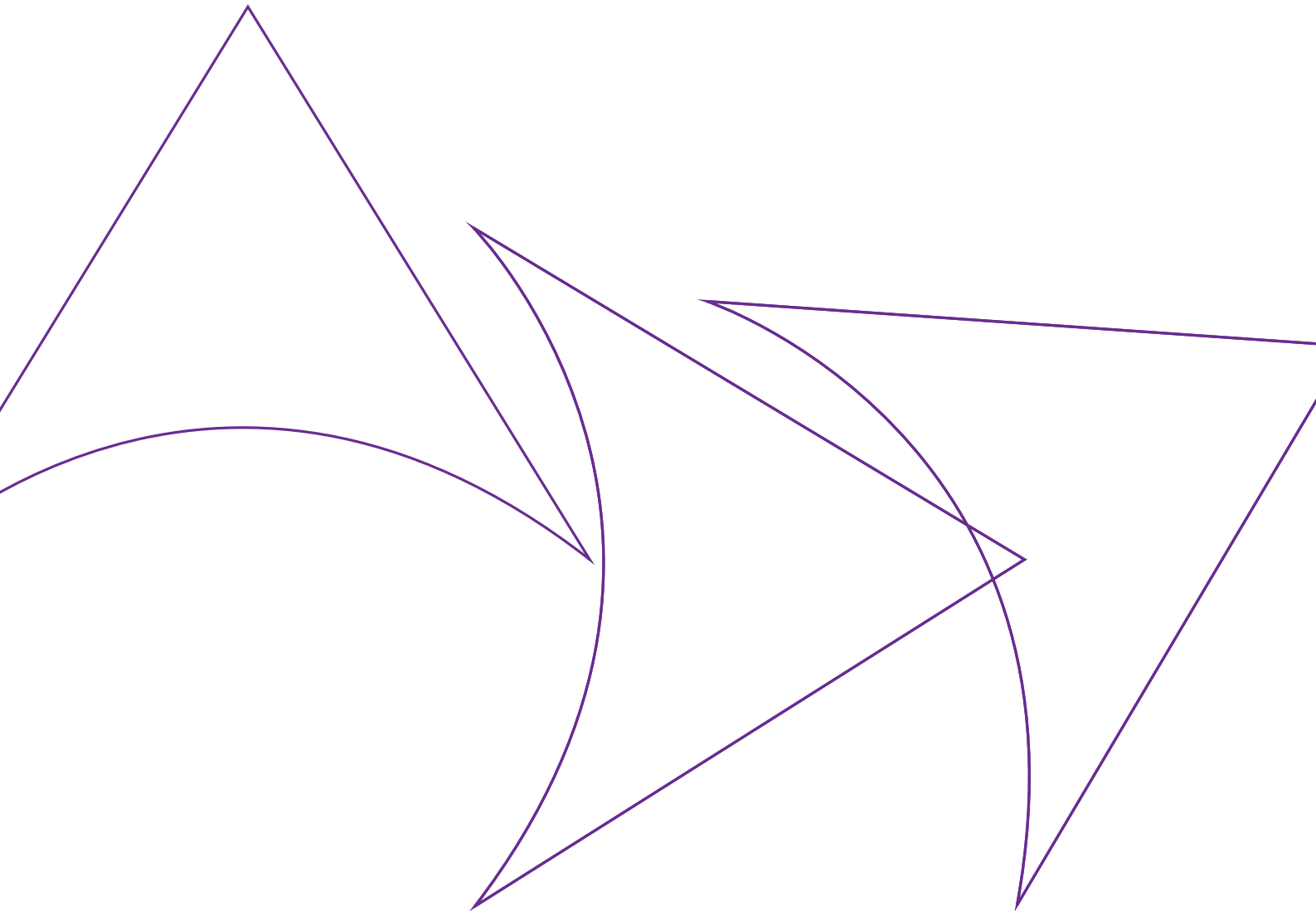




# Administrative Decisions Tribunal

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 seventh annual report of the Tribunal, covering the period  
1 July 2004 to 30 June 2005.

Yours sincerely,

Judge KEVIN O'CONNOR AM

President

17 October 2005

# Contents

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The Year in Review	4
Our Objectives	6
Legislative Changes Affecting the Operation of the Tribunal	7
Our Divisions and the Appeal Panel	8
<i>The 'Administrative Review' Sector</i>	9
General Division	9
Guardianship and Protected Estates List	11
Revenue Division	13
Community Services Division	14
<i>The 'Professional Discipline' Sector</i>	15
Legal Services Division	15
Other Professional Discipline Jurisdictions	16
<i>The 'Civil' Sector</i>	17
Equal Opportunity Division	17
Retail Leases Division	20
<i>Appeals</i>	22
Appeal Panel	22
Supreme Court	25
Services to our Users and Community Relationships	27
Membership	28
Practice and Procedure	30
Registry and Budget	32
<b>Appendices</b>	33
Appendix A List of Members	33
Appendix B Legislation	36
Appendix C Financial Information	38
Appendix D Statistics	39
Appendix E Case Load, Time Standards	47
Appendix F Rule Subcommittee Membership	48

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# The Year in Review



President Kevin O'Connor

I have referred to the subject of integration of Tribunals in previous reports. In January 2005 the new Western Australian 'super tribunal', the State Administrative Tribunal (SAT), commenced operation. It is headed by a President who is a Supreme Court judge, and has many of the features found in the structure of the Administrative Decisions Tribunal (ADT). There is a basic distinction made, as is the case with the ADT, between 'review' and 'original' jurisdiction.

SAT is, to a significant degree, a mirror of the Victorian Civil and Administrative Tribunal (VCAT). SAT has four 'Streams': Commercial and Civil (e.g. credit matters, strata titles disputes); Human Rights (e.g. equal opportunity, guardianship and administration); Development and Resources (e.g. town planning appeals); and Vocational Regulation (covering such areas as the medical profession, the legal profession and licensed trades and occupations).

SAT has many functions beyond those found in the ADT. On the other hand, SAT does not have a Freedom of Information review function. That remains in Western Australia with the Information Commissioner. As compared to VCAT, the most significant difference is that the SAT does not cover residential tenancy disputes, which were seen as best left to the Local Court, for reasons of geography and access.

The United Kingdom is presently the scene of the largest scale integration of tribunal services seen in the common law world. Major national tribunals are steadily being transferred from the portfolios where they were established (for example, health, immigration, social security) to the more detached environment of a portfolio which has as a core responsibility the administration of justice services, the Department of Constitutional Affairs. This is part of a government policy that seeks to build a stronger tribunal culture, improve their actual and perceived independence from the executive, improve the quality of their work and

improve their accessibility and efficiency. They are to be supported by a dedicated agency, the Tribunals Service, which will commence operation in 2006. The scale of the UK initiative is reflected in the statistic that 3000 staff members serving the incoming tribunals are to be transferred to the new Tribunals Service. The Government has declared that the Tribunals Service will 'reflect the needs and specialisms of individual jurisdictions' and 'in particular ... respect the differences between party vs party tribunals (such as the Employment Tribunals) and those hearing disputes between citizen vs state (on matters such as social security)'.  
These developments will, I expect, receive attention in the Attorney General's statutory review of the ADT, presently occurring. The review has before it the recommendations of an earlier review, that of the Parliamentary Committee which reported in 2002. One of the Parliamentary Committee's major recommendations was that there be a substantial integration into the ADT of the State's professional discipline jurisdictions. The ADT already has discipline functions in relation to legal practitioners, veterinary surgeons, architects, surveyors and accredited certifiers. The health professions are regulated by a scatter of small tribunals.

During the year the Department with responsibility for the *Retail Leases Act*, State and Regional Development, completed its review of the operation of the Act. The review expressed satisfaction with the role and operation of the Retail Leases Division and supported a number of proposals for strengthening the jurisdiction. The key recommendations are outlined in the Retail Leases section of this report.

An important aspect of the work of Tribunals is the use of alternative dispute resolution techniques where appropriate. These techniques, with their emphasis on confidentiality of process and facilitated negotiation, are always appropriate when dealing with civil disputes. They are less suited to areas such as occupational regulation, professional discipline and merits review more



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generally, where the public interest is usually best served by a public hearing and adjudication.

In the (almost) seven year history of the Tribunal, the Equal Opportunity Division has been the main user of mediation. In that time 326 mediations have been conducted, leading to 268 matters being resolved at or after the mediation session, an 82% success rate, with the balance (58 matters, 18%) continuing to hearing. Our research of results from comparable bodies indicates that this result sits at the high end of the range (usually 55% to 75%). I should thank, especially, Judicial Member Penny Goode and Non-Judicial Member Zita Antonios for their major contributions to this aspect of the work of the Tribunal. A full list of the Tribunal's mediators appears in Appendix A.

The Tribunal had another steady year of activity. Filings moved up a little on last year (1015 versus 1001). The Tribunal disposed of 990 matters, leading to a small increase in the number of matters pending as against 12 months ago (as at 1 July 2005, 559 matters). These statistics reveal that on average the time a matter remains in the Tribunal is 6.75 months. My aim is to reduce this average to less than 6 months and ideally closer to 5 months. To that end, the aim in 2005-2006 is to increase the disposal rate by 10 per cent (i.e. to approximately 1080 matters), which, assuming a steady filing rate, will bring our performance into the 5-6 months range.

As to shifts in the workload during the year, filings in the General Division and the Revenue Division increased – 433 versus 397 last year (General), and 93 versus 56 last year (Revenue), while Equal Opportunity Division filings decreased significantly (143 versus 201 last year). The other three Divisions had very similar workloads to the previous year. The same was true of appeals to the Appeal Panel (there was a small increase in internal appeals and a small decrease in external appeals); and of appeals to the Supreme Court (14 last year, 16 this year, with 5 upheld in whole or in part, in each year).

The downturn in the Equal Opportunity Division is not surprising. In part it is a function of a

decrease in complaints to the Anti-Discrimination Board. In addition, the State jurisdiction is becoming increasingly marginalised. It approximates today more to a small claims jurisdiction. New South Wales is one of only three jurisdictions in Australia which has a damages cap, and is equal lowest. The NSW cap is antiquated, having been limited to \$40,000 since 1983 – the then District Court civil claims cap. Had the limit been adjusted in line with the District Court's ordinary civil claims cap it would now be \$750,000. What this means in practice is that well-advised complainants with reasonable cases that might involve substantial damages claims will take their cases to the Federal jurisdiction if they can. There are also more liberal costs rules there.

In the last year the internal education program of the Tribunal involved special workshops and seminars. A one day, annual conference was not held, for the first time. The internal education program was led, very ably, by Deputy President Hennessy, and its intensive small group format proved to be very welcome.

The Divisional Head of the Legal Services Division, the Honourable Acting Judge John Nader QC, stepped down in June 2005 after three years' service. In his distinguished career, Acting Judge Nader has made a substantial contribution to the administration of justice in New South Wales and the Northern Territory. I thank him for his contribution to the ADT. The new Divisional Head is Deputy President Angela Karpin, formerly a Judge of the District Court and Deputy Chief Magistrate. Some changes will occur in the practice and procedure of the Division as a result of the new *Legal Profession Act 2004*.



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.

# Legislative Changes Affecting the Operation of the Tribunal

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The *Administrative Decisions Tribunal Amendment Act 2004*, which came into force on 1 January 2005, introduced three significant changes to ADT procedures. One of these was to permit the Tribunal to be constituted by one member when exercising interlocutory functions, both at Divisional and Appeal levels. Previously there was no distinction drawn in the ADT Act between the constitution of the Tribunal in interlocutory and final proceedings, meaning that interlocutory proceedings frequently had to be constituted by three member panels.

