's statistics do not separately deal with outcomes in this group. The global statistic for the General Division is that 175 matters out of the 469 filed during the year did not proceed to hearing, i.e. 38%.

The Tribunal's estimate is that about 51% of 'information law' matters are resolved without a final hearing being required (based on a comparison of applications filed versus the number of published reasons for decision, the latter being a highly reliable indicator of the number of contested hearings).

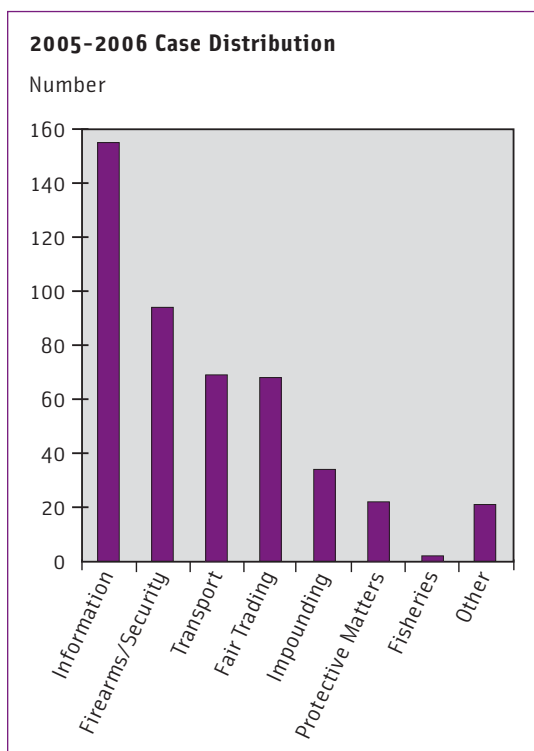
The bulk of the business of the Division involves review of licensing decisions, mainly occupational licensing. It is usual for these cases to proceed, after directions, to a formal hearing.

There was a marked increase during the year in passenger transport filings (private taxi, hire car and bus licensing) (from 31 to 54), an area administered by the Director-General, Department of Transport. In the case of statutes administered by the Commissioner of Police, there was a decrease in security industry filings (33 to 24). Firearms licensing saw an increase in filings from 48 to 61. The various licensing statutes administered by the Commissioner for Fair Trading saw an increase from 47 to 61 filings, which included a marked increase in applications for review relating to building licensing – from 22 to 46.

One of the oddities of the year was a steep increase in applications for review of decisions made by local councils under the *Impounding Act 1993*. There were 34 applications. In the first seven years of the Tribunal there had only been 6 filings, including 2 last year. Most of the recent cases related to the impounding of shopping trolleys by Burwood Council. The applicants were major stores in the area. They claimed that the impounding was unlawful, as were the fees being sought by the Council for the return of the trolleys. Applications continued to be made as more trolleys were impounded. The parties ultimately came to a settlement. The applications were withdrawn.

The Tribunal's jurisdiction under the *Road Transport (General) Act 1999*, s 48 to hear applications for review of roadside suspensions of driver licences by police officers after a breath test has ended. The jurisdiction has now been returned to the Local Courts. Thus there is a decline in this category from 39 applications last year to 8 this year.

The distribution of General Division between major categories is shown on the bar chart below.



### Significant Cases and Themes

Many of the significant cases and themes affecting the General Division are covered in the Appeals section of this report.

The FOI Act contains 24 primary exemption categories, and within several of them there are more specific exemption categories. The experience of the Tribunal is that certain categories come up repeatedly, whereas others are rarely dealt with. In the early years of the Tribunal's jurisdiction the law enforcement documents category arose frequently. That is less so today. The exemption that still continues to arise frequently is legal professional privilege. Others that regularly arise are: the in-confidence communications exemption; the internal working documents exemption; the Cabinet documents exemption; and the third party personal and commercial affairs exemptions. In privacy cases, the most typical complaint is wrongful disclosure of personal information.

Administrators' decisions to revoke, suspend or cancel licences are usually based on a history of contraventions or, sometimes, a single serious contravention. In the case of firearms licensing, there are a small number of cases each year where the administrator's decision is based on public interest grounds relating to concern over the mental health of the licensee. These can be difficult cases because the licensee will usually have had no history of improper conduct in connection with a weapon, have a demonstrated need for a weapon and have medical evidence at variance with the administrator's assessment.



# Guardianship and Protected Estates

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In 2003 the Tribunal's jurisdiction was extended to hear appeals from the Guardianship Tribunal (and the Mental Health Review Tribunal and Magistrates) against the making of guardianship and financial management orders; and to review decisions made by the Public Guardian or the Protective Commissioner as administrators of those orders. The original intention was to have these matters all dealt with by a separate Division of the Tribunal. In response to representations from the Tribunal, the legislation as passed allocated the appeals function to the Appeal Panel, giving rise to the separation of appeals into the categories of 'internal' appeal and 'external' appeal; and the review function was allocated to the General Division. The Tribunal agreed to report separately on these new responsibilities in the annual report, and to ensure that hearings were conducted by members with relevant expertise. For that purpose a Guardianship and Protected Estates List was created. Deputy President Hennessy manages this List.

On occasions the Tribunal has received applications for review from protected persons or their family disputing decisions of the Protective Commissioner over the long-term management of substantial estates and the extent of depletion of the capital.

During the year two persons were appointed as non-judicial members to serve on this List because of their expertise in accounting and financial planning. They each had experience in forensic accounting and issues to do with the prudent, long-term management of large funds.

## Case Load

During the year there were 22 review applications and 16 external appeals. The number of review applications and appeals is a slight increase on previous years.

## Significant Themes and Cases

The issue in one case was whether the Public Guardian, as a person's substitute decision maker, has power to consent to 'end-of-life' decisions, such as the withdrawal of dialysis or the making of a 'not for resuscitation' direction. Because of the doubt about this question the matter was remitted to the Public Guardian with a recommendation that he seek clarification of the scope of his powers from the Guardianship Tribunal. The person died prior to the Guardianship Tribunal completing its consideration of this question. (*WK v Public Guardian* (No 2) [2006] NSWADT 121)

The Tribunal also heard matters involving whether or not it had jurisdiction to review a decision of the Protective Commissioner. In one case the Tribunal found that it had jurisdiction to review the decision of the Protective Commissioner relating to a property in New Zealand. (*RW v Protective Commissioner* [2005] NSWADT 209)

# Revenue Division

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Ms Jane Needham SC was appointed Divisional Head and Deputy President. Her appointment commenced on 25 November 2005. She is the first Divisional Head of the Division. The post had been vacant since the creation of the Division, with the President managing the Division pending this welcome appointment.

## Structure and Functions

A judicial member sitting alone conducts directions hearings and hears applications. In contrast to the usual position in merits review where no onus is cast on parties, State revenue law does cast an onus on the applicant/taxpayer to satisfy the Tribunal that a determination by the Chief Commissioner, State Revenue, should be disturbed. The Commissioner's official file is tendered to the Tribunal. Often at hearing the facts of the case are agreed, and the task of the Tribunal is one of applying the law to the facts.

## Case Load and Significant Themes

The Division received 132 applications during the year, 76 more than last year. It disposed of 118 applications, leaving 67 matters pending at the end of the year (up from 53 in the previous year).

The increase in the number of matters awaiting disposal is mostly explained by the transfer from the General Division to the Revenue Division of *First Home Owner Grant Act 2000* matters (52 filings). There was also an increase in the number of filings under the *Land Tax Management Act 1956* (up from 21 to 31), the *Duties Act 1997* (up from 6 to 31) and the *Parking Space Levy Act 1992* (up from 1 to 9).

There were 5 filings under the *Land Tax Act 1956* this year (nil in the previous year). Filings under *The Stamp Duties Act 1920* remained steady.

Conversely, there was a reduction in the filings under the *Pay-roll Tax Act 1971* (down from 16 to 10). Filings under the *Taxation Administration Act 1996*, which deals principally with Interest and Penalty Tax, continued a downward trend, down from 10 to 7.

Analysis of the various outcomes of matters shows that more than half are dismissed or settled prior to hearing. There is little recourse to formal mediation within the Revenue Division, so any settlements or agreements reached are the work of the parties themselves.

Of the 118 disposals, 68 did not go to hearing either because the application was withdrawn or dismissed, there was no appearance or the parties reached agreement. Of the remainder, in 37 cases, the decision under review was affirmed. In 11 cases the decision under review was set aside, varied, remitted or a recommendation made. In 2 cases the Tribunal determined that it had no jurisdiction.

While the Division aims to improve in terms of timeliness of decisions, an analysis of the figures shows that the timeliness of the Division is reasonable. The vast majority of matters are disposed of within six months (87), which is within the target timeframe. 26 matters were disposed of within 12 months. 5 matters were disposed of within 2 years. No matters remained unresolved for more than 2 years.

## Case Management

A number of administrative changes have been made. Case management now commences with a directions hearing held before the Divisional Head in place of the previous practice of various Members of the Division taking directions hearings in turn. In this way the Divisional Head is able to keep abreast of all matters in the Division, and a listing decision is then made. While this system is in its infancy, thus far it has worked well and delivered a measure of continuity in the handling of directions matters.



Deputy President  
Jane Needham SC

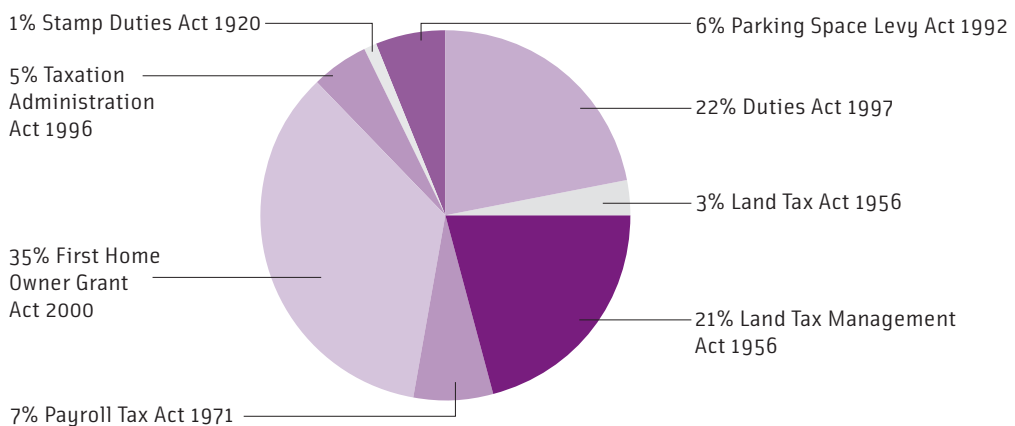
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### Members' Meetings

In order to promote collegiality and to encourage discussion and a flow of ideas within the Division, quarterly Members' Meetings combined with training sessions have been instituted. The first such training session was a discussion led by Kate Richardson of the NSW Bar on appeals within the statutory context of the *Administrative Decisions Tribunal Act 1997*. The talk was most informative and the format will continue in 2006, with a session on 'The Decision-making Process' with the Commissioner of State Revenue and a member of the accounting profession scheduled for late 2006.

It has been a year of change and consolidation for the Revenue Division. There are more changes planned and the aim for the coming year is to continue to improve the efficiency and timeliness of the work of the Division.

### Applications by Act 2005 - 2006



# Community Services Division

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The Divisional Head is Mr Tom Kelly, part-time Deputy President

## Structure and Functions

The Division is the successor of the Community Services Appeals Tribunal. This year there were more applications for original decisions (29) than for merits reviews (21), but all of the matters dealt with belong to the sphere of public law.

The original applications are made by persons for exemption from the provisions of the *Child Protection (Prohibited Employment) Act 1998* so that they can work with persons under the age of 18 years. The review applications mostly relate to decisions about custody of foster children, together with some applications relating to disability funding and withdrawal of licences.

When hearing a merits review application the Tribunal sits as a three member panel, comprising a legally qualified member and two other members who have experience or knowledge directly relevant to the subject matter of the proceedings. In Prohibited Employment matters the Tribunal usually sits with a judicial member unless the matter has unusual aspects of public importance or complexity. Hearings are conducted in a less formal and adversarial manner than in some other Divisions of the Tribunal, especially in the majority of applications where the applicant is not represented and the government agency is represented.

