



# Administrative Decisions Tribunal

New South Wales

## Annual Report

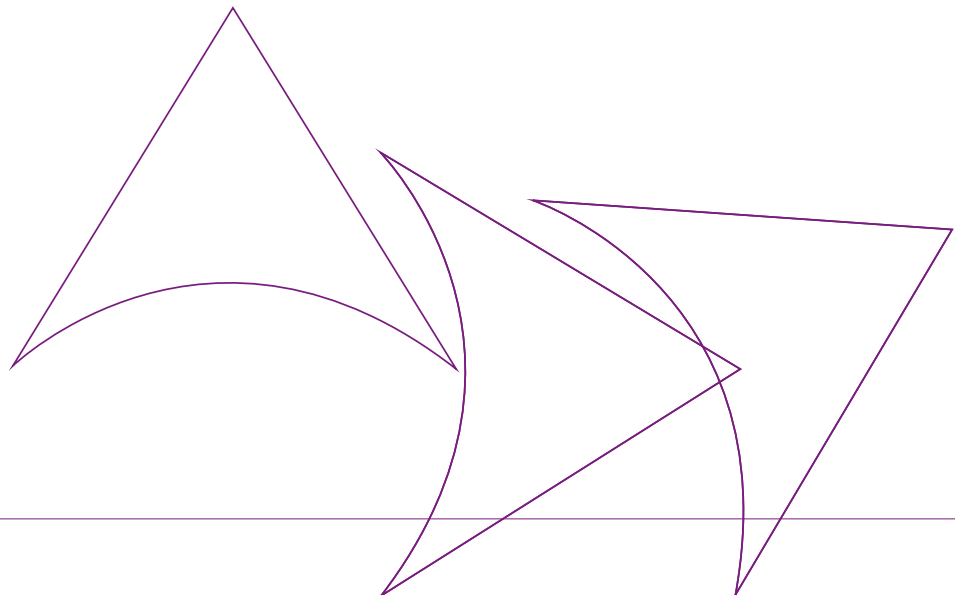
2007-2008

© State of New South Wales through the Administrative Decisions Tribunal, Attorney General's Department 2008

Copyright: You may copy, distribute, display, download and otherwise freely deal with this work for any purpose, provided that you attribute the owner. However, you must obtain permission if you wish to (a) charge others for access to the work (other than at cost), (b) include the work in advertising or a product for sale, or (c) modify the work.

Disclaimer: This document has been prepared by the Administrative Decisions Tribunal for general information purposes and while every care has been taken in relation to its accuracy, no warranty is given or implied. Further, recipients should obtain their own independent advice before making any decisions that rely on this information.

Alternate formats: This information can be provided in alternative formats such as Braille, audiotape, large print or computer disk. Please contact Corporate Services or Diversity Services on (02) 9228 7507 (voice), (02) 9228 7733 (TTY - for people who are Deaf or have a speech impairment) or [diversity\\_services@agd.nsw.gov.au](mailto:diversity_services@agd.nsw.gov.au)





Administrative Decisions Tribunal  
New South Wales

The Hon. John Hatzistergos MLC  
Attorney General and Minister for Justice  
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 tenth annual report of the Tribunal, covering the period  
1 July 2007 to 30 June 2008.