The amending Act also introduced a requirement that parties obtain leave to appeal from interlocutory decisions of the Tribunal. Before the amendment, parties generally had a right of appeal from Tribunal decisions whether interlocutory or final.

The other major change was to remove the right of appeal to the Appeal Panel from disciplinary decisions involving architects, surveyors and veterinary surgeons. Instead, these professions were given a right to appeal directly to the Supreme Court on a question of law and, with the leave of the Court, to have the appeal extended to the merits of the decision. The right of legal practitioners to appeal to the Appeal Panel in disciplinary matters was also removed by an amendment to the *Legal Profession Act 1987*, which commenced on 15 August 2004. For legal practitioners, however, the right of appeal to the Supreme Court is by way of rehearing.



# Our Divisions and the Appeal Panel

The conceptual classification used by the ADT Act to define the work of the Tribunal – ‘review of reviewable decisions’ and ‘original decisions’ – does not precisely capture the difference between that part of the business of the Tribunal that can be said to be of an ‘administrative’ or public law character (proceedings to which a private citizen and a government agency or a body exercising public power are parties), on the one hand; and that, on the other hand, which is of a ‘civil’ or private law character (disputes between private parties).

Three Divisions deal substantially or exclusively with administrative disputes between citizens and government. These are the:

- *General Division*: operative 6 October 1998. This Division hears most applications by citizens for the review of administrative decisions or administrative conduct.
- *Community Services Division*: operative 1 January 1999. This Division hears applications for review of various administrative decisions made in the Community Services and Ageing, Disability and Home Care portfolios. Its main business at present involves the hearing of applications by citizens for exemption from prohibition on being engaged in child-related employment because of a past serious sex offence to which a government agency is the respondent.
- *Revenue Division*: operative 1 July 2001. This Division hears applications for review of various State taxation decisions.

The Legal Services Division is the fourth Division of an ‘administrative’ or ‘public law’ character as its ultimate duty is to the public interest, when considering whether a member of a profession should be removed from the public register and prohibited from continuing to practise.

- *Legal Services Division*: operative 6 October 1998. This Division hears complaints referred under the *Legal Profession Act 1987* against legal



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

practitioners and licensed conveyancers. The Tribunal has disciplinary functions affecting other professions located in the General Division. A short report on them is given after the Legal Services Division report.

Two Divisions (Equal Opportunity and Retail Leases) are engaged in dealing with disputes of a ‘civil’ character.

- *Equal Opportunity Division*: operative 6 October 1998. This Division hears complaints of unlawful discrimination referred to it by the President, Anti-Discrimination Board under the *Anti-Discrimination Act 1977*.
- *Retail Leases Division*: operative 1 March 1999. This Division hears claims made under the *Retail Leases Act 1994* by parties to retail shop leases.

## Appeal Panel

The Tribunal has an Appeal Panel which hears internal appeals from decisions made by the Divisions of the Tribunal and external appeals from other decision-makers, as prescribed by Chapter 7 of the ADT Act.

In the following presentation, the Divisions have been grouped according to the conceptual category into which their work mainly or wholly falls: that is, ‘administrative review’, ‘professional discipline’ and ‘civil’.





# General Division

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### Structure and Functions

The President is 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.

After an application is lodged in the General Division it is referred either to a directions hearing or to a planning meeting.

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 planning meeting is listed for a 45 minute session. The agency is usually represented by the FOI/Privacy officer and a legal officer. The applicant almost always attends in person without legal assistance.

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 is comparable with previous years. Of the 919 applications filed in the Tribunal at Divisional level, 433 (47%) went to the General Division.

There was an increase in filings of 36 (9%). The disposal rate was slightly more than the number of filings meaning that business on hand at the end of the year decreased as against last year. The number of matters pending at the end of the year was 190 as compared to 198 last year.

Of the 440 matters disposed of during the year, 418 were applications for review. Of these 155 (37%) were resolved prior to hearing. Of the 263 review cases that went to hearing, 138 of the decisions were affirmed, 9 applications were found to be without jurisdiction (total 56%), 112 matters were the subject of orders which set aside or varied in some way the primary decision (42.5%) and in four privacy matters a

contravention was found but no action was required (1.5%).

Last year the comparable statistics were 156 (46%) withdrawn, resolved or dismissed prior to hearing; while 182 decisions went to hearing of which 60 were set aside or varied in some way (33% of the group that went to hearing).

These are the main components of the business of the Division:

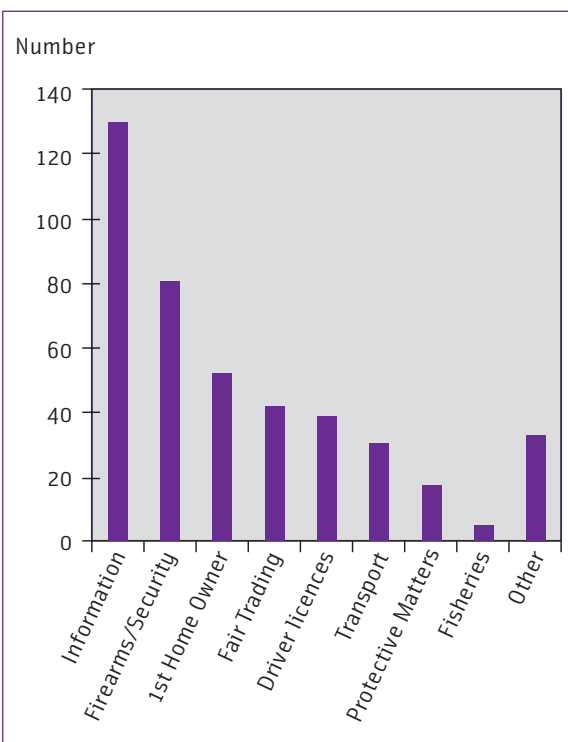
- (1) Review of agency decisions or agency conduct in respect of information. Total, 130 applications (30% of all applications lodged in the Division) comprising 96 under the *Freedom of Information Act* and 34 under the *Privacy and Personal Information Protection Act*. This was an increase from last year when the total was 88 (67 FOI; 21 PPIPA).
- (2) Review of decisions by the Police Commissioner relating to firearms and security industry licences. Total, 81 (19%) (firearms, 48; security industry, 33), slightly down on last year's total of 84 (61 and 23 respectively).
- (3) Review of decisions of Director General, Department of Transport (public passenger vehicle authorities, mainly taxi driver authorities). Total, 31 (7%), down on last year's total of 49.
- (4) Review of decisions of the Commissioner, Fair Trading made under a variety of Fair Trading portfolio statutes (*Fair Trading Act, Home Building Act, Licensing and Registration (Uniform Procedures) Act, Motor Dealers Act, Motor Vehicle Repairs Act, Pawn Brokers and Second-hand Dealers Act, Property Stock and Business Agents Act and Travel Agents Act*), total 42 (10%), as compared to 43 last year.

- (5) Review of decisions of the Commissioner, State Revenue under the First Home Owner Grant scheme. Total, 52 (12%), as compared to 31 last year.
- (6) Review of Police decisions to suspend immediately driver's licences. Total, 39 (9%), up on last year's total of 31.
- (7) Review of decisions of the Protective Commissioner and Public Guardian. Total, 17 (15 PC and 2 PG) (4%), as compared to 18 (12 and 6 respectively) last year.
- (8) Review of decisions of Director General, Ministry of Fisheries (commercial fishing licences). Total, 5 (1 %), last year 10.

The remaining 33 applications (8%) fell across a variety of Acts.

#### 2004-2005 Case Distribution

One category of business (review of first home owner grant decisions) more naturally belongs to the Revenue Division, which specialises in review of decisions of the Chief Commissioner, State Revenue. A legislative amendment to effect such a transfer has been made.



#### Legislative Changes

This year saw the commencement of the *Health Records and Information Privacy Act 2002* (HRIP Act) on 1 September 2004. This Act removes 'health information' from regulation under the *Privacy and Personal Information Protection Act 1998* (PIIP Act) and introduces a new regime for protecting it. Unlike the PIIP Act which only applies to public sector agencies, the HRIP Act applies also to individual people and organisations in the private sector who are health service providers or (in certain cases) who handle health information. So far no complaints under the HRIP Act have reached the Tribunal.

The *Architects Act 2003* commenced on 30 June 2004, replacing the *Architects Act 1921*. As a result of the new Act, disciplinary proceedings against architects are now undertaken before a specially constituted panel, comprising a judicial member of the General Division and two non-judicial members, being an architect and a consumer representative. Any disciplinary findings made by the former Board of Architects of NSW under the 1921 Act are also reviewable by such a panel.

#### Published Decisions

The General Division issued 165 published decisions during the year in respect of the 279 matters that went to final hearing. Last year the figure was 121 in comparison to 182 that went to hearing. One class of case is routinely resolved by ex tempore decisions – applications for review of decisions made by a police officer under the *Road Transport (General) Act 1999* to suspend a driver's licence following an adverse roadside breath test reading (or refusal to undertake a test). There were 39 applications for review in this category this year (and 31 last year). Once that group is taken into account, it will be seen that about 69% of remaining matters are the subject of reserved decisions. Last year it was about 80% and the year before close to 100%. The downward trend represents a greater emphasis in the Tribunal on giving ex tempore decisions.

# Guardianship and Protected Estates List

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The ADT may review decisions of the Public Guardian and the Protective Commissioner relating to the affairs of a protected person. These are heard in the General Division by members who belong to the Guardianship and Protected Estates List. They have special experience in these areas.

The Appeal Panel hears appeals from decisions of the Guardianship Tribunal and certain orders of Magistrates and the Mental Health Review Tribunal. Appeals are heard by a three member panel, comprising a presidential member, a judicial member and a non-judicial member who has experience in dealing with persons who have a disability.

## Case Load

Seventeen applications for review were filed this year as compared with 18 last year. The Tribunal disposed of 22 applications this year, 13 more than last year (when applications for review were just beginning to be lodged in the Tribunal following the commencement of the amended legislation). Of these, only two decisions were set aside.

There were 16 new appeals filed from decisions of the Guardianship Tribunal, as compared with 28 last year. As with last year, there were no appeals from decisions of Magistrates or the Mental Health Review Tribunal. Of the 20 external appeals disposed of relating to guardianship and protected estates matters, 10 were withdrawn or discontinued, five were upheld and five were dismissed.

## Significant Themes and Cases

Many of the review decisions affirmed the Protective Commissioner's decision to sell a former residence of the protected person. This was generally on the basis that the decision to sell was in the protected person's best interests, despite the objections of friends, family or the person herself.

In one significant case, the family of a protected person sought review in the Tribunal of a decision of the Protective Commissioner to pay them a limited amount for past gratuitous care out of the estate of the protected person. The Commissioner then sought a direction from the Supreme Court as to whether he had any power under the *Protected Estates Act 1983* to make such a payment. In *Protective Commissioner v D* (2004) 60 NSWLR 513, the Court of Appeal held that the Act authorised payments for past gratuitous care. The proceedings then resumed in the Tribunal. In *GJ and Ors v Protective Commissioner* [2005] NSWADT 66, the Tribunal had to decide whether the Protective Commissioner could make a payment for past gratuitous care exceeding the amount allocated for that purpose in a damages award or settlement in personal injuries litigation. The Tribunal held that the Commissioner's discretion to make payments was to be exercised in the protected person's best interests, which could include the fulfilment of his or her moral obligations. A payment to a carer in excess of the amount allowed for in a settlement was permissible if the amount allowed for was less than the market cost of the carer's services, and if there was a reasonable amount preserved for the protected person's future needs.