If a case is suitable for mediation a member of the Division who is a qualified and experienced mediator conducts mediation prior to the hearing at no expense to the parties. This member will not sit on the Tribunal panel when the matter is heard. Child custody reviews where serious child abuse is alleged and prohibited employment applications are never considered suitable for mediation. Additionally, at directions hearings the presiding judicial member often takes steps to actively encourage the parties to enter into discussions in an endeavour to have them come to an agreement.

## Case Load

This year there were a total of 50 new applications filed, compared with 42 last year. The number of applications for original decisions increased by 20% (from 20 to 29) and the number of merits reviews applications remained constant (down from 22 to 21). The rate of disposals have remained fairly constant over the last two years. The Tribunal disposed of 48 applications, 10 more than last year.



Deputy President Tom Kelly

Of the 29 applications for reviewable decisions which were disposed of, 5 were varied or set aside, 6 were affirmed, 13 matters did not proceed or agreement was reached and in one matter the Tribunal ruled that it did not have jurisdiction. Two of the 4 matters adjourned for mediation resulted in an agreement between the parties.

The 14 prohibited employment cases resulted in the grant of exemption declarations (often subject to conditions) in 11 cases, with 3 refusals.

## Legislation

Amendments to the legislation governing prohibited employment applications (yet to commence) extend the category of criminal convictions which currently prohibit persons working with children and young people to include certain serious non-sexual personal violence offences. Applicants with convictions for some offences will have to apply for leave to make an application. The legislation also allows the Commission for Children and Young People to apply to revoke a previous order of the Tribunal on the ground of fresh evidence becoming available.

A new appeal right has been given to family day carers whose registration is cancelled.

# Legal Services Division



Deputy President  
Angela Karpin

The Divisional Head is Acting Judge Angela Karpin, part-time Deputy President.

## Structure and Functions

The primary function of the Division is the hearing and determination of applications for disciplinary orders brought against legal practitioners pursuant to the *Legal Profession Act 2004*, which came into force on 1 October 2005. (There

remains a small number of matters which were commenced under the *Legal Profession Act 1987*.) The Councils of the Bar Association or the Law Society or the Legal Services Commissioner may apply for disciplinary orders.

The Division also determines applications by practitioners who wish to employ persons who have been convicted of a serious offence. There has been a slight increase in the number of these applications in the past year.

The Division reviews some decisions pursuant to the *Conveyancers Licensing Act 1995*. This jurisdiction will be transferred to the General Division when the *Conveyancers Licensing Act 2003* commences.

Divisional decisions are not appealable to the Appeal Panel. The right of appeal is direct to the Supreme Court, and where the presiding member is a judge, the appeal is to the Court of Appeal.

## Case Load

There were 36 matters pending as at 30 June 2005. There was a significant drop in the number of applications filed during this year to only 29 compared with 42 in the previous year. Thirty eight matters were disposed of during the year, and as at 30 June 2006, there were 27 matters pending. During the year 5 matters were withdrawn and dismissed, while 3 were dismissed after hearing. In all the remaining matters findings were made against the legal practitioner. In 7 matters the name of the legal practitioner was removed from the roll; 19 applications were dealt with by way of fine,

and/or reprimand. In 2 cases, in addition to fine and reprimand, the practitioner was suspended from practice, and in one case, the practitioner was ordered to undergo a course of further education. There were 2 successful applications pursuant to s 48K.

## Legislation

Thus far the implementation of the *Legal Profession Act 2004* that came into effect on 1 October 2005, has not resulted in increased workload in the Division.

## Significant Themes and Cases

In *Council of the New South Wales Bar Association v Davison* [2005] NSWADT 252 a barrister was disbarred after being found guilty of professional misconduct, as a consequence of his admitted substantial defaults in paying assessed income tax over a number of years. This decision applied the view that persistent failure to comply with legal and civic obligations to pay assessed tax may constitute professional misconduct, and justify removal from the profession.

In *New South Wales Bar Association v Punch* [2006] NSWADT 191 the parties sought a preliminary ruling from the Tribunal as to whether, in disciplinary proceedings against a barrister, the *Listening Devices Act 1984* prohibited the use of evidence inadvertently obtained via a lawful warrant issued under that act. The Tribunal held that the evidence was not excluded by the provisions of the *Listening Devices Act*, nor was it to be excluded pursuant to s 138 *Evidence Act 1995*. An appeal is pending in the Court of Appeal.

A significant number of matters involved the failure of legal practitioners to comply with a notice to assist an investigation into a complaint. Section 152(4) provides that *A legal practitioner who, without reasonable excuse, fails to comply...is guilty of professional misconduct*. Similar provisions are contained in the *Legal Profession Act 2004*. It is of concern that some practitioners fail to appreciate the gravity of failing to comply with notices.

# Other Professional Discipline Jurisdictions

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## **Veterinary Practitioners, Architects, Accredited Surveyors and Registered Surveyors**

The Tribunal's other professional discipline jurisdictions cover veterinary practitioners, architects, accredited certifiers and registered surveyors. They are located in the General Division, the Divisional Head being the President.

Some years ago a Parliamentary Committee recommended the creation of a single, integrated Professional Discipline Division of the Tribunal. The Government has yet to respond to this recommendation, but may do so via the Attorney General's statutory report required under s 147 of the ADT Act.

The Tribunal has review and original jurisdictions in connection with the discipline of veterinary practitioners. There were no new veterinary practitioner cases dealt with during the year. The *Veterinary Practice Act 2003* came into force on 1 September 2006. It makes a number of changes to the disciplinary procedures that have applied under the *Veterinary Surgeons Act 1986*. They will be outlined in next year's annual report.

Under the *Architects Act 2003* the NSW Architects Registration Board has disciplinary functions. The Board has power to investigate complaints, hold hearings and to take disciplinary action by way of a variety of orders not including suspension or deregistration. An architect may apply to the Tribunal for review of any disciplinary action taken by the Board. The Board may apply directly to the Tribunal for an original disciplinary finding. The orders available to the Tribunal include orders like those available to the Board. The major difference is that if the Tribunal finds the architect guilty of professional misconduct it may suspend or cancel the architect's registration.

During the last year, the Tribunal dealt with an application for review of findings and orders made by the then Board under the predecessor to the 2003 Act – the *Architects Act 1921*. Under that Act the full range of orders was available to the Board, and the Tribunal's relationship was

entirely that of a review body. The Tribunal affirmed the finding of the Board that the architect was guilty of professional misconduct and affirmed the disciplinary orders (a reprimand and a fine), but, at variance with the Board, confined the orders to one of the two contraventions of professional standards identified, the other being considered very minor. The more serious matter involved a failure by the architect to adhere to the terms of his engagement by a client in respect of engaging third parties to provide services in connection with the building job: *Doyle v Architects Registration Board* [2006] NSWADT 154.

The accreditation and discipline of accredited certifiers is governed by Part 4B of the *Environmental Planning and Assessment Act 1979*. Following the investigation of a complaint, the accreditation body may make orders binding the certifier, with the consent of the certifier. Alternatively the accreditation body may proceed to apply to the Tribunal for original findings and orders including an order suspending or withdrawing the accreditation.

In the last year the Tribunal dealt with two matters. In the first it found the certifier guilty of unsatisfactory professional conduct and relisted the matter for the making of disciplinary orders: *Director General, Dept of Infrastructure, Planning and Natural Resources v Boulle* [2006] NSWADT 43. In the second, it approved consent orders that certain disciplinary findings and orders be made. A reprimand and a fine was imposed: *Director, Building Professionals Branch, Department of Planning v Dallas* [2006] NSWADT 231.

Registered surveyors are subject to the discipline of the Board of Surveying and Spatial Information under the *Surveying Act 2002*. The Board has all disciplinary orders available to it. Any registered surveyor against whom action is taken may apply to the Tribunal for a review of the Board's determination. There have been no applications to the Tribunal.

## Equal Opportunity Division



Deputy President  
Nancy Hennessy

The Divisional Head is Magistrate Nancy Hennessy, full-time Deputy President. There are 14 judicial members and 21 non-judicial members all of whom sit on a sessional basis. A panel of three sits on each hearing – one judicial member and two non-judicial members who have expertise in various areas of anti-discrimination law and practice. For some kinds of preliminary and interim applications, the Tribunal is comprised of only one judicial member.

### Functions and statistics

The Equal Opportunity Division's main function is to determine complaints of discrimination that have been referred to it by the President of the Anti-Discrimination Board (ADB). The Division also hears four other kinds of applications:

1. applications for leave to proceed when a complaint has been declined by the President of the ADB;
2. applications for the registration of conciliation agreements made at the ADB;
3. applications for interim orders; and
4. applications to review a decision of the President of the ADB.

In total, the Tribunal received 107 applications this year and finalised 143 matters. Ninety-seven applications were pending at the end of the year. Each category of application is discussed briefly below.

*Referred complaints.* If the complaint cannot be conciliated by the President of the ADB, or it cannot be resolved for some other reason, the President may refer it to the Tribunal. Eighty-one original complaints were referred this year. The Tribunal conducts a preliminary case conference at which parties are offered the opportunity of mediation if their case is suitable. Of the 116 original complaints that were finalised during the year, 82 were

withdrawn or settled and dismissed, 5 were summarily dismissed, 19 were dismissed after a hearing and 10 applications resulted in orders being made in favour of the applicant. The low proportion of matters in which an order is ultimately made in favour of an applicant comes about because meritorious matters are generally settled either through mediation or, less frequently, direct negotiation between the parties.

Of the 116 original complaints disposed of during the year, mediation was conducted in 60 matters. Of those 60 matters, 37 (62%) settled at or after mediation; one matter is pending a further mediation and 22 (37%) are either listed for hearing or have been heard. There is a significant incentive for parties to resolve the dispute without having a hearing because of the high cost of litigation and the fact that the Tribunal can only award a maximum of \$40,000 in damages. A complaint may allege more than one ground of discrimination. The most frequently cited grounds of discrimination were disability (29), sex (19) and race (19). There were 18 complaints alleging victimisation of a person as a result of them making allegations of discrimination.

*Applications for leave to proceed.* Procedural amendments were made to the *Anti-Discrimination Act 1977* in May 2005. One of those amendments was a provision that where a complaint is declined by the President of the ADB because, for example, it lacks substance or is frivolous or vexatious, the complainant must obtain the Tribunal's 'leave' or permission before being allowed to proceed. Four applications were pending at the beginning of the year and the Tribunal received 21 applications for leave during the year. Leave was granted in two cases and refused in 17 cases. The applicant withdrew the application or settled the complaint in the remaining three cases. Three applications remain pending.

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*Applications for the registration of conciliation agreements made at the ADB.* The Tribunal also has a new jurisdiction to register conciliation agreements made when the complaints are still with the President of the ADB. The point of registration is that, as long as it contains terms that the Tribunal has power to order, the agreement can be enforced as an order of the Tribunal. Two applications for registration were made this year. One was withdrawn and the other is pending.

*Applications for interim orders.* The President of the ADB, or a party to a complaint, may apply to the Tribunal for an interim order to preserve the status quo between the parties or the rights of the parties pending determination of the complaint. This year three applications for interim orders were made. An interim order was refused in one matter and consent orders were made in the other two matters.

*Applications to review a decision of the President.* The Tribunal also has jurisdiction to review certain decisions of the President of the ADB. There were no such applications this year.

#### **Disposal rates**

The Equal Opportunity Division's time standards for disposal of matters is 80% of matters to be finalised within 12 months and 100% within 2 years. This year 73% (85) were disposed of in less than one year and a total of 97.5% (a further 28) in less than 2 years. The remaining 3 matters were more than two years old when they were finalised. Two possible reasons for complaints taking longer than 2 years to finalise are that related proceedings are pending in other jurisdictions or multiple interlocutory applications and/or appeals have been made.

#### **Significant Cases**

The High Court decision in *State of NSW v Amery* [2006] HCA 14 is dealt with in the High Court section of this report.

In *Sydney University Postgraduate Representative Association (SUPRA) & Ors v Minister for Transport Services & Ors* [2006] NSWADT 83, the Tribunal held that the NSW Minister for Transport, the State Transport Authority (STA) and the State Rail Authority (SRA) had discriminated against full-time, full-fee paying overseas students on the ground of their race, by denying them access to concession fares on public transport.

The Tribunal accepted that the Minister's intention was to manage and protect state revenue and not to deliberately harm or disadvantage overseas students. However, the effect of the concessional fare policy was that students who were not of Australian or New Zealand nationality were treated less favourably under the policy.



# Retail Leases Division



Deputy President  
Michael Chesterman

The Divisional Head is Acting Judge (and Emeritus Professor) Michael Chesterman, part-time Deputy President.

## Structure and Functions

The Retail Leases Division exercises jurisdiction conferred by the *Retail Leases Act 1994* on the Tribunal to determine applications relating to 'retail shop leases' as defined in this Act. The Act provides for two categories of claim: retail tenancy claims and unconscionable conduct claims. A judicial member sitting alone conducts all hearings (including interlocutory hearings) arising out of retail tenancy claims. In the case of unconscionable conduct claims interlocutory hearings may be conducted by a member sitting alone. In the final determination of unconscionable conduct claims the Tribunal must be constituted by a judicial member who is a Deputy President or a current, acting or retired judge of a court in Australia sitting with two non-judicial members who possess relevant expertise. They act in an advisory capacity only.

The *Retail Leases Act* requires that, except where a party to a lease applies for an order in the nature of an injunction, mediation by the Retail Tenancy Unit must be attempted, or must be found to be unlikely to resolve the dispute, before any proceedings may be taken in the Tribunal or in any other court or tribunal.

## Case Load

At the beginning of the year, 83 applications were pending. During the year, 184 applications were filed and 156 were disposed of, leaving 111 applications pending. This failure to dispose of as many applications as were filed remains a matter of concern. It may in part be attributable to the effect of the *Retail Leases Amendment Act 2005* in increasing the ambit of the Tribunal's jurisdiction over retail leases, in ways outlined below.

Within the 184 new applications, 116 (63%) contained retail tenancy claims only, 4 contained unconscionable conduct claims only (2.2%) and 64 (34.8%) contained both types of claim. Compared with last year, there was a distinctly larger proportion of applications containing unconscionable conduct claims, either alone or in conjunction with retail tenancy claims. The likely reason for this is that some difficulties affecting the hearing of unconscionable claims during 2004–2005 were resolved by legislation that took effect on 15 June 2005.

Of the 156 applications that were disposed of, 114 (73.1%) were withdrawn, discontinued or settled. This is a high rate of disposal without hearing or transfer, higher than last year. A further 2 (1.2%) were transferred to the Supreme Court. Out of the 40 applications that were determined following a hearing, 16 (10.3%) were dismissed (including two on the ground of lack of jurisdiction). In the remaining 24 (15.4%), orders were made.

## Significant Themes

The matters raised this year in the cases decided by the Division, or by the Appeal Panel on appeal from the Division, include:

- The definition of a 'retail shop lease' under the *Retail Leases Act*.
- The Act's requirements regarding disclosure of outgoings incurred by the lessor and services to be provided by the lessor.
- Damages for disturbance of a lessee's right to possession.
- Relief against forfeiture of a lease.
- Evidence regarding the amount of an alleged loss of business profits.
- Transfer of unconscionable conduct claims to the Supreme Court.
- The grounds justifying an order for costs in a retail lease dispute.

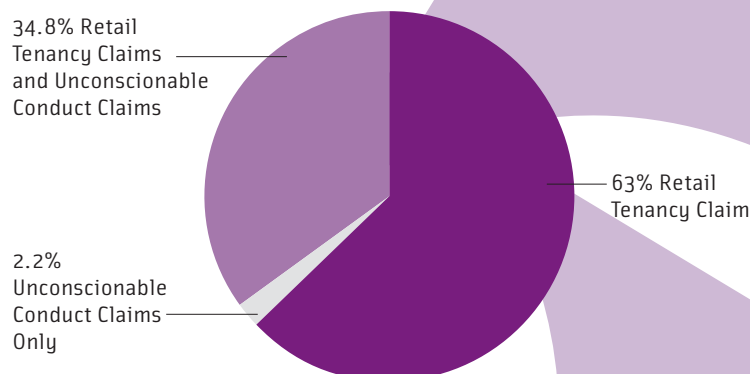
The last issue in this list continues to feature in a high proportion of the cases decided. This is because the normal practice within the Division is to defer any consideration of the question of costs until the substantive issues in the case have been resolved. Submissions on costs are then invited. If an application for costs is made, the Tribunal delivers a second decision, often without requiring a hearing.

### Legislation

The *Retail Leases Amendment Act 2005*, which came into operation on 1 January 2006, made a number of significant changes to the *Retail Leases Act 1994*. A number of these directly affect the Tribunal's jurisdiction. They are as follows:

1. The categories of retail tenancy claim that may be brought under the Act have been enlarged to include claims for damages caused by misleading or deceptive conduct.
2. The Tribunal may in its discretion permit a claim to be lodged after the standard time-limit of three years has elapsed, so long as a limit of six years has not been exceeded.
3. The monetary limit on the Tribunal's jurisdiction is increased from \$300,000 to \$400,000.
4. The Tribunal now has jurisdiction (a) to appoint a specialist retail valuer to determine the current market rent when it is payable under a lease, if the parties cannot agree on the amount of this rent or on a valuer to determine this amount; and (b) to appoint two specialist retail valuers to review a valuer's determination on this matter.
5. The Tribunal's power to transfer unconscionable conduct claims to the Supreme Court is enlarged to permit the transfer of proceedings combining one or more unconscionable conduct claims with one or more retail tenancy claims.
6. Appeals against Tribunal decisions in unconscionable conduct cases must now be brought to an Appeal Panel, instead of (as formerly) the Supreme Court.

**Applications by Type 2005 - 2006**



## APPEALS

# Appeal Panel

The President has responsibility for the operation of the Appeal Panel.

### Structure and Functions

The Appeal Panel hears both 'internal' and 'external' appeals. Internal appeals are appeals from decisions of a Division of the Tribunal. External appeals are appeals from decision-makers outside the Tribunal, presently the Guardianship Tribunal and, in respect of protective estate orders, the Mental Health Review Tribunal and Magistrates.

The Appeal Panel comprises a presidential member, a judicial member and a non-judicial member. The usual practice is for the President or the Divisional Head of the relevant Division to preside at appeals.

### Case Load

The Appeal Panel dealt with 92 appeals, 74 being internal appeals and 18 being external appeals. Of the internal appeals, 36 were dismissed, 22 resulted in decisions that varied or set aside the decision under appeal and 16 were withdrawn or discontinued. Of the external appeals, 7 were upheld, 6 were dismissed, and the remaining 5 were withdrawn or discontinued.

### Survey of Appeal Panel Decisions

The following is a limited survey of Appeal Panel decisions referring mainly to appeals where an order varying or setting aside the decision under appeal was made. The survey includes abbreviated references to the case, so for example 06/27 means the appeal reported at [2006] NSWADTAP 27.

### Internal Appeals

From General Division

*Procedural Fairness:* Tribunal received at hearing new material adverse to applicant for review of a decision in relation to a licence. Tribunal did not give warning as to possible increase in the severity of order based on new material. Tribunal should have afforded applicant an opportunity to withdraw application: 05/63.

Tribunal informed parties that it would deal with a preliminary point by way of separate decision before dealing with substance of application for review. It then proceeded to issue a decision dealing with the substance: 05/55.

*Evidence received In Camera - Procedural Fairness - Adequacy of Reasons:* Tribunal heard confidential police intelligence evidence relevant to decision to refuse renewal of security industry licence at an in camera session, without giving the review applicant an opportunity to be heard as to the adoption of that procedure or in relation to the suppression of details of the date or venue of the hearing. The review applicant first became aware of these events when they were referred to in the reasons for decision. While it may not be proper to refer in the reasons published to the review applicant the precise nature of the confidential evidence accepted, the Tribunal is obliged nonetheless to provide adequate reasons in this regard, and that may be achieved through the provision of additional, confidential reasons, to be supplied to the administrator and placed on the Tribunal file for use in the event of an appeal: 05/59.

*Privacy and Personal Information Protection Act - Jurisdiction:* Whether applicant had met the precondition to an application under s 55 to the Tribunal that there first be an application for internal review made under s 53 to the agency in relation to the conduct of concern. Tribunal held to have mischaracterised relevant correspondence. Applicant had met precondition: 05/38.

*Privacy - Use Principles - Evidence as to Conduct:* Interpretation of data quality and use principles (ss 16,17). Need to identify purposes for which personal information is used, and to assess whether reasonable steps have been taken to check accuracy in light of those purposes. Need to afford review applicant opportunity to produce evidence relevant to conduct in issue if agency fails to do so: 05/44.

*Privacy - Scope of Internal Review Application:* Internal review application as reasonably

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construed held to define scope of proceedings before Tribunal. Unduly limited characterisation by both agency and Tribunal of the conduct put in issue by the applicant at the internal review stage. Consideration of the statutory meaning of 'personal information' and scope of exceptions: 05/74.

*Privacy - Interpretation and Application of Various Information Protection Principles - Security, Use, Disclosure:* Interpretation of the security principle (s 12) and applicability to improper browsing of data held by an agency. Interpretation of data quality and use principles (ss 16, 17); applicability of Act to agencies in situations where agency officer uses data for private purposes; applicability of Act to agencies to officer disclosure resulting in unauthorised use by recipient. Interpretation of exceptions that permit agency disclosure of personal information, in particular the imminent threat to life and health exception (s 18) and the sensitive information exception (s 19), the lawful authority exception (s 24): 05/77.

*Freedom of Information Act - Jurisdiction:* Held Independent Commission Against Corruption is not an agency entirely exempt from the operation of the Act, therefore it is not free to refuse to deal with an application, but must respond and assert any exemption relying on a partial exclusion from the Act. The Tribunal can review this decision: 06/17.

*Veterinary Discipline:* Tribunal orders made in 2004 that included suspension and limitations on form of practice set aside in light of improvements made by the practitioner in the period since the previous orders: 06/21.

*Real Estate Agent Licensing:* Trust account and other financial administration contraventions. Appeal against Tribunal decision to set aside administrator's order of disqualification rejected; consideration of relevant provisions of *Property, Stock and Business Agents Act 2002*. Appeal upheld in relation to the adequacy of the substitute order; leave granted to extend to merits in that respect: 06/24.

From Revenue Division

*Pay-roll tax - Penalty Interest - Penalty Tax:* Tribunal affirmed the Commissioner's decision to impose pay-roll tax on the taxpayers on a grouped basis. Decision upheld. Tribunal's decision relieving the applicants of liability for interest at the premium rate and for liability for penalty tax set aside, relevant principles discussed: 05/75.

*Pay-roll tax:* Whether taxpayer, a building company, was liable to be assessed on the basis that it was the employer of certain persons engaged by it (variously, companies, partnerships and sole traders), or those persons were properly to be regarded as independent contractors: 06/2 and 06/32.

*Hire of goods duty:* On extension of appeal to merits, held (2-1) that the taxpayer's supply of goods in return for a hire charge was exempt from duty by virtue of s 186(1)(f) because it met the statutory test of being incidental and ancillary to the provision of a service as the provision of the goods was solely to enable the contractual provision of the service: 06/8.

From Community Services Division

*Jurisdiction:* Consideration of whether a licensed child care service provider's decision to remove a carer's name from the register of approved family day carers is reviewable. On appeal, held that the relevant provisions of the *Children and Young Persons (Care and Protection) Act 1998* and the *Children's Services Regulation 2004* covered the circumstances, and the right to apply for review provided by Reg 123A was properly engaged: 05/50.

From Equal Opportunity Division

*Jurisdiction:* Mischaracterisation of scope of complaint led to Tribunal wrongly declining jurisdiction. Principles relevant to determining scope of the complaint referred to the Tribunal for inquiry by the President, Anti-Discrimination Board considered: 05/40.

From Retail Leases Division

*Costs:* Mischaracterisation of the strength and nature of aspects of the applicant's unsuccessful claim gave rise to an erroneous exercise against the applicant of the limited discretion to award costs under s 88 ADT Act: 05/48.