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During the current year, there were four successful appeals from decisions of the Guardianship Tribunal, all relating to breaches of procedural fairness. These appeals were brought by persons holding a power of attorney for the protected person, who were parties to financial management applications under the *Guardianship Act 1987* (see *Cachia* [2005] NSWADTAP 16; *Carew* [2005] NSWADTAP 13; *NG* [2005] NSWADTAP 11; *KV* [2004] NSWADTAP 48). The Appeal Panel upheld the claims of these persons that the Guardianship Tribunal had failed to accord them procedural fairness in various ways: by not giving them adequate time to respond to adverse material in medical reports (*KV*; *Cachia*) or by failing to allow them to respond to adverse evidence reflecting on their own propriety or capability (*Carew*; *NG*).

The Appeal Panel held in *KV* and *Cachia* that, except in exceptional circumstances, procedural fairness requires the Guardianship Tribunal to provide a party with a full copy of medical reports relied upon so as to enable other practitioners to comment on the diagnosis or diagnoses outlined in the reports.

# Revenue Division

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The Revenue Division deals with applications for review of decisions made under State revenue law. A Divisional Head has yet to be appointed, with the President currently taking responsibility for the conduct of the Division.

## Structure and Functions

A judicial member sitting alone conducts directions hearings and hears applications. The members assigned to the Division all have substantial tax law expertise. In contrast to the usual position in merits review where no onus is cast on parties, State revenue law casts an onus on the applicant/taxpayer to satisfy the Tribunal that a determination by the Chief Commissioner, State Revenue should be disturbed. In practice this has not proved to be a significant matter. All applications for review are first the subject of a determination by the Commissioner. The official file is tendered to the Tribunal. It normally contains a comprehensive record of the applicant's factual claims and legal submissions. Often at hearing the circumstances are agreed, and the task for the Tribunal is one of applying the law to the facts.

There is one tax review jurisdiction that has been allocated to the General Division of the Tribunal, review of determinations refusing or recalling first home owner grants. This is being transferred to the Revenue Division in the 2005-06 year.

## Case Load and Significant Themes

The Division received 93 applications during the year, a significant increase on the 56 applications of last year. It disposed of 75 applications, leaving 53 on hand at the end of the year. There was a significant decrease in filings relating to payroll tax (down from 16 to 3) and an increase in filings relating to stamp duty imposed under the *Duties Act* (up from 6 to 25). Filings under the *Taxation Administration Act*, which deals with interest and penalty tax, doubled, up from 10 to 21, as did filings under the *Land Tax Management Act* (up from 21 to 42). Of the 75 disposals, 44 did not go to a hearing. Of the 31 that went to hearing, 21 decisions were

affirmed, two lacked jurisdiction and 8 resulted in the decision being set aside (7) or varied (1).

The primary liability to pay tax is not in issue in a significant proportion of applications for review, which are contesting the payment of interest or penalty tax. Of the 22 revenue decisions reported on the Caselaw NSW website, 5 were concerned exclusively with interest or penalty tax and 1 was concerned with costs. When tax is overdue, the Commissioner may impose interest at the market rate, as well as premium rate interest and penalty tax. The Appeal Panel stressed this year that the market rate component is one 'that could rarely, if ever, be waived as otherwise tax would be paid at a devalued amount thereby discriminating against taxpayers who meet their obligations on time' (see *Guinta* [2005] NSWADTAP 19 and, in the preceding financial year, *Incise Technologies* [2004] NSWADTAP 19). The Tribunal's approach is that the premium rate is a form of penalty to provide an additional economic deterrent against taxpayers failing to meet their obligations on time. Penalty tax is imposed where there is an intentional disregard of the taxpayer's obligations, but the Commissioner has a discretion to remit it, and the Tribunal has said that this discretion is 'to ensure that the penalty provisions are applied in a just and equitable manner to all taxpayers' (*Hirere* [2004] NSWADT 251).

Cases where decisions favourable to the taxpayer were made covered such matters as: whether trusts were subject to the grouping provisions applying to payroll tax (*Fanfold Business Forms*); the duty payable in respect of written transfer where duty had been paid on an earlier oral agreement to transfer property (*Schipp*); the appropriate application of the discretion to relieve a taxpayer of liability for duty on what was in substance, if not in fact, the taxpayer's principal place of residence (*Doney*); whether penalty tax should be reduced due to the taxpayer's cooperation with an investigation (*Ettamogah Mob; Nikaed*); whether the rental of a telephone handset to customers of a telephone service was subject to duty (*Telstra*).

# Community Services Division



Deputy President Tom Kelly

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. It has both merits and original decisions roles. At present there is about an equal number of applications for original decisions as for merits reviews. 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

The number of applications and the rate of disposals have remained fairly constant over the last two years. This year there were 42 new applications filed, compared with 43 last year. Twenty of these applications were for original decisions and 22 were for review of reviewable decisions. The Tribunal disposed of 38 applications, three fewer than last year. Of the 21 applications for reviewable decisions which were disposed of, three were varied or set aside. In nine of the 17 original decisions disposed of, a declaration was made that the *Child Protection (Prohibited Employment) Act* does not apply to the applicant.

## Significant cases and themes

There were no significant changes to legislation affecting the jurisdiction of the Division.

Under the *Children and Young Persons (Care and Protection) Act 1998* it is possible for the Department of Community Services ('DOCS') to delegate to private welfare organizations its function of arranging and overseeing fostering placements. DOCS often consults the private welfare organization before it makes a decision to terminate the placement. In one case dealt with by the Tribunal, a private welfare organization actually made the final decision to terminate the placement. This meant that the private welfare organization was the respondent to the application for review. DOCS was not a party to the proceedings.

Conversely, in another application (*PR v Director General of Department of Community Services* [2005] NSWADT 38), the same private welfare organization had administered a placement that DOCS terminated after consulting with the organization, and sought to be joined as a second respondent to defend DOCS's decision. For several reasons the Tribunal declined to join this organization and, noting that the organization's officers would be giving evidence on behalf of DOCS, expressed the view that the agency did not have sufficient reason to be joined.

## Legal Services Division

The new Divisional Head is Acting Judge Angela Karpin, part-time Deputy President. Acting Judge John Nader RFD QC, part-time Deputy President, was Head of the Division until 8 June 2005 when he retired from this office.

### Structure and Functions

The primary function of the Division is the hearing and determination of applications for disciplinary orders brought pursuant to the *Legal Profession Act 1987*. Applications to the Tribunal may be made by the Legal Services Commissioner or the Councils of the Bar Association or the Law Society.

The Division sits as a three member panel, including one lay person. If the practitioner against whom a complaint is made is found by the Tribunal to be guilty of professional misconduct or unsatisfactory professional conduct, the Tribunal may make consequential orders, including, but not limited to, ordering that the name of the practitioner be removed from the roll of legal practitioners; ordering that the practitioner's practising certificate be cancelled and stipulating a period during which it may not be renewed; imposing a fine, or reprimanding the practitioner. The practitioner may be ordered to pay the costs of the Commissioner or the complainant Council.

This Division also reviews some decisions pursuant to the *Conveyancers Licensing Act 1995*.

### Case Load and Significant Themes

There were 42 matters pending as at 30 June 2004. Forty-two new applications were filed during the year; 48 matters were disposed of, leaving 36 matters pending as at 30 June 2005.

Of the 48 matters disposed of after hearing, 9 were dismissed; 10 legal practitioners were removed from the roll; 23 were reprimanded, some of whom were also fined; two were suspended from practice; two were fined; and the remaining two matters involved sections of the Act dealing with employment of non-legal clerks, and disqualified or convicted associates.

Significant cases included *New South Wales Bar Association v 'LI'* [2005] NSWADT 15 where the Tribunal held that the Bar Association was not entitled to withdraw proceedings it had brought charging a barrister with professional misconduct. The Tribunal's decision was based on an interpretation of the statutory scheme for the professional discipline of barristers.



Deputy President  
Angela Karpin

In another case, the Appeal Panel upheld an appeal from a solicitor against a decision of the Tribunal removing him from the roll of practitioners. The presiding member in the proceedings had been a member of a committee of the Law Society that had charge of investigations into the practitioner about ten years earlier, and the Appeal Panel held that a fair minded observer could entertain a reasonable apprehension that the member was biased: *Khera v Law Society of NSW* [2005] NSWADTAP 29.

Behaviour which resulted in adverse findings included such serious conduct as misappropriation of trust funds, falsification of documents, and untruthfulness to clients or to the legal practitioner's professional body.

### Legislative Developments

On 15 August 2004, amendments to the *Legal Profession Act 1987* came into effect, creating a right to apply the Legal Services Division for review of decisions of the Legal Services Commissioner, Bar Council and Law Society Council to reprimand a legal practitioner. These are described as external appeals and are therefore governed by the criteria affecting external appeals, even though they are heard at Divisional level.

Registry staff and some members of the Legal Services Division devoted considerable time to issues surrounding the implementation of the *Legal Profession Act 2004*, which it is anticipated will come into force late in 2005.

# Other Professional Discipline Jurisdictions

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The following jurisdictions form part of the General Division.

*Veterinary Surgeons:* The Tribunal sitting as a Veterinary Disciplinary Panel of the General Division determined three new applications for disciplinary orders during the year. In one, the Tribunal found the complaints not proved. In another, the Tribunal ordered that the name of a veterinary surgeon who had been convicted of wilfully supplying injectable steroids be removed from the roll. In the final case, the Tribunal ordered that a veterinary surgeon who had repeatedly breached standards over many years be suspended from practice for 9 months and that he should then be required to work under supervision for at least a further 15 months.

*Accredited Certifiers:* The office of accredited certifier is one conferred under the provisions of the *Environmental Planning and Assessment Act 1979*. It is a relatively new office created to help speed up the development approval process. Accredited certifiers belong to the private sector and can exercise some of the decision-making functions once vested exclusively in relevant authorities such as local councils. They are subject to disciplinary procedures. These include the possibility of referral of their conduct for inquiry by the Tribunal. The jurisdiction is vested in the General Division. Proceedings so far have been constituted by a panel comprising a presidential judicial member of the Tribunal and a non-judicial member who is an accredited certifier of standing.

During the year there were two disciplinary inquiries into the conduct of accredited certifiers. In one the certifier had been found guilty of unsatisfactory professional conduct in the previous year, and this year the issue of the appropriate disciplinary order was determined, the Tribunal administering a caution. In the other the Tribunal found a certifier guilty of professional misconduct and issued a reprimand and imposed a fine.

*Surveyors:* The Tribunal has jurisdiction in respect of the professional discipline of surveyors under the *Surveying Act 2002*, which commenced on 25 June 2003, replacing the *Surveyors Act 1929*. So far no applications have been brought under this Act.

*Architects:* The Tribunal has jurisdiction in respect of the professional discipline of architects under the *Architects Act 2003*, which commenced on 30 June 2004, replacing the *Architects Act 1921*. One application was brought under the Act during the year, but it was not disposed of.

A new practice note was issued during the year to simplify and unify practices and procedures in professional discipline proceedings relating to veterinary surgeons, accredited certifiers and architects (PN 17).



## Equal Opportunity Division

The Divisional Head is Magistrate Nancy Hennessy, full-time Deputy President.