**External Appeals**

From Guardianship Tribunal, Mental Health Review Tribunal

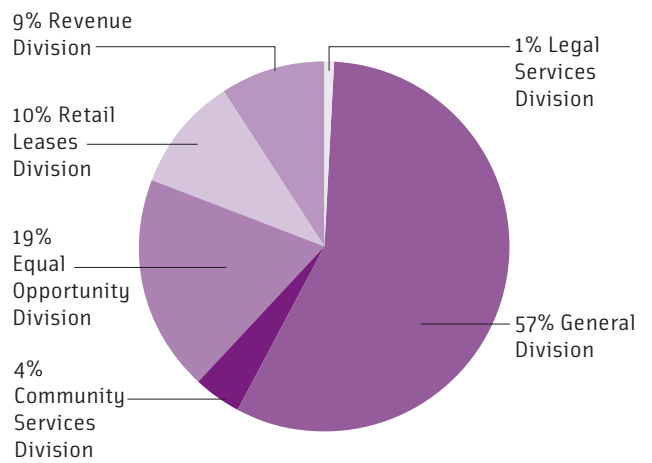
*Procedural fairness: Material adverse to a Party:* In four cases, the Appeal Panel found that the Guardianship Tribunal had denied a party procedural fairness by, for example, not giving the party an adequate opportunity to respond to adverse material that was before the Guardianship Tribunal: 06/30, 06/12, 05/43, 06/15.

The Appeal Panel also found in one case that the confidential nature of particular documents did not override a party's entitlement to be afforded procedural fairness in relation to the content of those documents: 06/15.

*Estate Management Orders in relation to Mental Health Patients:* Interpretation of power vested in the Mental Health Review Tribunal by s 20 of the *Protected Estates Act 1983* which specifies that any interim order is made 'pending further consideration of the patient's capability to manage his or her affairs'. Order held to be beyond power as it was made as a final order expressed to operate for a period of six months, with no review scheduled within this time: 06/19.

*Standing to bring an External Appeal:* Consideration of s 67(2A) of ADT Act and s 67(2A) of the *Guardianship Act 1987*; original party to original order does not have standing to appeal against a decision relating to review of order unless a party on the occasion of the review: 05/35.

**Appeals lodged by Division**



# Supreme Court and High Court

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Parties to Appeal Panel decisions may appeal on a question of law to the Supreme Court (ss 118, 119). Some Divisional decisions (the main example being Legal Services Division decisions) are not appealable to the Appeal Panel but are appealable directly to the Supreme Court. In the case of appeals against Appeal Panel or Divisional decisions where a judge has presided, the appeal goes directly to the Court of Appeal of the Supreme Court as required by the *Supreme Court Act 1970* s 48.

A party may use the originating summons procedure to bring the matter before the Supreme Court even though there is a right of internal appeal. The Supreme Court has sometimes in these circumstances exercised its discretion to refer the matter back for disposition by the Appeal Panel.

During the last year the Court of Appeal dealt with a number of appeals from the Tribunal. One matter reached the High Court.

## High Court

*Amery & Ors v State of New South Wales (Director-General NSW Department Of Education And Training)* [2006] HCA 14

A group of female casual teachers complained that their rate of pay was lower than that of permanent teachers, and that this was a form of indirect sex discrimination since women were proportionately more likely to be casual teachers than men. The elements of 'indirect' discrimination were said to be:

- the Education Department required them to 'have permanent status' as a condition of accessing the higher salary levels;
- a substantially higher proportion of men could comply with that requirement because women often needed the flexibility of a temporary position in order to care for children;
- women in this situation could not comply with the requirement; and
- consequently, the requirement was not reasonable in all the circumstances.

The teachers were successful before the Equal Opportunity Division and the Court of Appeal. The State was successful before the Appeal Panel, and crucially, the High Court, for reasons at variance with those of the Appeal Panel.

The main points made in the High Court judgments (Kirby J dissenting) were:

- The question was not whether the work of a temporary teacher has the same value as that of a permanent teacher, but 'whether, having regard to their respective conditions of employment, it is reasonable to pay one less than the other'.
- It was reasonable for the Department of Education to pay permanent teachers more than temporary teachers given their 'significantly different' conditions of employment.
- The requirement of 'having permanent status as a condition of accessing the higher salary levels' was not a requirement or condition within the meaning of the *Anti-Discrimination Act 1977*.
- It cannot be said that it is a requirement or condition, compliance with which is required in the terms on which one is offered employment as a casual teacher, that, in order to access those higher levels of pay, the employee must accept appointment as something other than a casual teacher.
- Having regard to the 'significantly different' conditions which attach to permanent and temporary employees (especially being subject to direction as to where they must teach in the State) the women were not employed as 'teachers' but as 'temporary teachers'.

## Supreme Court

### Retail Leases

*Attorney General of New South Wales v World Best Holdings Limited Ors* [2005] NSWCA 261

In last year's annual report (at page 26) the

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decision of the Supreme Court (Patten AJ) was summarised. The Attorney General appealed.

The first error indicated by Patten AJ (invalid constitution) was the subject of a retroactive amendment to the *Retail Leases Act 1994*. The Court of Appeal held that this deficiency had now cured. However the Court agreed that there remained a procedural unfairness in having the members collectively decide the matter when the Act gave the two non-judicial members an 'advisory role'. It held 2-1 that the deficiency was such as to render the decision invalid.

*Cripps and Another v GM Dawson Pty Limited and Another; GM Dawson Pty Limited and Another v Cripps and Another* [2006] NSWCA 81

The lessor breached a retail lease, by failing to consent to an assignment, thereby depriving the lessee of an opportunity to sell his photographic business. The introduction of digital technology some months later had a negative impact on the value of equipment included in the sale. The lessee negotiated a sale to a new buyer, but the sale price was greatly reduced (a loss of \$102,000). The Tribunal refused to include the loss in its award of damages against the lessor for the breach. The Appeal Panel held that the Tribunal had erred in applying remoteness of damage principles and made a fresh award including the \$102,000. The Court of Appeal dismissed the appeal, finding that Dawson's loss of \$102,000 was not too remote, and that the question of remoteness was indeed a question of law.

### **Professional Discipline and Occupational Regulation**

*Lloyd v Veterinary Surgeons Investigating Committee* [2005] NSWCA 456

The appellant, a veterinary practitioner, had been the subject of disciplinary orders made by a veterinary disciplinary panel of the Tribunal. He appealed to the Appeal Panel. In particular he questioned an order that required him to be employed under supervision for a period in a multi-member practice. He considered that

because of his disciplinary record and the solo nature of most veterinary practices, the order amounted in effect to removal from practice. The Appeal Panel considered that in order to deal with the point it would have to give leave to extend to the merits in circumstances where no error of law had been shown in the underlying decision. Applying a line of authority in the Tribunal the Appeal Panel refused to grant leave. The Court of Appeal upheld an appeal by the veterinary surgeon. Tobias JA held (Spigelman CJ agreeing) that the only relevant prerequisite to extending an appeal under s 113 (1) of the ADT Act to a merits review is the grant of leave by the Appeal Panel under s 113 (2) (b). Such a grant is not dependant upon an appeal raising a question of law, let alone an error of law. The matter was remitted back to the Appeal Panel to determine the appropriate order.

*Stanoevski v Council of the Law Society of New South Wales* [2005] NSWCA 428

In 2003 the Legal Services Division had found the appellant, a legal practitioner, guilty of professional misconduct. She was struck off the roll. The Appeal Panel (such an appeal then being possible) found a material error in the primary tribunal's reasoning and gave leave to extend the appeal to the merits. The Appeal Panel ordered striking off. In its inquiry it had examined a matter of conduct additional to the matters that had been before the Tribunal – the honesty of evidence given by the practitioner at the Tribunal proceedings. It found that the practitioner had given deliberately false evidence to the Tribunal.

The appellant challenged the order on two grounds, first that the order-making stage of a disciplinary inquiry is affected by the Briginshaw principle, and that the matters proven were not of sufficient gravity to justify the order made. The Court of Appeal rejected that ground of appeal, stating that the Briginshaw principle is a guide to judicial method in resolving factual issues. It belongs to the fact-finding stage.

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The second ground was successful. While satisfied that there was ample other material to justify the finding of guilt of professional misconduct, the Court held that the Appeal Panel had wrongly extended its hearing to the additional matter. It should have only dealt with the matter once the grounds of professional misconduct charged had formally been enlarged (as is permitted by the *Legal Profession Act*, but such an amendment was not sought by the prosecutor, the Law Society). While the finding of guilt could stand on the basis of the other matters, the taking into account of this fresh finding in making the disciplinary order constituted procedural unfairness, with the result that the order must be set aside. The matter was remitted to the Appeal Panel to make a new order.

*Council of New South Wales Bar Association v LI* [2005] NSWCA 415

The Bar Council, as informant, commenced proceedings in the Legal Services Division against a barrister for professional misconduct. The Bar Council and the barrister subsequently agreed between themselves as to a way of disposing of the matter which involved the administration by the Bar Council of a 'private reprimand', a sanction not referred to in the scheme of the *Legal Profession Act 1987*, though the Act does allow the Bar Council to administer some limited sanctions. In keeping with the agreement, the Bar Council moved to withdraw the matter, and submitted that it had an unqualified right to do that based on s 73(5)(g) of the ADT Act. The Tribunal, being seized of the matter, disagreed, considering that it was up to the parties to satisfy the Tribunal that it was consistent with the public interest that the Tribunal consent to withdrawal on the terms proposed. The Bar Council appealed. The Court of Appeal dismissed the appeal, holding that the statutory scheme for the discipline of legal practitioners obliges the Council to institute proceedings in the Tribunal once it has reached the prescribed state of satisfaction (LPA s 155(2)). The Court held that it would be 'quite

inconsistent with such a mandatory obligation to suggest that the proceedings can be withdrawn from the Tribunal at the discretion of the Council' (per Spigelman CJ at [30]). The Chief Justice noted further that the words 'the Tribunal may' as they appear in s 73(5)(g) of the ADT Act are discretionary in character and that, once its jurisdiction is invoked, the Tribunal is the relevant decision-making body.

*Suzanne Frugtniet v Administrative Decisions Tribunal (Appeal Panel) Anor; Brian Frugtniet v Administrative Decisions Tribunal (Appeal Panel) Anor* [2005] NSWCA 257

The Commissioner for Fair Trading determined that Ms Frugtniet should be permanently disqualified from operating as a travel agent. The Tribunal upheld the disqualification, finding that Ms Frugtniet had used a false name in order to conceal her involvement with a travel agency from the authorities. It also found that her response to a Notice to Show Cause issued by the Commissioner was misleading in that it failed to mention two criminal convictions.

Ms Frugtniet appealed to the Appeal Panel, arguing that the Commissioner could not rely on matters that had not been raised in the Notice to Show Cause served under s 20 (that is, Ms Frugtniet's failure to disclose criminal convictions). The Appeal Panel held that, while it was not stated or implied, only the matters set out in the Notice could provide the foundation for disqualification. The Appeal failed.

On Appeal to the Court of Appeal, the appellant further alleged that the Tribunal, in referring evidence of criminal convictions, had taken into account irrelevant considerations. The Court of Appeal held that s 21 did not limit the Commissioner to the particulars of the matter given in the notice. Additional information might come to the Commissioner, and the Commissioner was bound to investigate that information. The Tribunal had to decide what the correct and preferable decision was under s 63 of the ADT Act and could not be restricted to the particulars set out in the original notice. She



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also argued jurisdictional error based on the fact that the reasons for disqualification listed in the notice to her were not the same as those sent to the licensee company. This argument was rejected. The appeal was dismissed.

#### **Freedom of Information**

*General Manager, WorkCover Authority of NSW v Law Society of NSW* [2006] NSWCA 84

The Law Society sought access under the the FOI Act to confidential advice given to WorkCover by a professional costs consultant (and qualified solicitor) in 2002 evaluating submissions made by the Law Society relating to the appropriate costs scales for professional work done in connection with workers compensation claims under the new regime being introduced at the time. At first instance the Tribunal found that the advice was legal advice, was privileged and WorkCover's claim for exemption on the ground of legal professional privilege was upheld. The Appeal Panel reversed this decision, found the advice was not of the character of legal advice, and extended the appeal to the merits so that other grounds of exemption relied upon but not previously considered could be addressed. The Appeal Panel rejected the other grounds (internal working documents exemption, secrecy provisions exemption, and the in-confidence exemption). The Court of Appeal dismissed the appeal. It examined the Appeal Panel's decision for errors of law, and found none. Its judgment deals at length with the proper interpretation of the legal professional privilege exemption, the internal documents exemption and more briefly with the secrecy provisions exemption and the in-confidence exemption. It is to be noted that the appellant declined to provide the Court with the documents in dispute for inspection, thus negating the possibility of any challenge that might be based on misapplication of properly stated law to the facts.

#### **Prohibited Employment**

*Commissioner For Children and Young People v IK* [2005] NSWSC 1136

The Community Services Division of the Tribunal granted an exemption from the prohibition on working with children that applies to persons who have committed a serious sex offence at any time in the past. In this case the offences had occurred almost 30 years before when the applicant was a young man of 20 years of age. The Commissioner appealed on a question of law to the Supreme Court. (This class of decision is not appealable to the Appeal Panel.) The Court was satisfied that there was no error of law. It rejected the Commissioner's submission that the Tribunal had erred in law in its assessment of the expert evidence. There had been competing views expressed as to the risk of reoffence. The Court was satisfied that the Tribunal did not just accept the views of one expert in preference to the other in isolation; on the contrary, it had carefully considered the evidence and then came to the logical conclusion that the facts established by that evidence were more consistent with the reasoning of the Applicant's expert witness than that of the Commission's expert witness.

# Membership

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## **Composition of Membership**

During the year the Tribunal's membership comprised 61 presidential or judicial members and 82 non-judicial members. The list with appointment details appears in Appendix A.

The distribution of men and women is evenly spread across the Tribunal. Of the judicial members, 30 are male and 31 are female. Of the non-judicial members there are 41 men and 41 women. The gender distribution for the entire membership is 72 women and 71 men.

## **Changes in Membership**

*New Members:* During the year, 2 new non-judicial members joined the Tribunal (Ralph Merrell and Bruce Thomson). They are both qualified accountants with experience in forensic accounting. They have been appointed to the Guardianship and Protected List to sit in cases involving complex financial decisions in relation to long-term management of the estates of protected persons.

*Retirements:* Eleven members resigned or retired following completion of their term of appointment. Four were judicial members: Bruce Donald AM, Graeme Innes AM, Jennifer Mattila and John McCarthy QC. Seven were non-judicial members: Michael McDaniell, Kersti Elliott, Jennifer Geddes, Davies Hoareau, Alan Kennedy, Denis Mahon and Ann Mara.

*Appointments:* Our congratulations to Graeme Innes AM, Judicial Member for many years, on his appointment as Federal Human Rights Commissioner in November, 2005.

## **Members' Professional Development**

In the years 1999 to 2003, the main event was the annual members' conference (or 'professional development day') usually held around October. Many leading Australian jurists have spoken at this event. It was supplemented by training activities at Divisional level.

In the last two years the Tribunal has concentrated on small workshop and seminar-type training activities. The general workshops

have dealt with Decision Writing and Mediation. Workshops are limited to about 10 members, and overall about 40 judicial members participated in the Decision Writing workshops. The Mediation workshop was for members belonging to the List of Mediators. During the present year, there has also been an induction workshop for new members; and specialised workshops for members of the General Division on Freedom of Information/Privacy and Professional Discipline. The Equal Opportunity Division and Revenue Division have also held training sessions.

## **Conferences**

The President and Deputy President Hennessy were among 30 persons invited by the Centre for International and Public Law, ANU to participate in an 'International Tribunals Workshop' held on 5 April 2006. The participants came from Australia, the United Kingdom, Canada and New Zealand. Australian attendees included the heads of the Commonwealth Administrative Appeals Tribunal, the Victorian Civil and Administrative Tribunal, and the new State Administrative Tribunal of Western Australia, as well as the President of the Administrative Review Council and the Commonwealth Ombudsman. The UK attendees included the Senior President (Designate) for Tribunals in the UK, Sir Robert Carnwath, Lord Justice of Appeal, a Director of the new Tribunals Service, Mr Paul Stockton and the Director of Training, Judicial Studies Board, Ms Mary Holmes. There were 16 papers presented.

In the Overview at the beginning of this report, there is a brief summary of the main points seen as emerging from the workshop.

On the following two days, the Australian Institute of Judicial Administration's 9<sup>th</sup> Annual Conference on Tribunals was held. Some of the sessions at this conference took the form of repeat presentations of the papers given at the International Tribunals Workshop.

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There were about 200 attendees at the AIJA Conference, drawn from all parts of Australia and New Zealand. The papers can be found by accessing the AIJA web-site.

#### **Council of Australasian Tribunals (COAT) – Activities**

On Friday 7 April 2006, the National Executive of the Council of Australasian Tribunals published the Practice Manual for Tribunals. This is a loose-leaf volume addressing matters of law and practice relevant to tribunals generally. The AIJA and the Standing Committee of Attorneys General funded the project. The NSW Attorney General spoke at the launch. The hope is that this manual will assist, particularly, smaller tribunals in having a readily-available guide to tribunal law and practice. In the Tribunal the Practice Manual is used as a general guide. The Tribunal already has a Members' Manual, on-line to members.

The NSW Chapter of COAT held its annual conference on 26 May 2006. The President and Deputy President Hennessy are members of the State Committee. Federal Court Justice, Stephen Rares, gave the keynote address - 'Blind Justice and the Pitfalls for Administrative Decision-Making'. Other speakers included Ms Diane Robinson, President of the Guardianship Tribunal, Mr John McDonnell, NSW Assistant Crown Solicitor, and Justice Stuart Morris, President of the Victorian Civil and

Administrative Tribunal. The papers from the conference are available on the COAT website at: [www.coat.gov.au/newswales\\_chapter.htm](http://www.coat.gov.au/newswales_chapter.htm).

#### **International**

In 2005 the International Criminal Police Organisation (Interpol) appointed the President, Judge O'Connor, for a 3-year term as Chairman (Alternate) of a constituent body of Interpol, the Commission for Control of Interpol's Files (CCF). The President was from 1989-1996 the founding Australian Privacy Commissioner.

The CCF has been established in accordance with Interpol's headquarters agreement with the Government of France requiring Interpol to adhere to French national law in its handling of personal data. The CCF has five principal members with qualifications as defined in the agreement. As alternate chairperson the President has been invited to attend one of the three meetings per year in an observer capacity, so as to be informed in case he is called upon to take over from the Chairman, Mr Peter Hustinx, European Union Data Protection Supervisor and formerly Data Protection Registrar of the Netherlands. The other principal members come from Cameroon, Chile, Cyprus and France. The President attended the 62nd session of the CCF held at Lyon, France in December 2005.



# Registry and Budget

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## **Accommodation**

The Registry is located at Level 15, 111 Elizabeth Street Sydney. The design of the Registry counter, the reception area and the hearing rooms seeks to accommodate the needs of Tribunal users with disabilities.

## **Staff**

The Registry has eleven positions, including the Registrar and Deputy Registrar. Registry staff work in small teams specialising in case management, client services and support services. In order to develop and maintain individual skills, officers are rotated between the teams.

A separate position of Research Associate to the President provides legal and research support for the President and the full-time Deputy President.

The Registry provides the following services: enquiries, registrations, hearing support, case management and general administrative support to members. In addition, registry staff maintain the Tribunal's website, ensuring that information about the Tribunal's jurisdiction and procedures are up-to-date and readily available to the public.

## **Projects**

During the last financial year, the Tribunal's website was reviewed and redesigned to make it more accessible and user friendly for the Tribunal's users. The new website went 'live' in August 2005.

Over the last 12 months, the Registry has developed brochures to assist users of the Tribunal in understanding the principles and procedures specific to particular Divisions of the Tribunal. These brochures are designed on the basis that most applicants appearing before the Tribunal are appearing without legal representation. The brochures attempt to help users identify whether their matter can be heard by the Tribunal, and what steps are involved from registration to finalisation.

To assist unrepresented litigants, the Registry has also developed 'frequently asked questions' fact sheets, specific to each Division, and a list of organisations that may be able to provide free legal advice or assistance when they register an application.

The Registry has also produced an 'Information Strategy', which sets out the different ways in which the Tribunal seeks to provide users, and other interested persons, with information about the Tribunal's operations.

## **Staff development**

Staff receive training through the Attorney General's Department, and through attendance at relevant conferences. Additionally, staff receive in-house training on new legislation and procedural changes.

All staff participate in a performance plan, which is used as a tool to identify opportunities for individual officers to develop and consolidate the skills they require to effectively deliver services to members and Tribunal users.

## **Budget and Financial Information**

The Tribunal is an independent statutory body that for budgetary purposes is a business centre within the Attorney General's Department.

The Tribunal has two sources of funds. Government funding is provided by a budget allocated by the Attorney General's Department and funding allocated by the trustees of the Public Purpose Fund. The Public Purpose Fund is used primarily to meet the cost of operating the Legal Services Division of the Tribunal. The Public Purpose Fund comprises interest earned on solicitors' clients' funds held in compulsory trust account deposits under the *Legal Profession Act 2004*. Appendix C provides a picture of the expenditure incurred by the Tribunal in the reporting period.

# Appendices

## Appendix A: List of Members

1 July 2005 to 30 June 2006

This list of members of the Tribunal indicates who held appointments during the reporting period, organised by Divisions. In the case of new members appointed during the current reporting period, their date of appointment to this Tribunal is shown next to their names. In the case of continuing members, their first date of appointment is shown in the relevant previous annual report unless they held appointments to former tribunals and were continued under transitional provisions. In the case of retiring members, an asterisk appears next to their names.

If a member has been assigned to more than one Division, there is a corresponding entry.

The President is assigned to all Divisions.

### PRESIDENT

Judge KEVIN PATRICK O'CONNOR, AM, to 9 August 2007

Assigned to all Divisions in accordance with s 21(1) of the *Administrative Decisions Tribunal Act 1997*.

### DEPUTY PRESIDENT (Full-time)

Magistrate NANCY LOUISE HENNESSY, to 7 March 2007

Assigned as set out below.