### Structure and Functions

The Equal Opportunity Division makes inquiries into complaints that allege breaches of the *Anti-Discrimination Act 1977*. A complainant must first lodge a complaint with the President of the Anti-Discrimination Board (ADB). If the complaint cannot be conciliated or it cannot be resolved for some other reason, it may be referred to the Tribunal. A panel of three sits on each hearing – one judicial member and two non-judicial members who have expertise in various areas of discrimination. Apart from the Deputy President, there are 16 judicial members and 22 non-judicial members in the Division, all of whom are part-time members.

The Deputy President holds regular meetings with members of the Division where management and substantive issues are discussed. The Deputy President also meets regularly with the President of the Anti-Discrimination Board, or his representative, to discuss issues of mutual interest and concern.

On Friday 19 November 2004, the Tribunal hosted a meeting of members of state and federal courts and tribunals which hear equal opportunity cases. The issues discussed included case management and inspection of files by members of the public. Professor Neil Rees, a part-time judicial member of the Equal Opportunity Division, gave a presentation entitled, 'Procedure and evidence in 'court substitute' tribunals' which was very well received.

### Case Load

The President of the ADB referred 142 new complaints to the Tribunal during the financial year. That was 57 fewer than were referred in the previous financial year. That decline is a reflection of the decline in the numbers of complaints made to the President during the year. The Tribunal also has a limited jurisdiction

to review decisions of the President of the ADB. There was only one application to review a decision of the President, but the Tribunal decided that it did not have jurisdiction to review that decision. One hundred and fifty nine complaints were disposed of during the year, an increase of four from last year. One hundred and thirty three matters remained pending at the end of the year.



Deputy President  
Nancy Hennessy

Of the 159 disposals, a total of 111 were settled or withdrawn, 9 were summarily dismissed and 40 matters proceeded to substantive hearing. Of those 40, 24 were dismissed. Orders were made in favour of the applicant in 16 cases. 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. In addition, 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.

The Tribunal conducts a preliminary case conference at which parties are offered the opportunity of mediation if their case is suitable. Of the 159 original complaints that were finalised during the year mediation was conducted in 79 matters. Of those 79 matters, 60 (76%) settled at or after mediation and 19 (24%) proceeded to a hearing. This outcome is slightly lower than the average settlement rate of 82% since 1998. (See Table on p18.)

A complaint may allege more than one ground of discrimination. The most frequently cited grounds of discrimination were race (47), disability (43), sex (25) and sexual harassment (20), followed by discrimination on the grounds of a person's responsibilities as a carer (11),

<b>Mediation in Equal Opportunity Division</b>					
Year	Disposals where Mediation Conducted	Settled at Mediation	Settled After Mediation	Proceeded to Hearing	Settlement rate (%)
1998-99	21	12	6	3	86
1999-2000	34	27	4	3	91
2000-01	30	21	6	3	90
2001-02	33	10	12	11	67
2002-03	53	27	20	6	89
2003-04	76	46	17	13	83
2004-05	79	32	28	19	76
<b>TOTAL</b>	<b>326</b>	<b>175</b>	<b>93</b>	<b>58</b>	<b>82</b>

homosexuality (9), age (7), marital status (3) and being a transgender person (4). There were four complaints of homosexual vilification, two complaints of racial vilification and one complaint of transgender vilification. The respondents in discrimination cases were most commonly government bodies and corporate entities, together comprising 65% of all respondents. (See Table on p19.)

The Equal Opportunity Division's time standards for disposal of matters is 80% of matters to be finalised within 12 months and the remaining 20% within 2 years. The Division almost met the target for the number of matters disposed of within 12 months. Of the 160 cases disposed of during the year, 120 (75%) were disposed of within 12 months and a further 35 (22%) in less than 2 years. The remaining five matters were more than two years old for reasons which are often beyond the Tribunal's control such as related pending proceedings in other jurisdictions.

### **Legislative Developments**

Procedural amendments to the *Anti-Discrimination Act* which commenced on 2 May 2005 include a provision that where a complaint is declined by the President of the Board because, for example, it lacks substance or is frivolous or vexatious, the complainant must obtain the Tribunal's permission before being allowed to proceed. There were no applications for leave to proceed during May or June 2005. Following the amendments a new practice note (PN 19) was developed for the Division.

### **Significant Cases**

The Tribunal upheld a complaint that two radio presenters had engaged in homosexual vilification during a program where they referred to a male couple involved in the television show, 'The Block.' The Tribunal said it was not necessary that there be an intention to incite hatred, nor was it necessary to show that anyone was in fact incited to hatred.

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**Respondents in EOD applications filed in 2004/2005**

Respondents	Number	Proportion (%)
State government agencies or public authorities	53	37.1
Corporate entities	40	28.0
Legal, health and social services	13	9.1
Individuals	12	8.4
Hotels and accommodation venues	9	6.3
Clubs and entertainment venues	7	4.8
Other	9	6.3
<b>TOTAL</b>	<b>143</b>	<b>100</b>

The Tribunal ordered the employer and the presenters to publish an apology. The Tribunal noted that an apology involves an acknowledgement of the wrongdoing. It is of value despite the absence of any genuinely held feelings of regret. The presenters and the employer have appealed. (*Radio 2UE Sydney Pty Ltd & Ors v Burns* [2004] NSWADTAP 53 and *Burns v Radio 2UE Sydney Pty Ltd & Ors (No 2)* [2005] NSWADT 24.)

In another significant case, an applicant claiming that his employer had discriminated against him sought to summons a former supervisor. The supervisor is now the Governor of New South Wales. The Governor resisted the summons. The Tribunal found that whilst her evidence would have been relevant to the Tribunal she was not compellable: *O'Sullivan v Central Sydney Area Health Service (No 2)* [2005] NSWADT 136. The applicant has appealed against the decision.

# Retail Leases Division



Deputy President  
Michael Chesterman

The Divisional Head is Acting Judge Michael Chesterman, part-time Deputy President.

## Structure and Functions

A Supreme Court decision in December 2004 (*World Best Holdings Ltd v Sarker* [2004] NSWSC 1164) ruled that a judicial member of the Division who had been assigned to hear an unconscionable conduct claim under the *Retail Leases Act 1994* did not satisfy the special qualification required by the ADT Act. The Court's interpretation of the relevant provision meant that no other member of the Division, including the Divisional Head and the President, met the requirement. In consequence, there were delays in bringing other unconscionable conduct claims to the stage of a hearing. Acting Judge Nader, part-time Deputy President, agreed to be assigned to the Division to assist in meeting the difficulty that arose. His experience met the relevant standard, as interpreted by the Supreme Court. In addition, a small number of unconscionable conduct claims were transferred to the Supreme Court under a provision of the *Retail Leases Act*.

On 15 June 2005, legislation enacted to resolve these problems (the *Courts Legislation Amendment Act 2005*) commenced operation. It provides that unconscionable conduct claims may be heard by a judicial member who is a current, retired or acting judge of any court in Australia, or who is a Deputy President. It also has the effect of validating retrospectively all prior decisions of the Tribunal in unconscionable conduct claims, in so far as they were vulnerable to challenge on the ground that the judicial member who heard the claim did not possess the requisite qualifications. In *Attorney General of New South Wales v World Best Holdings Ltd* [2005] NSWCA 261, the Court of Appeal

confirmed the retrospective operation of this legislation, with reference specifically to the proceedings in *World Best Holdings Ltd v Sarker*.

In the past, it was necessary to constitute multi-member panels to deal with interlocutory stages of unconscionable conduct claims. As a result of an amendment to the ADT Act which commenced on 1 January 2005, it is now possible to list interlocutory matters before a single judicial member. This means that any judicial member may deal with interlocutory matters in proceedings involving allegations of unconscionable conduct.

## Case Load

At the beginning of the year, 64 applications were pending. During the year, 166 applications were filed and 147 were disposed of, leaving 83 applications pending. This increase in the number of matters pending is largely to be explained by the special problems that the Tribunal encountered with regard to unconscionable conduct claims.

In the 166 new applications, 139 (84%) contained retail tenancy claims only, 5 contained unconscionable conduct claims only (3%) and 22 (13%) contained both types of claim. Compared with last year, there was a smaller proportion of applications containing unconscionable conduct claims, either alone or in conjunction with retail tenancy claims.

Of the 147 applications that were disposed of, 103 (70%) were settled. This is a high rate of settlement, though not as high as last year's rate of 74%. A further five (3%) were transferred to the Supreme Court. Out of the 39 applications that were determined following a hearing, 20 (51%) were dismissed (including three on the ground of lack of jurisdiction). In the remaining 19 (49%), orders were made.

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## Significant Themes

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

- Whether the Tribunal has jurisdiction to determine claims of misleading and deceptive conduct under trade practices legislation;
- The definition of a 'retail shop lease' under the *Retail Leases Act*;
- The consequences of failure by a lessee to observe the requirements stated in the lease for exercising an option of renewal;
- Damages for disturbance of a lessee's right to possession;
- Relief against forfeiture of a lease;
- The nature of unconscionable conduct as defined in the *Retail Leases Act*; and
- The grounds justifying an order for costs in a retail lease dispute.

Probably the most significant decision during the year related to the first issue in this list. Reversing previous authority, the Appeal Panel held that the Tribunal has jurisdiction to award damages for misleading and deceptive conduct under the relevant provision in Commonwealth law (s 52 of the *Trade Practices Act 1974*), though not under its counterpart in New South Wales law.

The last issue in this list continues to feature in a high proportion of the cases decided. The Tribunal is continuing to develop settled principles for determining what are 'special circumstances warranting an award of costs' under s 88 of the ADT Act.

## Legislative Developments

During the year under review, amendments to the *Retail Leases Act* commenced operation, prohibiting (subject to exceptions) a lessor of retail shop premises from charging lease preparation expenses to the lessee.

Judicial members of the Division have continued to participate in a major review of this Act, being conducted by the Department of State and Regional Development. It is anticipated that amending legislation will be submitted to Parliament in the second half of 2005. The topics that the legislation is expected to cover include the following:-

- the scope of the Tribunal's jurisdiction over claims arising out of retail leases, including whether it should have jurisdiction to determine claims of misleading and deceptive conduct under the *Fair Trading Act 1987*;
- time limits for lodging claims;
- the appointment of specialist valuers; and
- the continuance of special requirements on the hearing of unconscionable conduct claims.

## Appeal Panel

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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 the Tribunal. External appeals are appeals from decision-makers outside the Tribunal including the Guardianship Tribunal and the Mental Health Review Tribunal.

The Appeal Panel generally 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 80 appeals during the year, of which 59 were internal appeals and 21 were external appeals. Of the internal appeals, 29 were dismissed, 19 resulted in decisions that varied or set aside the decision under appeal and 11 were withdrawn or discontinued. Of the external appeals, 5 were upheld, 5 were dismissed, and the remaining 11 were withdrawn or discontinued.

The presiding members in respect of published internal appeals during the last year were the President (12 matters), Deputy President Hennessy (11 matters), Deputy President Chesterman (21 matters), Deputy President Hogan (one matter, completed since expiry of term of office) and Deputy President Nader (one matter). In relation to published external appeals, the presiding members were Deputy President Hennessy (8 matters) and Acting Deputy President Rees (one matter).

### **Legislative Developments**

As from 15 August 2004, a legal practitioner may appeal to the Legal Services Division of the Tribunal from decisions of the Legal Services Commissioner, Bar Council and Law Society Council to reprimand a legal practitioner. These are described as external appeals and are therefore governed by the criteria affecting 'external appeals,' but they are to be heard at Divisional level. Three appeals have been lodged under the new provisions.