### GENERAL DIVISION

### Current Expiry date

#### Divisional Head

Judge KEVIN PATRICK O'CONNOR, AM, President 9.8.07

#### Deputy Presidents

Acting Judge MICHAEL RAINSFORD  
CHESTERMAN 2.10.08  
Magistrate NANCY LOUISE HENNESSY 7.3.07  
JANE ANNABEL DARLING NEEDHAM, SC 30.4.08

#### Judicial Members

CATHERINE LOUISE FITZGERALD 30.4.08  
PENELOPE HELEN GOODE 8.10.06  
YVONNE GRANT 30.4.08  
ROBIN PATRICK HANDLEY 30.4.08  
SIGRID HIGGINS 30.4.07  
SUZANNE MAREE LEAL 8.10.06  
PETER HENRY MOLONY 31.10.07  
STEPHEN HENRY MONTGOMERY 30.4.07  
LINDA MARY PEARSON 30.4.08  
NEIL ROBERT REES 8.10.06  
ROBERT BRUCE WILSON 30.4.08

#### Non-judicial Members

ZITA ROSE ANTONIOS 31.10.08  
CLIFFORD DOUGLAS BLAKE, AM 30.4.07  
MARY ELIZABETH BOLT 30.4.07  
KEVEN WILLIAM MAPPERSON 31.10.07  
MICHAEL JOHN McDANIEL\* 25.11.05  
ANNETTE FRANCES O'NEILL 31.10.08

#### Presidential Members assigned to Guardianship and Protected Estates list

Magistrate NANCY LOUISE HENNESSY 7.3.07

#### Judicial Members assigned to Guardianship and Protected Estates list

ANNE BRITTON 30.4.08  
GRAEME GORDON INNES, AM\* 25.11.05  
SUZANNE MAREE LEAL 8.10.06  
JULIAN JOSEPH MILLAR 8.10.06  
NEIL ROBERT REES 8.10.06

#### Non-judicial Members assigned to Guardianship and Protected Estates list

MARY ELIZABETH BOLT 30.4.07  
BARBARA RUTH FIELD 16.11.06  
JENNIFER GREEN 31.10.08  
LYNN MARY HOULAHAN 31.10.08  
BELINDA ANNE MERICOURT 16.11.06  
RALPH WILLIAM MERRELL (6.3.06) 31.10.08  
BRUCE GEOFFREY THOMSON (6.3.06) 31.10.08  
ELIZABETH ANNE WHAITE 16.11.06  
ANN DOMINICA WUNSCH 16.11.06

#### Non-judicial Members, Public Health

ANNEMARIE HENNESSY 30.4.07  
RICHARD MATTHEWS 30.4.07

**Non-judicial Members, Accredited Certifier**

PETER GABRIEL FRIEDMANN	3.8.06
PHILIP ARTHUR HAYWARD	3.8.06
GRAHAM JOHN MALLISON	3.8.06
GORDON PATRICK WREN	3.8.06

**Non-judicial Members, Veterinary Surgeons Discipline**

TANYA LORRAINE CARTER	1.9.06
FIONA JENNIFER CLARK	31.10.08
TIMOTHY ROBERT CRISP	1.9.06
DAVID LACHLAN EVANS	1.9.06
RICHARD ELDRED JANE	1.9.06
ROSALIE JANE MAYO-RAMSAY	31.10.08
GARTH ALEXANDER McGILVRAY	1.9.06
RUTH ROSEMARY THOMPSON	1.9.06

**Non-judicial Members, Education**

TERENCE RICHARD BURKE, AM	30.4.08
JOLYN MARGARET KARAOLIS, AM	30.4.08
JOSEPH RIORDAN, AO	31.10.07

**Non-judicial Members, Architects**

MARTYN DAVID CHAPMAN	31.10.07
JANE MARGARET JOSE	31.10.07
PATRICK JOHN O'CARRIGAN	31.10.07
PETER ROY WATTS	31.10.07

**EQUAL OPPORTUNITY DIVISION****Divisional Head**

Magistrate NANCY LOUISE HENNESSY	7.3.07
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**Deputy President**

Acting Judge MICHAEL RAINSFORD CHESTERMAN	2.10.08
JANE ANNABEL DARLING NEEDHAM, SC	30.4.08

**Judicial Members**

LARISSA YASMIN BEHRENDT	31.10.08
DAVID LEE BITEL	8.10.06
ANNE BRITTON	30.4.08
JENNIFER LOUISE CONLEY	30.4.08
JANICE MARGERY CONNELLY	30.4.08
PENELOPE HELEN GOODE	8.10.06
ERAINE ELIZABETH GROTTÉ	30.4.08
GRAEME GORDON INNES, AM*	25.11.05
GRAHAM REGINALD IRELAND	31.10.08
RUTH LAYTON	8.10.06
CHRISSE TEREASA LOUKAS	8.10.06
THERESE MARGARET MacDERMOTT	31.10.08
NEIL ROBERT REES	8.10.06
SIMON JAMES RICE, OAM	6.2.07
JANELLE ANNE SAFFIN	16.11.06
MARGARET MARY SMYTH	30.4.07

**Non-judicial Members**

ZITA ROSE ANTONIOS	31.10.08
MARY ELIZABETH BOLT	30.4.07
STEVIE CLAYTON, OAM	25.11.05
RENIA DOUGLAS COX	8.10.06
MAREE JANE GILL	8.10.06
KAREN GREENHILL	8.10.06
DENNY GROTH	30.4.07
ELAYNE HAYES	30.4.07
NOEL ARTHUR HIFFERNAN	8.10.06
LYNN MARY HOULAHAN	31.10.08
ANTHEA ELISABETH LOWE	8.10.06
MICHAEL JOHN McDANIEL*	25.11.05
LINDA MARILYN MONAGHAN-NAGLE	30.4.07
LAURA CLARE MOONEY	28.9.06
LOUISE NEMETH DE BIKAL	8.10.06
MAURICE MICHAEL O'SULLIVAN	8.10.06
HENRY NAN HUNG PAN, OAM	8.10.06
CLEONIE DOROTHY QUAYLE	30.4.07
ANTHONY MICHAEL JOSEPH SCHEMBRI	8.10.06
JOACHIM SCHNEEWEISS, AM	31.10.07
LUCY TAKSA	6.2.07
DOREEN TOLTZ	8.10.06
BETTY LORRAINE WEULE	30.4.07

**COMMUNITY SERVICES DIVISION****Divisional Head**

THOMAS JOSEPH KELLY, Deputy President	30.4.07
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**Judicial Members**

ANNE BRITTON	30.4.08
MARGARET MARY SMYTH	30.4.07

**Non-judicial Members**

MARY ELIZABETH BOLT	30.4.07
DAVID EDWIN DOBELL	30.4.07
JENNIFER GREEN	31.10.08
DENNY GROTH	30.4.07
LYNN MARY HOULAHAN	31.10.08
MEREDITH MARTIN	31.10.08
JAN MASON	30.4.07
LINDA MARILYN MONAGHAN-NAGLE	30.4.07
JEANETTE McDONALD MOSS, AM	31.10.08
CLARITA NORMAN	30.4.07

**LEGAL SERVICES DIVISION****Divisional Head**

Acting Judge ANGELA JEANNE STIRLING KARPIN, Deputy President	8.6.08
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**Deputy Presidents**

Acting Judge MICHAEL RAINSFORD CHESTERMAN	2.10.08
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# Appendices

## Barrister Members

ROBERT BRUCE SCOTT MACFARLAN, QC	31.10.08
JOHN ANTHONY MCCARTHY, QC	16.12.05
SHARRON NORTON, SC	31.10.08
DAVID PETER FORBES OFFICER, QC	31.10.08
LIONEL PHILIP ROBBERDS, QC	31.10.08
WENDY LOUISE ROBINSON, QC	31.10.08
ALISON PATRICIA STENMARK, SC	12.1.07
JOHN NORMAN WEST, QC*	16.12.05

## Solicitor Members

MICHAEL JAMES BARNES	30.4.07
CHRISTINE ANNE BISHOP	31.10.08
JOHN WILLIAM FRANCIS BRENNAN, RFD	31.10.08
ROGER JAMES CLISDELL	31.10.08
ROSEMARY COX	31.10.08
JOHN SYDNEY CURRIE	31.10.08
ANDREA DURBACH*	16.12.05
JULIE LOUISE GREENWOOD	31.10.08
SANDRA NERYL HALE	31.10.08
JENNIFER MARGARET MATTILA*	16.12.05
GRAHAM BRIAN MOLLOY	31.10.08
JOHANNA PHEILS	30.4.07
MICHELLE ANNE RIORDAN	30.4.07
GORDON ALBERT SALIER	30.4.08
CEDRIC BOHRSMANN VASS	31.10.08

## Licensee Members

PAULINE ELLEN CURRAEY	30.4.07
JANICE LOUISE HEDISON	30.4.07

## Non-judicial Members

CARL DONALD BENNETT	30.4.07
LESHIA OLGA BUBNIUK	30.4.07
MICHAEL EUGENE COSTIGAN	31.10.08
BARRIE DRUMMOND DYSTER	31.10.08
KERSTI ELLIOTT*	23.2.06
ROSS ANDREW EDWARD FITZGERALD	31.10.08
JENNIFER ANNE GEDDES*	23.2.06
RAY GIETZELT, AO	30.4.07
ELAYNE HAYES	30.4.07
DAVIES HOAREAU*	23.2.06
ALAN KENNEDY*	23.2.06
ELISABETH WILMA KIRKBY	30.4.07
DEBORAH KLIKA	30.4.07
DENIS MAHON*	23.2.06
ANN MARIE MARA*	23.2.06
ANNETTE FRANCES O'NEILL	31.10.08
CLEONIE DOROTHY QUAYLE	30.4.07
LUCY TAKSA	6.2.07

## RETAIL LEASES DIVISION

### Divisional Head

Acting Judge MICHAEL RAINSFORD	
CHESTERMAN, Deputy President	2.10.08

### Deputy Presidents

Magistrate NANCY LOUISE HENNESSY	7.3.07
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## Judicial Members

PHILIP LESLIE BOYCE	16.11.06
BRUCE GEORGE DONALD, AM*	25.11.05
ROBERT JOHN FOX	31.10.08
SIGRID HIGGINS	30.4.07
MARGARET COLLEEN HOLE, AM	30.4.07
GRAHAM BRIAN MOLLOY	31.10.08
STEPHEN HENRY MONTGOMERY	30.4.07
KIM BERESFORD RICKARDS	16.11.06
JANELLE ANNE SAFFIN	16.11.06

## Non-judicial Members

NEIL FAGG	31.10.07
ROGER KENNETH FAIRWEATHER	31.10.07
GARTH WARREN GRIFFITHS	31.10.07
BRIAN TERRY HARRISON	18.8.06
ANNETTE FRANCES O'NEILL	31.10.08
BARRY THOMAS OWENS	31.10.07
TERENCE JAMES TYLER	18.8.06
ROBERT VAUGHAN WARD	31.10.07
BETTY LORRAINE WEULE	30.4.07
LEXIA GAI WILSON	31.10.07

## REVENUE DIVISION

### Divisional Head

JANE ANNABEL DARLING NEEDHAM, SC (from 25.11.05)	30.4.08
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### Judicial Members

Acting Judge JULIAN BLOCK	30.4.07
JULIE LOUISE GREENWOOD	31.10.08
MARGARET COLLEEN HOLE, AM	30.4.07
JOANNE CHRISTINE SEVE	30.4.07
AMARJIT SINGH VERICK	30.4.07

### Non-judicial Members

CARL DONALD BENNETT	30.4.07
CLIFFORD DOUGLAS BLAKE, AM	30.4.07
DANNY KOUTOULAS	30.4.07

## Appendix B: Legislation

### Principal Legislation

Administrative Decisions Tribunal Act 1997  
Administrative Decisions Tribunal (General) Regulation 2004  
Administrative Decisions Tribunal Legislation Further Amendment Act 1998  
Administrative Decisions Tribunal Rules (Transitional) Regulation 1998

### Primary Legislation

*Note: This list of legislation contains conferrals of jurisdiction, as at 30 June 2006, as advised to Registry.*

Aboriginal Lands Rights Act 1983  
Adoption Act 2000  
Agricultural Livestock (Disease Control Funding) Act 1998  
Agricultural Tenancies Act 1990  
Animal Research Act 1985  
Anti-Discrimination Act 1977  
Apiaries Act 1985  
Architects Act 2003  
Betting Tax Act 2001  
Births Deaths and Marriages Registration Act 1995  
Boxing and Wrestling Control Act 1986  
Building and Construction Industry Security of Payment Act 1999  
Business Names Act 2002  
Charitable Fundraising Act 1991  
Child Protection (Offenders Registration) Act 2000  
Child Protection (Prohibited Employment) Act 1998  
Children (Care and Protection) Act 1987  
Children and Young Persons (Care and Protection) Act 1998  
Children and Young Persons (Care and Protection) Regulation 2000  
Children's Services Regulation 2004  
Commercial Agents and Private Inquiry Agents Act 2004  
Community Justices Centres Act 1983  
Community Services (Complaints, Appeals and Monitoring) Act 1993  
Community Services (Complaints, Appeals and Monitoring) Regulation 2004  
Conveyancers Licensing Act 1995  
Co-operative Housing and Starr-Bowkett Societies Act 1998  
Dangerous Goods Act 1975  
Debits Tax Act 1990  
Dental Practice Act 2001  
Disability Services Act 1993

Duties Act 1997  
Education Act 1990  
Electricity Supply Act 1995  
Entertainment Industry Act 1989  
Environmental Planning and Assessment Act 1979  
Explosives Act 2003  
Fair Trading Act 1987  
Firearms (General) Regulation 1997  
Firearms Act 1996  
First Home Owner Grant Act 2000  
Fisheries Management Act 1994  
Food Act 2003  
Food Production (Dairy Food Safety Scheme) Regulation 1999  
Food Production (Meat Food Safety Scheme) Regulation 2000  
Food Production (Seafood Safety Scheme) Regulation 2001  
Forestry Act 1916  
Freedom of Information Act 1989  
Game and Feral Animal Control Act 2002  
Gaming Machine Tax Act 2001  
Gas Supply Act 1996  
Guardianship Act 1987  
Guardianship Regulation 2000  
Health Insurance Levies Act 1982  
Health Records and Information Privacy Act 2002  
Home Building Act 1989  
Hunter Water Act 1991  
Impounding Act 1993  
Insurance Protection Tax Act 2001  
Land Tax Act 1956  
Land Tax Management Act 1956  
Legal Profession Act 2004  
Licensing and Registration (Uniform Procedures) Act 2002  
Local Government Act 1993  
Motor Dealers Act 1974  
Motor Vehicle Repairs Act 1980  
Motor Vehicle Sports (Public Safety) Act 1985  
Mount Panorama Motor Racing Act 1989  
Native Title (New South Wales) Act 1994  
Non-Indigenous Animals Act 1987  
Occupational Health and Safety Act 2000  
Occupational Health and Safety Regulation 2001  
Ombudsman Act 1974  
Optometrists Act 2002  
Parking Space Levy Act 1992



# Appendices

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Passenger Transport Act 1990  
Pawnbrokers and Second-hand Dealers Act 1996  
Pay-roll Tax Act 1971  
Pesticides Act 1999  
Petroleum Product Subsidy Act 1997  
Plant Diseases Act 1924  
Police Act 1990  
Powers of Attorney Act 2003  
Privacy and Personal Information Protection Act 1998  
Private Hospitals and Day Procedure Centres Act 1988  
Property, Stock and Business Agents Act 2002  
Protected Estates Act 1983  
Protected Estates Regulation 2003  
Public Health Act 1991  
Public Lotteries Act 1996  
Rail Safety Act 2002  
Registration of Interests in Goods Act 1986  
Retail Leases Act 1994  
Road and Rail Transport (Dangerous Goods) Act 1997  
Road Transport (General) Act 2005  
Road Transport (Safety and Traffic Management) Act 1999  
Security Industry Act 1997  
Shops and Industries Act 1962  
Stamp Duties Act 1920  
State Water Corporation Act 2004  
Stock (Artificial Breeding) Act 1985  
Surveying Act 2002  
Sydney Water Act 1994  
Sydney Water Catchment Management Act 1998  
Taxation Administration Act 1996  
Timber Marketing Act 1977  
Tow Truck Industry Act 1998  
Trade Measurement Act 1989  
Trade Measurement Administration Act 1989  
Travel Agents Act 1986  
Valuers Act 2003  
Veterinary Surgeons Act 1986  
Vocational Education and Training Accreditation Act 1990  
Weapons Prohibition Act 1998  
Wool Hide and Skin Dealers Act 2004  
Workplace Injury Management and Workers Compensation Act 1998  
Youth and Community Services Act 1973

## Appendix C: Financial Information

### Financial Information as at 30 June 2006<sup>1</sup>

#### Administrative Decisions Tribunal & Legal Services Division

	ADT			LSD <sup>2</sup>	TOTAL
	Actual	Budget	Variance	Actual	Actual
	\$	\$	\$	\$	\$
Employee Related Payments (Including Crown Liabilities)	1,737,778	1,863,486	125,708	19,024	1,756,802
Property Items	397,704	389,860	(7,844)		378,887
Other Operating	1,185,595	1,109,860	(75,735)	221,710	1,407,305
Depreciation	(2,890)	93,738	96,628		(2,890)
<b>Total Expenditure</b>	<b>3,318,187</b>	<b>3,456,944</b>	<b>(138,757)</b>	<b>240,734</b>	<b>3,558,921</b>
<b>Total Revenue<sup>3</sup></b>	<b>(764,633)</b>	<b>(739,233)</b>	<b>25,400</b>	<b>(240,734)</b>	<b>(1,005,367)</b>
<b>Net Cost Of Services</b>	<b>2,553,554</b>	<b>2,717,711</b>	<b>164,157</b>	<b>0</b>	<b>2,553,554</b>
Less Depreciation	(2,890)	93,738	96,628	0	(2,890)
Less Crown Liabilities	(169,564)	(224,675)	(55,111)	0	(169,564)
<b>Controlled Net Cost Of Services</b>	<b>2,386,880</b>	<b>2,399,298</b>	<b>12,418</b>	<b>0</b>	<b>2,386,880</b>

#### Notes

1. This appendix has been based on information supplied by the Attorney General's Department. The Audit Office had not completed the audit of the Department's financial statements when this information was supplied.

#### 2. Legal Services Division

The Legal Services Division is funded by the Public Purpose Fund. A global amount is contributed towards the operating costs of the Tribunal and is included in the 'actual' and 'budget' columns of the ADT. Additionally the costs of members' fees and associated costs and transcription services provided to that Division are separately recouped. These are the amounts shown in the LSD column.

#### 3. Revenue

The Tribunal received \$1,005,367.30 in revenue. Of this, \$934,734.30 was by way of recoupment from the Public Purpose Fund for the cost of operating the Legal Services Division. The balance was general revenue items.

# Appendices

## Appendix D: Statistics

### General Division 1/7/2005 - 30/6/2006

#### 1. Case flow 2005-2006

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Matters pending at 30 June 2004	New Applications filed	Disposals	Pending as at 30 June 2005
191	467	410	248

\* pending figure of 190 reported in previous annual report adjusted following manual reconciliation of files and/or changes in data collection

#### 2. Applications by type 2005-2006

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Applications for Original Decision	Applications for review	Professional Discipline
0	461	6

#### 3. Applications by Act 2005-2006

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Apiaries Act	1
Architects Act	1
Births Deaths and Marriages Registration Act	5
Business Names Act	2
Environmental Planning and Assessment Act	5
Explosives Act	7
Firearms Act	61
First Home Owner Grant Act	6
Fisheries Management Act	2
Freedom of Information Act	125
Guardianship Act	4
Health Records and Information Privacy Act	3
Home Building Act	46
Impounding Act	34
Licensing and Registration (Uniform Procedures) Act	1
Motor Vehicle Repairs Act	4
Occupational Health and Safety Act	2
Passenger Transport Act	54
Pawnbrokers and Second-hand Dealers Act	1
Privacy and Personal Information Protection Act	27
Property Stock and Business Agents Act	14
Protected Estates Act	18
Rail Safety Act	1
Road Transport (General) Act	8
Security Industry Act	24
Tow Truck Industry Act	6
Valuers Act	1
Vocational Education and Training Accreditation Act	1
Weapons Prohibition Act	2
Workplace Injury Management and Workers Compensation Act	1

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#### 4. Outcomes in Review matters 2005-2006

Application withdrawn Dismissed/No appearance Dismissed/Agreement reached Dismissed	Decision under review affirmed	Decision under review set aside/ varied/remitted/ recommendation made	Mixed Result – Partly Affirmed/ Partly set aside, varied or remitted	Privacy – contravention – no action	Privacy – contravention – order made	No Jurisdiction
175	136	50	25	0	4	13

#### 5. Outcomes in Original matters 2005-2006

Application withdrawn dismissed/ No appearance dismissed/ Agreement reached dismissed	Application granted	Application refused	No Jurisdiction
0	1	0	0

#### 6. Outcomes in Professional Discipline 2005-2006

Dismissed	Orders made	No jurisdiction
0	4	1

#### 7. Timeliness - time from date of application to date of disposal

No. disposed of in under 6 months	295
No. disposed of in under 12 months	81
No. disposed of in over 12 months	32
No. disposed of in over 2 years	2

## Guardianship and Protected Estates List 1/7/2005-30/6/2006

Note: This information also forms part of the General Division statistics. The List has two components of activity, External Appeals, and General Division Reviews. The External Appeals statistics are provided in the Appeals section below. As to the General Division Reviews, more detailed statistics than those that appear in the General Division table follow.

#### 1. Case Flow-Guardianship and Protected Estates Review Matters 2005-2006

Pending as at 30 June 2005	New Applications Filed	Disposals	Pending as at 30 June 2006
5	22	21	6

#### 2. Applications for Review by Act 2005-2006

Subject by Act	Number
Guardianship Act	4
Protected Estates Act	18

#### 3. Outcomes in Review Matters under the Guardianship Act and the Protected Estates Act 2005-2006

Application withdrawn Dismissed/ No appearance Dismissed/Agreement reached Dismissed	Decision under review affirmed	Decision under review set aside varied/ remitted recommendation made	Mixed Result – Partly Affirmed/ Partly set aside, varied or remitted	No Jurisdiction	Total
3	9	5	2	2	21

#### 4. Timeliness-time from date of application to date of disposal

No. disposed of in under 6 months	19
No. disposed of in under 12 months	1
No. disposed of in over 12 months	
No. disposed of in over 2 years	1

# Appendices

## Community Services Division 1/7/2005 - 30/6/2006

### 1. Case flow 2005-2006

Matter pending as at 30 June 2005	New Applications filed	Disposals	Pending as at 30 June 06
18	50	48	20

### 2. Applications by type 2005-2006

Applications for original decision	Applications for review
29	21

### 3. Applications by Act 2005-2006

	Number
Children and Young Persons (Care and Protection) Act	17
Children (Care and Protection) Act	4
Declaration that Child Protection (Prohibited Employment) Act 1998 does not apply	29

### 4. Outcomes - Reviewable Decisions 2005-2006

Application withdrawn Dismissed/No appearance Dismissed/Agreement reached Dismissed	Decision under review affirmed	Decision under review set aside/ varied/remitted/ recommendation made	Mixed Result – Partly Affirmed/ Partly set aside, varied or remitted	No Jurisdiction/ Jurisdiction Declined
13	6	5	0	1

### 5. Outcomes- Original Decisions 2005-2006

Application withdrawn Dismissed/ No appearance Dismissed/ Agreement reached Dismissed	Declaration made	Declaration Refused	No Jurisdiction
4	14	3	2

### 6. Mediation 2005-2006

No. of disposals where mediation was conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing
4	2	0	2

### 7. Timeliness - time from date of application to date of disposal

No. disposed of in under 6 months	30
No. disposed of in under 12 months	14
No. disposed of in over 12 months	4
No. disposed of in over 2 years	0

## Equal Opportunity Division 1/7/2005 - 30/6/2006

### 1. Case flow 2005- 2006

Matters pending at 30 June 2005	New Applications filed	Disposals	Pending as at 30 June 06
133	107	143*	97

### 2. Applications by type 2005-2006

Applications for original decision	Applications for review	Application for registration of conciliation agreement	Applications for leave to proceed	Applications for interim orders
81	0	2	21	3

### 3. Applications for original decision by Ground 2005-2006

Head of discrimination**	Number
Race	19
Racial vilification	6
Sexual harassment	8
Sex	19
Transgender	2
Disability	29
Carers responsibilities	9
Homosexuality	5
Homosexual vilification	1
Age	5
Victimisation	18

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

### 4. Outcomes - Original Decisions 2005-2006

Withdrawn Dismissed/ Settled Dismissed/ No Appearance Dismissed	Summary dismissal under section 111, s 102D	Dismissed after hearing	Orders made
82	5	19	10

### 5. Outcomes - Reviewable Decisions 2005-2006

Application withdrawn Dismissed/No appearance Dismissed/Agreement reached Dismissed	Decision under review affirmed	Decision under review set aside/ varied/remitted/ recommendation made	Mixed Result - Partly Affirmed/ Partly set aside, varied or remitted	No Jurisdiction/ Jurisdiction Declined
0	0	0	0	1

### 6. Mediation

No. of disposals where mediation was conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing
60	21	24	15

### 7. Timeliness - time from date of application to date of disposal

for original and reviewable decisions

No. disposed of in under 6 months	49
No. disposed of in under 12 months	36
No. disposed of in over 12 months	28
No. disposed of in over 2 years	4

# Appendices

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## **8. Application for registration of conciliation agreement 2005 - 2006 (this information also forms part of the Equal Opportunity Division case flow statistics above)**

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Matters pending at 30 June 2005	New Applications filed	Disposals	Pending as at 30 June 06
0	2	1	1