### **Survey of Appellate Decisions**

The following is a brief survey of the issues that arose in those 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 05/53 means the appeal reported at [2005] NSWADTAP 53. The survey organises the rulings by reference to Division rather than nature of error (e.g. procedural fairness, jurisdiction, statutory construction).

### **Freedom of Information and Privacy (Appeals from General Division)**

*Freedom of Information Act:* Advice given by a solicitor and costs consultant to a government agency concerning government proposals to reform a workers' compensation costs regulation was policy advice not legal advice, and so the legal professional privilege exemption did not apply to it: 04/40. In respect of the internal working documents exemption, the high level of communications was not a highly influential factor in favour of release; the more relevant question is what 'tangible harm' will result from release. The secrecy exemption did not apply to a document where a non-disclosure provision was very broadly expressed, and did not refer specifically to the kind of information for which exemption was claimed: 05/33.

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*Privacy and Personal Information Protection Act:* The disclosure of information about a student by one university to another in the course of an investigation was not covered by a Direction exempting the university from compliance with the disclosure provisions of the Act, because it had not been established that non-disclosure would detrimentally affect the performance of the university's investigative functions: 04/37. An applicant's complaint about particular conduct by an agency does not trigger an obligation on the part of the agency to examine every step of the information cycle (from collection to disposal). Rather, in determining which, if any, information protection principle has been contravened, the agency must look at the application itself, any contraventions nominated by the applicant, and the material he or she has attached to the application: 04/50. Leave to appeal out of time was granted where the reason for not appealing within time was logical and sound and the appellant appealed promptly once it became apparent that its interests were adversely affected: 04/36.

**Licensing  
(Appeals from General Division)**

*Taxi drivers:* The Tribunal did not adequately explain why its adverse findings in respect of complaints against a taxi driver, some of which were of great seriousness, were not conclusive as to its assessment of the driver's character in determining whether he was a 'fit and proper person' to hold a taxi authority: 04/42, 05/7. The Tribunal erred in concluding that cancellation of a taxi authority is mandatory where the taxi driver no longer has a driver's licence: 04/31.

*Firearms:* The Tribunal should not have disregarded evidence of primary producer as to the need for a weapon as it was based on 'specialized knowledge' and there was no other evidence available: 04/52.

*Motor Dealers:* The Tribunal failed to determine or apply the relevant law in relation to the question of agency or bailment where the dealer claimed that it did not take vehicles on consignment, but rather under a temporary bailment: 05/25.

**State Revenue Law  
(Appeals from Revenue Division)**

*Duties Act:* In determining whether dutiable transactions relating to separate items of dutiable property are to be aggregated, it was legitimate in some situations to consider only the conduct of the purchasers and their beneficiaries. The circumstance that the vendors were all unrelated was not conclusive: 04/51. The rental of a telephone handset to customers of a telephone service was excluded from duty imposed on hire of goods as it was an arrangement ancillary to the service: 05/28.

**Professional Discipline  
(Appeals from General Division and  
Legal Services Division)**

*Legal Profession:* Where a member of a professional governing body was a member of a committee that had charge of investigations into a practitioner; or had any material connection to action taken against a practitioner, that member was disqualified from sitting in disciplinary proceedings against the practitioner on the ground of apprehended bias: 05/29.

*Veterinary Surgeons:* A costs order was awarded in the case of an appeal against a disciplinary order without any real prospects of success: 05/15.

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**Retail Leases  
(Appeals from Retail Leases Division)**

Stay of execution granted pending appeal in respect of part of damages award affected by uncertainty: 04/33. The rule that damages for breach of contract are confined to losses reasonably in the contemplation of both parties as a probable result of the breach does not require the parties to have regard to the precise details of the events giving rise to the loss: 04/38. The Tribunal has jurisdiction to award damages, in a retail leases case, for a breach of the *Trade Practices Act*: 05/9. Where a lessor's disclosure statement indicated that there was no charge for facilities and services provided by the lessor, the *Retail Leases Act* debarred the lessor from charging for those services even though provision was made for such charges in the lease: 05/10. Where a lessor had promised to renew a lease if work on the premises was completed within a certain time frame, and the lessee spent significant money on the work but did not finish within that time frame, the lessor was not estopped from refusing to enter into the new lease agreement: 04/47. In making costs decisions under the ADT Act the Tribunal should be cautious about basing a decision on behaviour of a party unconnected with the conduct of the litigation: 05/32. It is essential that parties are given an opportunity to be heard on costs after the Tribunal has delivered its decision and before it makes a costs order: 05/26. Costs were awarded against a party which brought a case which did not have any real prospects of success: 05/17. The Tribunal's omission to deal with one line of argument in its judgment constituted an error of law: 05/6.

**Equal Opportunity  
(Appeals from Equal Opportunity Division)**

The Appeal Panel refused to make an interlocutory order for a stay in circumstances where the Tribunal had made a determination as to liability but not as to the appropriate remedy, holding that the prejudice to the unsuccessful respondents had to be balanced against the interest of a successful applicant in having a final resolution of his or her application: 04/53. The Tribunal erred in holding that the employer is required, at the time of deciding whether to offer employment to a person with a disability, to identify the inherent requirements of the position in order to be entitled to rely on the defence that the person would not be able to carry out those requirements: 05/1. Leave to appeal from an interlocutory decision of the Tribunal was refused because the applicant delayed and because the appeal had no reasonable prospects of success: 05/30. The Tribunal denied procedural fairness to the applicant through determining that no costs should be awarded without providing her with an opportunity to make submissions on the matter: 05/18.

**Guardianship and Protected Estates (External Appeals, Appeals from General Division)**

A stay against a decision of the Guardianship Tribunal to make a financial management order was refused, as the order was in the interests of the person subject to it: 04/29. When making a financial management order, the Guardianship Tribunal did not give a person with a legal interest in the proceedings an adequate opportunity to respond to adverse material, and so breached the rules of procedural fairness: 04/48, 05/11, 05/13, 05/16.



# Supreme Court

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Appeal Panel decisions, and a limited number of Tribunal decisions, may be appealed on a question of law to the Supreme Court under s 119 of the ADT Act or under the statute conferring jurisdiction. As a result of 2004 amendments to the *Legal Profession Act 1987*, appeals from legal professional discipline decisions go from the Tribunal to the Court of Appeal, bypassing the Appeal Panel. An Appeal Panel may also refer a question of law to the Supreme Court for its opinion under s 118 of the ADT Act. Alternatively, and less commonly, an originating summons can be taken out by a party, effectively seeking to remove the matter from the Tribunal and have it dealt with by the Supreme Court instead of the Appeal Panel.

1. *Vice-Chancellor Macquarie University v FM* [2005] NSWCA 192: The Appeal Panel had held that the *Privacy and Personal Information Protection Act* regulated some information which employees of a public sector agency had acquired through direct experience and which was not held in recorded form. That is, where employees disclosed information they had obtained by witnessing an incident when acting in an official capacity, the agency could be liable under the Act. The Court of Appeal, influenced by references in the Act to a public sector agency 'holding' information, reversed this decision. The Court said that it was almost impossible to see how these sections could operate if they were 'intended to apply to information in the minds of employees acquired by direct visual or aural experience and never recorded in any manner.'
2. *Amery v State Of NSW (Director-General NSW Department Of Education And Training)* [2004] NSWCA 404: A group of female casual school 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. Disagreeing with the Tribunal, the Appeal

Panel held that the teachers had not shown that the condition (lower pay) was 'not reasonable' having regard to the teachers' decision not to accept permanent employment a long way from home and having regard to the existence of an industrial award regulating teachers' salaries. The Court of Appeal upheld the teachers' appeal. Holding that the condition was 'not reasonable' under the *Anti-Discrimination Act*, the majority noted that it was the Department's practice of not making over-award payments that imposed the requirement of lower pay for work of equal value, and not the award itself.

3. *Commissioner of Fire Brigades (NSW) v Lavery* [2005] NSWSC 268: The case concerned a letter written by NSW Fire Brigades to a fire fighter with an eye injury over thirty years ago, deploying him in a non-operational position and directing that he should remain at the same rank indefinitely. The Tribunal awarded him damages for discrimination on the ground of disability and the Appeal Panel and the Supreme Court dismissed appeals against the Tribunal's decision. The Supreme Court upheld the view of the Tribunal and the Appeal Panel that the letter continued to be operative in the six month period before the fire fighter brought the claim, and that the Tribunal therefore had jurisdiction to hear the claim.
4. *NSW Breeding & Racing Stables Pty Ltd v V & X* [2005] NSWCA 114: A party applied for judicial review of two Tribunal decisions in the Supreme Court. A judge refused the application on the ground that adequate provision was made for the party to seek review by way of an appeal to the Appeal Panel. The party then lodged an appeal to the Appeal Panel. The Appeal Panel refused leave to appeal out of time, partly due to the mistaken understanding that the party had instituted proceedings in the Supreme Court after months of delay. The Court of Appeal held that, since the Appeal

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Panel proceeded on the basis of this error, its exercise of discretion fundamentally miscarried. However, the Panel had indicated that it would have rejected the appeal, even if it had decided to grant an extension of time, and the Panel's reasons revealed no legal error. Accordingly, the Court dismissed the appeal.

5. *The Council of The Law Society of NSW v Graham* [2005] NSWCA 127: The Law Society had charged a solicitor with professional misconduct on the ground that he had wilfully failed to comply with a regulation requiring him to lodge an accountant's report with the Law Society. The Tribunal held that the solicitor's conduct was properly 'regarded as administrative failure by the Solicitor' and dismissed the charges. Dismissing the appeal, the Court of Appeal held that it was clear that the allegation of professional misconduct was not established against the solicitor.
6. *World Best Holdings Ltd v Sarker* [2004] NSWSC 1164: A lessor in a retail leases matter argued that the Tribunal was not properly constituted since the judicial member was not qualified in accordance with the ADT Act. The Act provided that, when hearing unconscionable conduct claims, one member of the Tribunal must be a retired Supreme Court or Federal Court judge or someone with 'equivalent experience or qualifications'. Patten AJ held that the clause required the person to have judicial experience of a high order, and not merely significant commercial law experience as was the case with the judicial member in question. Patten AJ also held that the two members appointed to assist the judicial member participated in the adjudication instead of only acting in an advisory capacity as required by the ADT Act.
7. *Manly Council v Malouf* [2004] NSWCA 299: Manly Council had granted Mr Malouf a licence to use public space adjoining his restaurant as an outdoor eating area. Mr Malouf brought proceedings in the Tribunal under the *Retail Leases Act* claiming that the licence was a 'retail lease.' The Council said that the Tribunal did not have jurisdiction since the licensed areas were not 'premises' within the meaning of 'retail shop' in the *Retail Leases Act*. The Appeal Panel overturned the Tribunal's finding that the licensed areas were 'premises', reasoning that the restaurant and the footpath space had two different owners, and it would be straining the definition of 'premises' to treat it as a synonym for bare land. This decision was reversed on appeal to a single judge of the Supreme Court. The Court of Appeal unanimously upheld an appeal from the single judge's decision, holding that the word 'premises' in the *Retail Leases Act* did not apply to vacant or bare land and that the Tribunal therefore had no jurisdiction in this matter.
8. *Rix v State of New South Wales & Ors* [2005] NSWSC 329: Mr Rix applied for a declaration to the effect that the *Child Protection (Prohibited Employment) Act 1998* did not apply in respect of an offense he had committed twenty years ago of an act of gross indecency. The Tribunal dismissed the application because it was not satisfied that Mr Rix did not pose a risk to the safety of children. Approving the Tribunal's reasons, the Supreme Court dismissed an appeal against the Tribunal's decision.
9. *Abdul-Karim v The Council Of The NSW Bar Association* [2005] NSWCA 93: The Tribunal made adverse findings against a barrister, including findings that he had entered into an illegal costs agreement and made false and misleading statements and representations. The Tribunal held that he had engaged in professional misconduct and ordered that his name be removed from the roll. The Appeal Panel and the Court of Appeal dismissed his appeals.