## **9. Outcome of application for registration of agreement 2005-2006**

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Agreement registered	Agreement not registered	Application withdrawn dismissed
0	0	1

## **10. Applications for leave to proceed 2005-2006 (this information also forms part of the Equal Opportunity Division case flow statistics above)**

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Matters pending at 30 June 2005	New Applications filed	Disposals	Pending at 30 June 2006
4	21	22	3

## **11. Outcome of applications for leave 2005-2006**

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Leave granted	Leave not granted	Application withdrawn dismissed/settled dismissed
2	17	3

## **12. Outcome of applications for interim orders**

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order granted	order not granted	Consent orders
0	1	2

## **13. Timeliness - time from date of application to date of disposal**

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No. disposed of in under 6 months	3
No. disposed of in under 12 months	0
No. disposed of in over 12 months	0
No. disposed of in over 2 years	0

## Retail Leases Division 1/7/2005 - 30/6/2006

### 1. Case flow 2005-2006

Matters pending at 30 June 2005	Applications filed	Disposed	Pending as at 30 June 2006
83	184	156	111

### 2. Applications by type 2005-2006

Relevant provision of Retail Leases Act 1994	
section 71	116
section 71A - unconscionable conduct	4
Combined section 71 and section 71A	64

### 3. Outcomes 2005-2006

Withdrawn/ Discontinued/ Dismissed without hearing	Dismissed after hearing	Settled - Orders made	Orders made	No Jurisdiction	Transfer to Supreme Court
107	14	7	24	2	2

### 4. Timeliness - time from date of application to date of disposal

No. disposed of in under 6 months	114
No. disposed of in under 12 months	27
No. disposed of in over 12 months	13
No. disposed of in over 2 years	2

## Revenue Division 1/7/2005 - 30/6/2006

### 1. Case flow 2005-2006

Matters pending at 30 June 2005	Applications filed	Disposals	Matters pending as at 30 June 06
53	132	118	67

### 2. Applications by type 2005-2006

Duties Act	31
First Home Owners Grant Act	52
Land Tax Act	5
Land Tax Management Act	31
Parking Space Levy Act	9
Payroll Tax Act	10
Taxation Administration Act	7
Stamp Duties Act	1

\* a number of applications have been made under more than one Act

### 3. Outcomes 2005 - 2006

Application withdrawn Dismissed/No appearance Dismissed/Agreement reached Dismissed	Decision under review affirmed	Decision under review set aside/ varied/remitted/ recommendation made	Mixed Result - Partly Affirmed/ Partly set aside, varied or remitted	No Jurisdiction
68	37	10	1	2

### 4. Timeliness - time from date of application to date of disposal

No. disposed of in under 6 months	87
No. disposed of in under 12 months	26
No. disposed of in over 12 months	5
No. disposed of in over 2 years	0



# Appendices

## Legal Services Division 1/7/2005 - 30/6/2006

### 1. Case flow 2005-2006

Matters pending at 30 June 2005	Applications filed	Disposed	Pending as at 30 June 06
36	29	29	27

### 2. Applications by type 2005-2006

Applications for original decision	27
Applications for review	2

### 3. Applications by subject 2005-2006

Type of Practitioner	Type of conduct**	Number
Solicitor	PM	5
Solicitor	Disciplinary Action	13
Solicitor	Review	1
Barrister	UPC	1
Barrister	PM & UPC	1
Barrister	Disciplinary Action	3
Conveyancer	Disciplinary Action	1
Conveyancer	review	1
Lay associate	s 17(3) approval	2
S.48I & 48K Applications		1

\*\*PM - professional misconduct, UPC - Unsatisfactory professional conduct

### 4. Outcomes in Original matters 2005-2006

Withdrawn Dismissed	3
Dismissed after hearing	3
<i>Penalty imposed by type</i>	
Reprimanded and Fined	11
Reprimanded	5
Removed from Roll	7
Reprimanded and Fined, suspended from practice	2
Reprimanded and Fined, Legal Education Course	1
s 48K	2
Total	

### 5. Outcomes in Review matters 2005-2006

Application withdrawn/ Dismissed	2
Decision under review affirmed	1
Decision under review set aside/varied/remitted/recommendation made	1

### 6. Timeliness - time from date of application to date of disposal

No. disposed of in under 6 months	18
No. disposed of in under 12 months	12
No. disposed of in over 12 months	7
No. disposed of in over 2 years	1

## Appeals 1/7/2005 - 30/6/2006

### Internal Appeals to Appeal Panel

#### 1. Case Flow 2005 -2006

	Appeals Pending as 30 June 2005	New Appeals filed	Disposals	Pending as at 30 June 06
General Division	21*	47	42	26
Community Services Division	0*	3	3	0
Equal Opportunity Division	8*	16	11	13
Retail Leases Division	4*	8	8	4
Revenue Division	6	7	9	4
Legal Services Division	1*	1	1	1
Total	40	82	74	48

\* data remediated

#### 2. Outcome of Internal Appeals 2005 - 2006

	Upheld (in full or part)	Dismissed	No Jurisdiction	Consent Orders	Withdrawn Discontinued	Total
General Division	12	19	0	1	10	42
Community Services Division	1				2	3
Equal Opportunity Division	1	7			3	11
Retail Leases Division	2	5			1	8
Revenue Division	4	5				9
Legal Services Division	1					1
Total	21	36	0	1	16	74

#### 3. Timeliness - time from date of appeal to date of determination

No. disposed of in under 6 months	40
No. disposed of in under 12 months	29
No. disposed of in over 12 months	5
No. disposed of in over 2 years	0

### External Appeals to the Appeal Panel

#### 1. Case Flow 2005 -2006

	Appeals Pending as at 30 June 2005	New Appeals filed	Disposals	Pending as at 30 June 06
Guardianship Tribunal	4	13	13	4
Mental Health Review Tribunal	0	1	1	0
Magistrate	0	2	2	0
Bar Council	1	1	2	0
LSC	1	0	0	1
Total	6	17	18	5

#### 2. Outcome of External Appeals 2005-2006

Upheld (in full or in part)	Dismissed	Withdrawn/Discontinued	Total
7	6	5	18

# Appendices

## 3. Timeliness - time from date of application to date of disposal

No. disposed of in under 6 months	18
No. disposed of in under 12 months	0
No. disposed of in over 12 months	0
No. disposed of in over 2 years	0

## 4. Published Appeal Decisions - Presiding Member

Member	Number- Internal Decisions	Number- External Decisions	Total
O'Connor, P	30	0	30
Hennessy, DP	20	10	30
Chesterman, DP	24	2	26
Needham, DP	1	0	1
Kelly, DP	1	0	1
Karpin, DP	1	1	2
			90

## Appeals to the Supreme Court

### 1. Case flow 2005 - 2006

	Appeals Pending as at 30 June 2005	New Appeals filed	Disposals	Pending as at 30 June 2006
General Division	0	0	0	0
Community Services Division	1	1	0	2
Equal Opportunity Division	0	0	0	0
Retail Leases Division	0	2	0	2
Revenue Division	0	0	0	0
Legal Services Division	1	4	1	4
Appeal Panel	9	7	6	10
Total	11	14	7	18

### 2. Outcome of Appeals 2005 - 2006

	Upheld (in full or part)	Dismissed	Withdrawn/ Discontinued	Orders made following s118 referral
General Division	0	0	0	0
Community Services Division	0	0	0	0
Equal Opportunity Division	0	0	0	0
Retail Leases Division	0	0	0	0
Revenue Division	0	0	0	0
Legal Services Division	0	1	0	0
Appeal Panel	2	4	0	0
Total	2	5	0	0

# Appendix E: Case Load, Time Standards

## Case Load

	All Divisions			Appeal Panel		
	Applications Lodged	Applications Completed	Applications Pending	Appeals Lodged	Appeals Completed	Appeals Pending
1998-1999	625*	234	394*	8	2	6
1999-2000	568	619	343*	44	20	31
2000-2001	666	629	380	53	45	39
2001-2002	695	642	433	61	59	41
2002-2003	766	817	382	73	67	47
2003-2004	908	791	502	93	110	30
				(65 Int; 28 Ext)	(89 Int; 21 Ext)	(22 Int; 8 Ext)
2004-2005	919	910	511#	96	80	48
				(77 Int; 19 Ext)	(59 Int; 21 Ext)	(42 Int; 6 Ext)
2005-2006	969	913	570#	99	92	53
				(82 Int; 17 Ext)	(74 Int; 18 Ext)	(48 Int; 5 Ext)
Total	6116	5555	(561)	527	475	(52)
				(463 Int; 64 Ext)	(415 Int; 60 Ext)	

\* Includes 257 transferred from predecessor tribunals and District Court on 6 October 1998 and 1 January 1999

# There is an inconsistency of plus 3 in this year's pending matters.

Note: Pending figures may have been adjusted following manual reconciliation of files.

### Explanatory Note

The figure for number of Appeals Pending is inconsistent with the registry Pending figure for 2000 (plus 1), 2005 (plus 2) and 2006 (minus 2). An audit is planned for 2007 in order to resolve discrepancies.

## Time Standards

As at 30 June 2006 the Tribunal's performance against its time standards was:

(*target appears in brackets*)

### General Division (other than professional discipline matters) Community Services Division, Revenue Division, Retail Leases

- 66% of matters disposed of in less than 6 months (85%)
- 88% of matters disposed of in less than 1 year (100%)
- Clearance ratio\* – 88%

### Equal Opportunity Division (other than review matters, includes leave matters)

- 57% of matters disposed of in less than 1 year (80%)
- 77% of matters disposed of in less than 2 years (100%)
- Clearance ratio\* – 134%

### Professional Disciplinary Decisions

- Legal Services Division
- General Division
- 69% of matters disposed of in less than 9 months (90%)
- 72% of matters disposed of in less than 1 year (100%)
- Clearance ratio\* – 123%

### Appeals

Internal Appeals from appealable decisions of the Tribunal and External Appeals

- 58% of matters disposed of in less than 6 months (80%)
- 91% of matters disposed of in less than 1 year (100%)
- Clearance ratio\* – 90%

(Clearance ratio is the percentage of cases disposed of divided by cases lodged over the last 12 months)

# Appendices

## Appendix F: Rule Subcommittee Membership

Administrative Decisions Tribunal Subcommittees of the Rule Committee – Membership (section 97 Administrative Decisions Tribunal Act 1997)

### General Division

1. Divisional Head: Judge Kevin O'Connor
2. Judicial member: Simon Rice
3. Non-judicial member: Mary Bolt
4. Community/special interest member: Wayne Kosh, Ombudsman's Office
5. Community/special interest member: Simon Moran, Public Interest Advocacy Centre
6. Community/special interest member: Brad Row, Law Society's Standing Committee for Government solicitors

### Community Services Division

1. Divisional Head: Tom Kelly
2. Judicial member: Anne Britton
3. Non-judicial member: Jennifer Green
4. Community/special interest members: Robert McLachlan, Law Society's Standing Committee on Children's Legal Issues; representative, National Children's and Youth Law Centre; representative, Commission for Children and Young People.

### Equal Opportunity Division

1. Divisional Head: Nancy Hennessy
2. Judicial member: Graham Ireland
3. Non-judicial member: Louise Nemeth de Bikal
4. Community/special interest members (including additional co-opted members): Teena Balgi, Kingsford Legal Centre; Mark MacDiarmid and Meredith Osborne, Blue Mountains Community Legal Centre; Julie Burton, Crown Solicitors Office; David Hillard (or his nominee), Clayton Utz.

### Retail Leases Division

1. Divisional Head: Acting Judge Michael Chesterman
2. Judicial member: vacant
3. Non-judicial member: Betty Weule
4. Community/special interest members: Ken Carlsund, Retail Tenancy Unit; Bill Healey, Executive Director, Australian Retailers' Association; Lexia Wilson, Property Council of Australia.

### Legal Services Division

1. Divisional Head: Acting Judge Karpin
2. Judicial member: David Officer QC
3. Non-judicial member: Dr Michael Costigan
4. Community/special interest members: Steve Mark, Office of the Legal Services Commissioner, Ray Collins, Law Society, Peter Garling, Bar Association.