# Services to our Users and Community Relationships

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In accordance with the Tribunal's objectives, the Tribunal is committed to ensuring that it is accessible, that its decisions are transparent and fair and that proceedings are determined informally and expeditiously. Hearings are generally open to the public, except where special orders are made to close them. All reserved decisions are published on the Tribunal website.

The Tribunal seeks to make itself accessible through the use of telephone and video links to parties who find it difficult to attend hearings in person, and through members sitting in local courts in regional New South Wales where appropriate. The Tribunal's hearing rooms and registry are at located centrally, at Level 15, 111 Elizabeth St, Sydney.

The Tribunal maintains links with the community through the appointment of community members and members in specialised professions such as veterinary science.

It has established a Professional Discipline Advisory Group to enable consultation with professional and community representatives on professional disciplinary matters.

## **Tribunal website**

The Tribunal's website is located at [www.lawlink.nsw.gov.au/adt](http://www.lawlink.nsw.gov.au/adt). It is the primary source of information about the Tribunal.

The site provides information about the ADT legislation and rules, including the daily law list and all published decisions. It also provides information about each Division.

The website includes access to all practice notes, standard forms and brochures and practitioners may also subscribe by email to the daily Tribunal hearing list. The website generally has a high usage with this year's total hits estimated at 952,000. The Attorney-General's Department has been trialing new software for recording website hits this year, and more accurate information on website usage is expected to be available next year.

## **Published Decisions**

Since its establishment the Tribunal has sought to ensure that reasons in all reserved decisions and in selected ex tempore decisions are published through the CaseLaw NSW web-site and related services such as the Australasian Legal Information Institute site (AUSTLII) at [www.austlii.edu.au](http://www.austlii.edu.au). This is of special importance to the development of principle in many of the areas of the law with which the Tribunal deals. Many are 'new law' areas – the product of reforming legislation passed over the last thirty years. The Tribunal is the principal or exclusive jurisdiction in New South Wales in several subject areas. Three of its major subject areas are Freedom of Information, Privacy and Equal Opportunity.

In the last year there were 368 reported decisions, compared to 329 in the previous year. The breakdown of published decisions for this year is: Appeal Panel, 54 (45 internal appeals, 9 external appeals); General Division, 165; Revenue Division, 22; Community Services Division, 14; Equal Opportunity Division, 40; Retail Leases Division, 35; Legal Services Division, 38.

# Membership

During the year the Tribunal's membership comprised 64 presidential or judicial members and 83 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, 34 are male and 30 are female. Of the non-judicial members there are 39 men and 44 women. The gender distribution for the entire membership is 74 women and 73 men.

## Changes in Membership

*New Members:* During the year, 6 new judicial members and 6 new non-judicial members joined the Tribunal. Almost all of these appointments were made following a selection process after advertisements in major newspapers.

*Retirements:* Two members resigned or retired following completion of their term of appointment.

*Appointments to Bench:* The Head of the Equal Opportunity Division between 1999 and 2001, Justice Megan Latham, was appointed to the Supreme Court during the year. Her Honour was

previously a Judge of the District Court. Julian Block, a judicial member in the Revenue Division, was appointed as an Acting Judge of the District Court.

## Members' Professional Development

In recent years the main professional development event has been an annual training day to which all members were invited. A different approach was taken this year, with the Tribunal holding several professional development activities aimed at specific groups of members. On 26 November 2004, the Tribunal held a Non-Judicial Members' Training Day. The keynote address was given by Geri Ettinger, Part-time Senior Member, Administrative Appeals Tribunal. This was followed by a workshop about how to respond to a variety of hypothetical scenarios, led by Magistrate Nancy Hennessy, Deputy President. The final session was 'Principles of Fact-Finding,' a seminar led by Simon Rice, Judicial Member.

The Tribunal also conducted seminars on decision-writing for its judicial members in November 2004 and February 2005. Magistrate



Deputy President Nancy Hennessy leading Decision-Writing Seminar, 8 February 2005

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Hennessy attended a two-day course on judgment writing led by the American academic, Professor James Raymond. She shared his approach to decision-writing with Tribunal members in a series of small seminars designed to encourage the exchange of ideas. Members were encouraged to re-work their own decisions during the seminars using the principles espoused by Professor Raymond, and to discuss their effectiveness.

### **Conferences**

On 9 and 10 June 2005, thirteen members and staff of the Tribunal attended the 8th Annual Australian Institute of Judicial Administration Tribunals Conference, 'The Rise and Rise of Tribunals,' held in Sydney. Speakers included The Hon Justice Michael Barker, President of the newly-formed State Administrative Tribunal of Western Australia, who spoke about 'The Emergence of the Generalist Administrative Tribunal in Australia and New Zealand'; The Hon Justice Garry Downes, President, Council of Australasian Tribunals ('COAT') and President, Administrative Appeals Tribunal, who informed delegates about the progress of the 'COAT Benchbook for Tribunals'; and, in a session chaired by His Hon Judge Kevin O'Connor, President, Administrative Decisions Tribunal, Professor Robin Creyke, Director of Teaching and Learning, Faculty of Law, Australian National University, spoke about the 'Practical Application of Investigative Methodology in Tribunals.' The conference gave Tribunal members an opportunity to meet with members of other tribunals and to discuss matters of common interest and concern.



# Practice and Procedure

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The practice of the Tribunal is formally documented in its practice notes and rules. The rules of the Tribunal are found in the *Administrative Decisions Tribunal (Interim) Rules 1998* contained in the *Administrative Decisions Tribunal Rules (Transitional) Regulation 1998*.

The *Administrative Decisions Tribunal (General) Regulation 2004* came into force on 1 September 2004, replacing the *Administrative Decisions Tribunal (General) Regulation 1998*. The new regulation deals with matters such as oaths of office and fees and is similar to the previous one, except that it also includes a scale of allowances and expenses for witnesses.

## Practice Notes

The President issued two further practice notes this year. These are:

- PN 17 General Division: Professional Discipline Proceedings.
- PN 18 All Divisions: Witnesses.

Practice Note 17 was introduced to simplify and unify practices and procedures in professional discipline proceedings relating to veterinary surgeons, accredited certifiers and architects. The purpose of Practice Note 18 is to outline the Tribunal's practices in relation to the calling of witnesses to give oral evidence in hearings.

The President also reissued several practice notes with amendments. These were Practice Note 5, 'Internal Appeals: Procedures for Appeals to the Appeal Panel of the Tribunal from decisions of the Tribunal,' Practice Note 12, 'Costs,' Practice Note 13, 'All Divisions: Publication, Anonymisation and Suppression,' and Practice Note 15 'All Divisions: Incapacitated Persons: Appointing a Representative.'

## Alternative Dispute Resolution

Mediation is one form of Alternative Dispute Resolution provided for 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 are also qualified Tribunal members, at no cost to the parties. Of course, the mediator takes no part in the hearing of the matter if mediation is unsuccessful.

## The Rule Committee

The Rule Committee did not meet during the current year. Wherever practicable the Tribunal seeks to avoid the making of formal rules and instead provides guidance on matters of practice and procedure by way of practice notes and information provided to parties in standard letters. This allows the Tribunal to deal flexibly with any need to revise practice.

Rule Subcommittees have been established in respect of the General, Community Services, Equal Opportunity, Retail Leases and Legal Services Divisions. Their membership is set out in Appendix F.

The Equal Opportunity Division Rule Subcommittee met twice during the year. It discussed changes to case management procedures, a draft practice note and procedural changes consequent on amendments to the *Anti-Discrimination Act*.

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### **Professional Discipline Advisory Group**

The Professional Discipline Advisory Group (PDAG) was established in early 2004 to consider matters relevant to practice and procedure in connection with professional discipline proceedings in the Tribunal. The professions over which the Tribunal has jurisdiction are lawyers, registered surveyors, accredited certifiers, architects, and veterinary surgeons.

During the course of the year, with the approval of the Rule Committee, a subcommittee of the PDAG was established to develop proposals for uniform rules, practice notes and guidelines for application to all classes of professional disciplinary proceedings that occur in the Tribunal, whether by way of application for original decision or application for review of a reviewable decision, and to advise on whether any statutory or rule amendments are required to achieve uniformity. The subcommittee presented its report and draft practice note and forms for application and reply to the PDAG in July 2004. This report formed the basis of a consultation undertaken by the PDAG with those professions whose disciplinary processes are overseen by the Tribunal. Following this consultation the President issued Practice Note 17, discussed above.

Given the anticipated commencement of the *Legal Profession Act 2004* and responses concerning proposed changes, the PDAG determined to undertake further consultation before introducing change to practice and procedure as it relates to legal professional discipline proceedings.



# 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. There are four hearing rooms and three interview rooms for mediation and conferences.

## **Staff**

The Registry has eleven positions, including the Registrar and Deputy Registrar. The position of Registrar is filled by two staff who job share. 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*. Appendix C provides a picture of the expenditure incurred by the Tribunal in the reporting period.



# Appendices

## Appendix A: List of Members

1 July 2004 to 30 June 2005

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 the 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.

If a member has been assigned to more than one Division, there is a corresponding entry. The President is assigned to all Divisions. Where a member resigned during his or her term, there is an asterisk next to the date in the expiry date column, and the date shown is the date of resignation.

### 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 2.10.05

Magistrate NANCY LOUISE HENNESSY 7.3.07

#### Judicial Members

ANNE BRITTON 30.4.08

JENNIFER LOUISE CONLEY 2.6.05

JANICE MARGERY CONNELLY 30.4.08

BRUCE GEORGE DONALD 28.2.05

CATHERINE LOUISE FITZGERALD (14.6.05) 30.4.08

ROBBERT JOHN FOX 25.11.05

PENELOPE HELEN GOODE 8.10.06

YVONNE GRANT (14.6.05) 30.4.08

JULIE LOUISE GREENWOOD 16.12.05

ERAINE ELIZABETH GROTTÉ 30.4.08

ROBIN PATRICK HANDLEY (14.6.05) 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

JANE ANNABEL DARLING NEEDHAM, SC 2.6.05

LINDA MARY PEARSON (14.6.05) 30.4.08

NEIL ROBERT REES (Acting Deputy

President from 15.4.04 to 1.10.04) 8.10.06

SIMON JAMES RICE, OAM 25.11.05

MARK ANTHONY ROBINSON 28.2.05

ROBERT BRUCE WILSON (14.6.05) 30.4.08

#### Non-judicial Members

ZITA ROSE ANTONIOS 25.11.05

CLIFFORD DOUGLAS BLAKE, AM 30.4.07

MARY ELIZABETH BOLT 30.4.07

BARBARA RUTH FIELD 16.11.06

KEVEN WILLIAM MAPPERSON 31.10.07

MICHAEL JOHN McDANIEL 25.11.05

ANNETTE FRANCES O'NEILL 23.2.06

#### 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 (Acting Deputy

President from 15.4.04 to 1.10.04) 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 23.8.05

LYNN MARY HOULAHAN 23.8.05

BELINDA ANNE MERICOURT 16.11.06

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

# Appendices

GRAHAM JOHN MALLISON	3.8.06	ELAYNE HAYES	30.4.07
GORDON PATRICK WREN	3.8.06	NOEL ARTHUR HIFFERNAN	8.10.06
<b>Non-judicial Members, Veterinary Surgeons</b>		LYNN MARY HOULAHAN	23.8.05
FIONA JENNIFER CLARK	5.8.05	ANTHEA ELISABETH LOWE	8.10.06
TIMOTHY ROBERT CRISP	31.12.05	MICHAEL JOHN McDANIEL	25.11.05
DAVID LACHLAN EVANS	31.12.05	LINDA MARILYN MONAGHAN-NAGLE	30.4.07
RICHARD ELDRED JANE	31.12.05	LAURA CLARE MOONEY	28.9.06
ROSALIE JANE MAYO-RAMSAY	5.8.05	LOUISE NEMETH DE BIKAL	8.10.06
GARTH ALEXANDER McGILVRAY	31.12.05	MAURICE MICHAEL O'SULLIVAN	8.10.06
TANYA LORRAINE STEPHENS	31.12.05	HENRY NAN HUNG PAN, OAM	8.10.06
RUTH ROSEMARY THOMPSON	31.12.05	CLEONIE DOROTHY QUAYLE	30.4.07
<b>Non-judicial Members, Education</b>		ANTHONY MICHAEL JOSEPH SCHEMBRI	8.10.06
TERENCE RICHARD BURKE, AM	30.4.08	JOACHIM SCHNEEWEISS, AM (21.2.05)	31.10.07
JOLYN MARGARET KARAOLIS, AM	30.4.08	LUCY TAKSA	25.11.05
JOSEPH RIORDAN, AO	31.10.07	DOREEN TOLTZ	8.10.06
<b>Non-judicial Members, Architects</b>		BETTY LORRAINE WEULE	30.4.07
MARTYN DAVID CHAPMAN (8.2.05)	31.10.07	<b>COMMUNITY SERVICES DIVISION</b>	
JANE MARGARET JOSE (8.2.05)	31.10.07	<b>Divisional Head</b>	
PATRICK JOHN O'CARRIGAN (8.2.05)	31.10.07	THOMAS JOSEPH KELLY, Deputy President	30.4.07
PETER ROY WATTS (8.2.05)	31.10.07	<b>Judicial Members</b>	
<b>Non-judicial Members, First Home Owners Scheme</b>		ANNE BRITTON	30.4.08
MARGARET COLLEEN HOLE	30.4.07	MARGARET MARY SMYTH	30.4.07
<b>EQUAL OPPORTUNITY DIVISION</b>		<b>Non-judicial Members</b>	
<b>Divisional Head</b>		MARY ELIZABETH BOLT	30.4.07
Magistrate NANCY LOUISE HENNESSY, Deputy President	7.3.07	DAVID EDWIN DOBELL	30.4.07
<b>Deputy President</b>		JENNIFER GREEN	23.8.05
Acting Judge MICHAEL RAINSFORD CHESTERMAN	2.10.05	DENNY GROTH	30.4.07
<b>Judicial Members</b>		LYNN MARY HOULAHAN	23.8.05
LARISSA YASMIN BEHRENDT	25.11.05	MEREDITH MARTIN	23.8.05
DAVID LEE BITEL	8.10.06	JAN MASON	30.4.07
ANNE BRITTON	30.4.08	LINDA MARILYN MONAGHAN-NAGLE	30.4.07
JENNIFER LOUISE CONLEY	2.6.05	JEANETTE McDONALD MOSS, AM	23.8.05
JANICE MARGERIE CONNELLY	30.4.08	CLARITA NORMAN	30.4.07
PENELOPE HELEN GOODE	8.10.06	<b>LEGAL SERVICES DIVISION</b>	
ERAINE ELIZABETH GROTTÉ	30.4.08	<b>Divisional Head</b>	
GRAEME GORDON INNES, AM	25.11.05	Acting Judge JOHN ANTHONY NADER, RFD, QC, Deputy President (to 8.6.05)	31.8.05
GRAHAM REGINALD IRELAND	25.11.05	Acting Judge ANGELA JEANNE STIRLING KARPIN, Deputy President (from 9.6.05)	8.6.08
RUTH LAYTON	8.10.06	<b>Deputy Presidents</b>	
CHRISSE TEREASA LOUKAS	8.10.06	Acting Judge MICHAEL RAINSFORD CHESTERMAN	2.10.05
JANE ANNABEL DARLING NEEDHAM, SC	2.6.05	<b>Barrister Members</b>	
NEIL ROBERT REES	8.10.06	ROBERT BRUCE SCOTT MACFARLAN, QC	16.12.05
(Acting Deputy President from 15.4.04 to 1.10.04)	8.10.06	JOHN ANTHONY MCCARTHY, QC	16.12.05
SIMON JAMES RICE, OAM	25.11.05	SHARRON NORTON, SC	16.12.05
JANELLE ANNE SAFFIN	16.11.06	DAVID PETER FORBES OFFICER, QC	16.12.05
<b>Non-judicial Members</b>		LIONEL PHILIP ROBBERDS, QC	16.12.05
ZITA ROSE ANTONIOS	25.11.05	WENDY LOUISE ROBINSON, QC	16.12.05
MARY ELIZABETH BOLT	30.4.07	ALISON PATRICIA STENMARK, SC	12.1.07
STEVIE CLAYTON, OAM	25.11.05	JOHN NORMAN WEST, QC	16.12.05
RENIA DOUGLAS COX	8.10.06	<b>Solicitor Members</b>	
MAREE JANE GILL	8.10.06	MICHAEL JAMES BARNES	30.4.07
KAREN GREENHILL	8.10.06		
DENNY GROTH	30.4.07		

CHRISTINE ANNE BISHOP	16.12.05
JOHN WILLIAM FRANCIS BRENNAN, RFD	16.12.05
ROGER JAMES CLISDELL	16.12.05
ROSEMARY COX	16.12.05
JOHN SYDNEY CURRIE	16.12.05
ANDREA DURBACH	16.12.05
ROBBERT JOHN FOX	25.11.05
JULIE LOUISE GREENWOOD	16.12.05
SANDRA NERYL HALE	16.12.05
JENNIFER MARGARET MATTILA	16.12.05
GRAHAM BRIAN MOLLOY	25.11.05
JOHANNA PHEILS	30.4.07
MICHELLE ANNE RIORDAN	30.4.07
GORDON ALBERT SALIER (14.6.05)	30.4.08
CEDRIC BOHRSMANN VASS	16.12.05

#### 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	23.2.06
BARRIE DRUMMOND DYSTER	23.2.06
KERSTI ELLIOTT	23.2.06
ROSS ANDREW EDWARD FITZGERALD	23.2.06
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	23.2.06
CLEONIE DOROTHY QUAYLE	30.4.07
LUCY TAKSA	25.11.05

#### RETAIL LEASES DIVISION

##### Divisional Head

Acting Judge MICHAEL RAINSFORD CHESTERMAN, Deputy President	2.10.05
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##### Deputy Presidents

Magistrate NANCY LOUISE HENNESSY	7.3.07
Acting Judge JOHN ANTHONY NADER, RFD QC	31.8.05
CHRISTOPHER JOHN ROSSITER	5.12.04

##### Judicial Members

PHILIP LESLIE BOYCE	16.11.06
BRUCE GEORGE DONALD, AM	31.10.07
ROBBERT JOHN FOX	25.11.05
SIGRID HIGGINS	30.4.07
MARGARET COLLEEN HOLE, AM	30.4.07
GRAHAM BRIAN MOLLOY	25.11.05
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	23.2.06
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

Divisional Head yet to be appointed

##### Judicial Members

Acting Judge JULIAN BLOCK	30.4.07
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 (20.9.04)	30.4.07

#### MEDIATORS

List of Mediators under s 106 of the ADT Act.

Appointments have been limited to serving members of the Tribunal.

#### Equal Opportunity Division

ZITA ROSE ANTONIOS
DAVID LEE BITEL
PENELOPE HELEN GOODE
DENNY GROTH
SANDRA NERYL HALE
LYNN MARY HOULAHAN
GRAEME GORDON INNES, AM
NEIL ROBERT REES
MARGARET MARY SMYTH

#### Community Services Division

PENELOPE HELEN GOODE
DENNY GROTH
LYNN MARY HOULAHAN
GRAEME GORDON INNES, AM
MARGARET MARY SMYTH

#### General Division

PENELOPE HELEN GOODE
SUZANNE MAREE LEAL
PETER HENRY MOLONY
JANE ANNABEL DARLING NEEDHAM
ANNETTE FRANCES O'NEILL

# Appendices

## Appendix B: Legislation

### Principal Legislation

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

### Primary Legislation

*Note: This list of legislation contains conferrals of jurisdiction, as at 30 June 2005, as advised to Registry.*

Aboriginal Lands Rights Act 1983  
Adoption Act 2000  
Agricultural Livestock (Disease Control Funding) Act 1998  
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  
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  
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  
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 1987  
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

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Mount Panorama Motor Racing Act 1989  
Native Title (New South Wales) Act 1994  
Non-Indigenous Animals Act 1987  
Occupational Health and Safety Act 2000  
Ombudsman Act 1974  
Optometrists Act 2002  
Parking Saving Levy Act 1992  
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 1995  
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 1999  
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



# Appendices

## Appendix C: Financial Information

Financial Information as at 30 June 2005<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)	1,949,004 <sup>3</sup>	1,732,976	(216,028)	10,604	1,959,608
Property Items	378,887	389,070	10,183		378,887
Other Operating	1,148,958	1,069,262	(79,696)	222,227	1,371,185
Depreciation	68,456	80,913	12,457		68,456
<b>Total Expenditure</b>	<b>3,545,305</b>	<b>3,272,221</b>	<b>(273,084)</b>	<b>232,831</b>	<b>3,778,136</b>
<b>Total Revenue<sup>4</sup></b>	<b>(715,458)</b>	<b>(657,887)</b>	<b>57,571</b>	<b>(232,831)</b>	<b>(948,289)</b>
<b>Net Cost Of Services</b>	<b>2,829,847</b>	<b>2,614,334</b>	<b>(215,513)</b>	<b>0</b>	<b>2,829,847</b>
Less Depreciation	(68,456)	(80,913)	12,457	0	(68,456)
Less Crown Liabilities	(381,126)	(340,497)	40,629	0	(381,126)
<b>Controlled Net Cost Of Services</b>	<b>2,380,265</b>	<b>2,192,924</b>	<b>(187,341)</b>	<b>0</b>	<b>2,380,265</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. The liability for the various superannuation schemes is based on an assessment by the SAS Trustee Corporation actuary for the defined benefit schemes administered by Pillar Administration. For the year ended 30 June 2005, the actuarial assessment indicated a large increase mainly in the liability relating to the State Superannuation scheme compared to 2004, thus resulting in a large debit adjustment to the operating statement. This figure includes an accrual amount of \$173,183 for this purpose.
4. Revenue  
The Tribunal received \$930,623.80 in revenue. Of this, \$874,595.38 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.

# Appendix D: Statistics

## General Division 1/7/2004 - 30/6/2005

### 1. Case flow 2004-2005

Matters pending at 30 June 2004	New Applications filed	Disposals	Pending as at 30 June 2005
197*	433	440	190

\* pending figure of 198 reported in previous annual report adjusted following manual reconciliation of files and/or changes in data collection.

### 2. Applications by type 2004-2005

Applications for Original Decision	Applications for review	Professional Discipline
3	424	6

### 3. Applications by Act 2004-2005

Subject by Act	
Architects Act	1
Births Deaths and Marriages Registration Act	2
Business Names Act	4
Environmental Planning and Assessment Act	3
Fair Trading Act	2
Firearms Act	48
First Home Owner Grant Act	52
Fisheries Management Act	5
Freedom of Information Act	96
Guardianship Act	2
Home Building Act	22
Impounding Act	2
Licensing and Registration (Uniform Procedures) Act	1
Local Government Act	1
Motor Dealers Act	3
Motor Vehicle Repairs Act	1
Occupational Health and Safety Act	5
Passenger Transport Act	31
Privacy and Personal Information Protection Act	34
Property Stock and Business Agents Act	14
Protected Estates Act	15
Public Health Act	2
Registration of Interests in Goods Act	1
Road Transport (General) Act	39
Security Industry Act	33
Travel Agents Act	1
Tow Truck Industry Act	9
Veterinary Surgeons Act	3
Weapons Prohibition Act	1

### 4. Outcomes in Review matters 2004-2005

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	No Jurisdiction
155	138	89	23	4	9

# Appendices

## 5. Outcomes in Original matters 2004-2005

Application withdrawn dismissed/ No appearance dismissed/ Agreement reached dismissed	Application granted	Application refused	No Jurisdiction
6	2	4	0

## 6. Outcomes in Professional Discipline 2004-2005

Dismissed	Orders made	No jurisdiction
0	10	0

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

No. disposed of in under 6 months	308
No. disposed of in under 12 months	94
No. disposed of in over 12 months	33
No. disposed of in over 2 years	5

## Guardianship and Protected Estates List 1/7/2004-30/6/2005

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 2004-2005

Pending as at 30 June 2004	New Applications Filed	Disposals	Pending as at 30 June 2005
10	17	22	5

### 2. Applications for Review by Act 2004-2005

Subject by Act	Number
Guardianship Act	2
Protected Estates Act	15

### 3. Outcomes in Review Matters under the Guardianship Act and the Protected Estates Act 2004-2005

Application withdrawn Dismissed/ No appearance Dismissed/ Agreement reached Dismissed	Decision under review affirmed	Decision under review set aside	No Jurisdiction	Total
4	16	2	0	22

### 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	2
No. disposed of in over 12 months	1
No. disposed of in over 2 years	0



## Community Services Division 1/7/2004 - 30/6/2005

### 1. Case flow 2004-2005

Matter pending as at 30 June 2004	New Applications filed	Disposals	Pending as at 30 June 05
14	42	38	18

### 2. Applications by type 2004-2005

Applications for original decision	Applications for review
20	22

### 3. Applications by Act 2004-2005

Subject by Act	Number
Children and Young Persons (Care and Protection) Act	20
Children (Care and Protection) Act	1
Declaration that Child Protection (Prohibited Employment) Act 1998 does not apply	20
Disability Services Act	1

### 4. Outcomes - Reviewable Decisions 2004-2005

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
10	5	3	0	3

### 5. Outcomes- Original Decisions 2004-2005

Application withdrawn Dismissed/ No appearance Dismissed/ Agreement reached Dismissed	Declaration made	Declaration Refused	No Jurisdiction
6	9	2	0

### 6. Mediation 2004-2005

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

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

No. disposed of in under 6 months	21
No. disposed of in under 12 months	11
No. disposed of in over 12 months	6
No. disposed of in over 2 years	0

# Appendices

## Equal Opportunity Division 1/7/2004 - 30/6/2005

### 1. Case flow 2004- 2005

Matters pending at 30 June 2004	New Applications filed	Disposals	Pending as at 30 June 05
150	143	160	133

### 2. Applications by type 2004-2005

Applications for original decision	Applications for review
142	1

### 3. Applications by Ground 2004-2005

Head of discrimination**	Number
Race	47
Racial vilification	2
Sexual harassment	20
Sex	25
Transgender	4
Transgender vilification	1
Marital status	3
Disability	43
Carer's responsibilities	11
Homosexuality	9
Homosexual vilification	4
Age	7
Victimisation	25
HIV/ Aids vilification	1

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

### 4. Outcomes Original Decisions 2004-2005

Withdrawn Dismissed/ Settled Dismissed/ No Appearance Dismissed	Summary dismissal under section 111, s 102D	Dismissed after hearing	Orders made
111	9	24	16

### 5. Outcomes - Reviewable Decisions 2004-2005

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	0

### 6. Mediation

No. of disposals where mediation was conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing
79	32	28	19

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

No. disposed of in under 6 months	73
No. disposed of in under 12 months	47
No. disposed of in over 12 months	35
No. disposed of in over 2 years	5

## Retail Leases Division 1/7/2004 - 30/6/2005

### 1. Case flow 2004-2005

Matters pending at 30 June 2004	Applications filed	Disposed	Pending as at 30 June 2005
64	166	147	83

### 2. Applications by Type 2004-2005

Relevant provision of Retail Leases Act 1994 section 71	139
section 71A - unconscionable conduct	5
Combined section 71 and section 71A	22

### 3. Outcomes 2004-2005

Withdrawn/ Discontinued/ Dismissed without hearing	Dismissed after hearing	Settled - Orders made	Orders made	No Jurisdiction	Transfer to Supreme Court
88	17	15	19	3	5

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

No. disposed of in under 6 months	110
No. disposed of in under 12 months	26
No. disposed of in over 12 months	10
No. disposed of in over 2 years	1

## Revenue Division 1/7/2004 - 30/6/2005

### 1. Case flow 2004-2005

Matters pending at 30 June 2004	Applications filed	Disposals	Matters pending as at 30 June 05
35*	93	75	53

\* pending figure of 34 reported in previous annual report adjusted following manual reconciliation of files and/or changes in data collection

### 2. Applications by Type 2004-2005

Subject by Act	
Duties Act 1997	25
Gaming Machine Tax Act 2001	1
Land Tax Management Act 1956	42
Parking Space Levy Act 1992	1
Payroll Tax Act 1971	3
Taxation Administration Act 1996	21

### 3. Outcomes 2004 - 2005

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
44	21	7	1	2

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

No. disposed of in under 6 months	50
No. disposed of in under 12 months	8
No. disposed of in over 12 months	17
No. disposed of in over 2 years	0

# Appendices

## Legal Services Division 1/7/2004 - 30/6/2005

### 1. Case flow 2004-2005

Matters pending at 30 June 2004	Applications filed	Disposed	Pending as at 30 June 05
42	42	48	36

### 2. Applications by type 2004-2005

Applications for original decision	39
Applications for review	3

### 3. Applications by subject 2004-2005

Type of Practitioner	Type of conduct**	Number
Solicitor	PM	27
Solicitor	PM & UPC	1
Solicitor	UPC	1
Barrister	PM	2
Barrister	UPC	1
Barrister	PM & UPC	3
Conveyancer	PM	2
Conveyancer	review	3
S.48I & 48K Applications		2

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

### 4. Outcomes 2004-2005

Withdrawn Dismissed	0
No Jurisdiction	0
Dismissed after hearing	9
<i>Penalty imposed by type</i>	
Removed from Roll	9
Reprimanded and Fined	13
Removed from Roll and Compensation ordered	1
Reprimanded	10
Suspended from practice	2
Fined	2
s 48I	1
s 48J	0
s 48K	1
Total	48

### 5. 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	21
No. disposed of in over 12 months	6
No. disposed of in over 2 years	3

## Appeals 1/7/2004 - 30/6/2005

### Internal Appeals to Appeal Panel

#### 1. Case Flow 2004 -2005

	Appeals Pending as 30 June 2004	New Appeals filed	Disposals	Pending as at 30 June 05
General Division	11	38	28	23
Community Services Division	0	0	0	1
Equal Opportunity Division	2	18	12	9
Retail Leases Division	4	14	14	3
Revenue Division	2	7	3	6
Legal Services Division	3	0	2	0
Total	22	77	59	42

#### 2. Outcome of Internal Appeals 2004 - 2005

	Upheld (in full or part)	Dismissed	Withdrawn/ Discontinued	No Jurisdiction	Consent Orders	Total
General Division	10	12	6	0	0	28
Community Services Division	0	0	0	0	0	0
Equal Opportunity Division	0	10	2	0	0	12
Retail Leases Division	6	6	2	0	0	14
Revenue Division	1	1	1	0	0	3
Legal Services Division	2	0	0	0	0	2
Total	19	29	11	0	0	59

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

No. disposed of in under 6 months	42
No. disposed of in under 12 months	10
No. disposed of in over 12 months	7
No. disposed of in over 2 years	0

### External Appeals to the Appeal Panel

#### 1. Case Flow 2004 -2005

	Appeals Pending as 30 June 2004	New Appeals filed	Disposals	Pending as at 30 June 05
Guardianship Tribunal	8	16	20	4
Mental Health Review Tribunal	0	0	0	0
Magistrate	0	0	0	0
Bar Council	0	1	0	1
LSC	0	2	1	1
Total	8	19	21	6

#### 2. Outcome of External Appeals 2004-2005

Upheld (in full or in part)	Dismissed	Withdrawn/Discontinued	Total
5	5	11	21

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

No. disposed of in under 6 months	17
No. disposed of in under 12 months	4
No. disposed of in over 12 months	0
No. disposed of in over 2 years	0

# Appendices

## Appeals to the Supreme Court

### 1. Case flow 2004 - 2005

	Appeals Pending as 30 June 2004	New Appeals filed	Disposals	Pending as at 30 June 2005
General Division	3	0	0	0
Community Services Division	0	2	1	1
Equal Opportunity Division	3	0	1	0
Retail Leases Division	1	1	2	0
Revenue Divison	0	0	0	0
Legal Services Division	2	5	4	1
Appeal Panel	9	8	7	9
Total	18	16	15	11

### 2. Outcome of Appeals 2004 - 2005

	Upheld (in full or part)	Dismissed	Withdrawn/ Discontinued	Orders made following s118 referral
General Division	0	0	0	0
Community Services Division	0	1	0	0
Equal Opportunity Division	0	0	1	0
Retail Leases Division	2	0	0	0
Revenue Divison	0	0	0	0
Legal Services Division	1	2	1	0
Appeal Panel	2	3	2	0
Total	5	6	4	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)
Total	5147	4642		376	361	
				(329 Int; 47 Ext)	(319 Int; 42 Ext)	

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

# There is an inconsistency of plus 6 between this figure and the difference between the two final totals. This will be resolved in next year's table.

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

### Time Standards

As at 30 June 2005 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

- 75% of matters disposed of in less than 6 months (85%)
- 92% of matters disposed of in less than 1 year (100%)
- Clearance ratio\* – 92%

#### Equal Opportunity Division (other than review matters)

- 81% of matters disposed of in less than 1 year (80%)
- 94% of matters disposed of in less than 2 years (100%)
- Clearance ratio\* – 78%

#### Professional Disciplinary Decisions

(includes Legal Services Division and General Division cases)

- 67% of matters disposed of in less than 9 months (90%)
- 77% of matters disposed of in less than 1 year (100%)
- Clearance ratio\* – 59%

#### Appeals

Internal Appeals from appealable decisions of the Tribunal and External Appeals

- 80% of matters disposed of in less than 6 months (80%)
- 93% of matters disposed of in less than 1 year (100%)
- Clearance ratio\* – 118%

\*Clearance ratio is the percentage of cases disposed of divided by cases lodged over the last 12 months.

# Appendices

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## 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 members:  
Wayne Kosh, Ombudsman's Office;  
Simon Moran, Public Interest Advocacy Centre;  
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: Bruce Donald
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 John Nader QC
2. Judicial member: David Officer
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.