Yours sincerely,

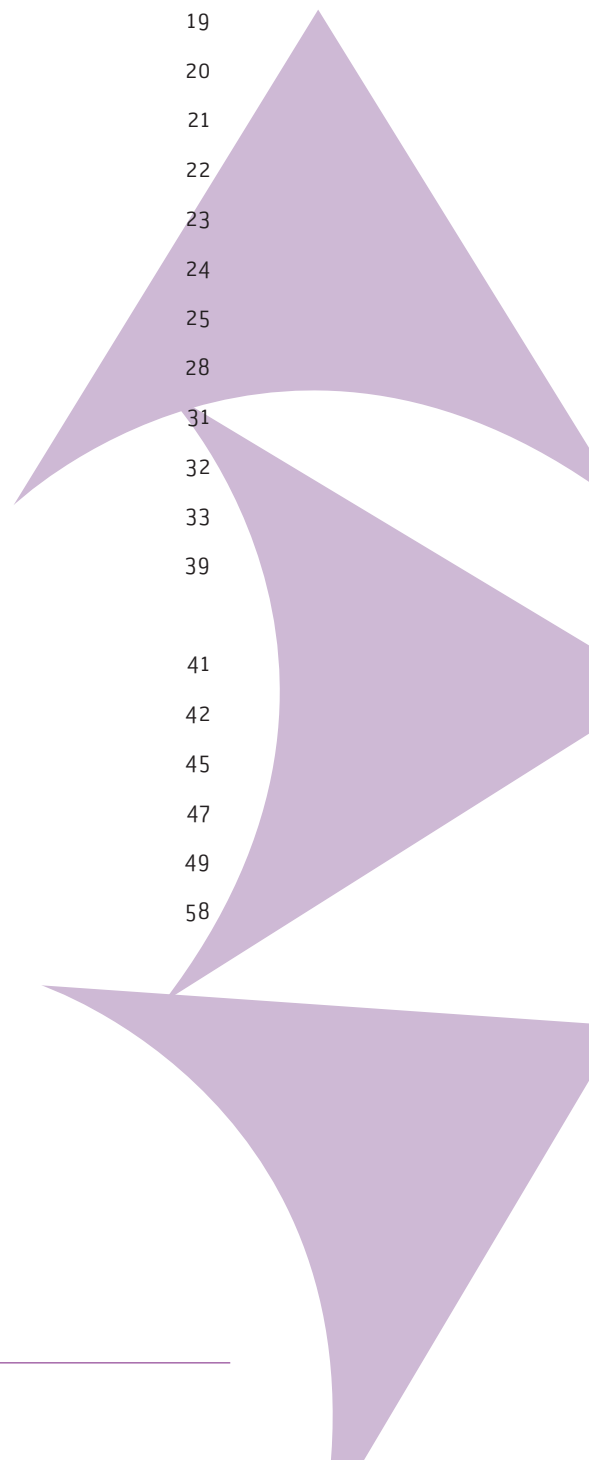
Judge KEVIN O'CONNOR AM  
President

3 October 2008

# Contents

---

Table of Abbreviations	4
The Year in Review	5
Our Objectives	9
Access, Assistance and Support	10
Membership	13
The Divisions and the Appeal Panel	15
General Division	19
Guardianship and Protected Estates List	20
Revenue Division	21
Community Services Division	22
Legal Services Division	23
Other Professional Discipline Jurisdictions	24
Equal Opportunity Division	25
Retail Leases Division	28
Appeal Panel	31
Further Appeals	32
Appeal Cases Overview	33
Practice and Procedure	39
Appendices	
Appendix A Financial Information	41
Appendix B List of Members	42
Appendix C Legislation	45
Appendix D Case Load, Time Standards	47
Appendix E Statistics	49
Appendix F Advisory Bodies	58



# Table of Abbreviations

---

ADA	<i>Anti-Discrimination Act 1977</i>
ADB	Anti-Discrimination Board
ADT	Administrative Decisions Tribunal
ADT Act	<i>Administrative Decisions Tribunal Act 1997</i>
COAT	Council of Australasian Tribunals
CSD	Community Services Division
EOD	Equal Opportunity Division
EXT	External
FHOG	<i>First Home Owners Grant Act 2000</i>
FOI	Freedom of Information
FOI Act	<i>Freedom of Information Act 1989</i>
GD	General Division
HRIPA	<i>Health Records and Information Privacy Act 2002</i>
INT	Internal
LPA	<i>Legal Profession Act 2004</i>
LSD	Legal Services Division
OPC	Office of the Protective Commissioner
OPG	Office of the Public Guardian
PPIPA	<i>Privacy and Personal Information Protection Act 1998</i>
RD	Revenue Division
RLA	<i>Retail Leases Act 1994</i>
RLD	Retail Leases Division
SCA	<i>Supreme Court Act 1970</i>



# The Year in Review

This Annual Report is the Tribunal's tenth, and marks a milestone in the history of the Tribunal.

As at 30 June 2008 (the end of the present reporting year), the Tribunal had not quite turned ten. That will occur on 6 October 2008. Nonetheless I will take the occasion of this report to reflect on the operation of the Tribunal over the last decade.

The then Attorney General (the Hon J W Shaw QC) introduced into Parliament the Government's Bill establishing the Administrative Decisions Tribunal in June 1997. In his second reading speech, delivered 27 June 1997, he placed the creation of the ADT within the wider framework of administrative law reforms that had occurred in Australia over the previous 20 years. Those reforms included the establishment of Ombudsman's offices in most Australian jurisdictions, and the creation of an independent administrative appeals tribunal by the Commonwealth (1975) and Victoria (1984).

At common law, administrators do not have to give reasons for their decisions regardless of how significant or damaging they may be for the individual. The ADT legislation modified that rule. Administrators were now obliged to give reasons for those decisions made reviewable before the ADT.

In the second reading speech the Attorney expressed a broad view as to the administrative decisions that citizens could look forward to seeing reviewed by the ADT. As it has transpired a much narrower range of decisions has been made reviewable.

Giving affected persons a right to seek external review remains a choice, in the first instance, for the various portfolios of Government and, ultimately, Cabinet. So far as I am aware, there is no transparent discipline or policy governing the matter.

The Tribunal has frequently encountered situations where, within the one Act, there is

seemingly inexplicable variation as between the administrative decisions that may be the subject of an application to the Tribunal, and those which may not be. There have been some instances where the review jurisdiction has been removed or reduced by amending legislation, without any public explanation, soon after decisions have gone against an agency.



*President  
Kevin O'Connor*

In 2002 a Parliamentary Committee recommended that a part-time government body be created, equivalent to the Commonwealth Administrative Review Council, to address problems of this kind, and develop an overarching discipline. That has not occurred.

State tribunals are not as affected as Commonwealth tribunals by the rigid distinction between 'judicial' and 'non-judicial' power in the Commonwealth Constitution. Consequently we see in the ADT jurisdictions of a 'court' type, such as equal opportunity and retail leases, and jurisdictions seen as of a 'non-court' type, review of administrative decisions

Traditionally State tribunals have been subject-area specific, as have some courts (e.g. mental health, guardianship, residential tenancies, workers compensation, industrial relations, dust diseases, town planning).

The creation of the ADT made it the first tribunal in the New South Wales with a divergent, multi-jurisdictional character.

While some existing State tribunals were merged into the new ADT, the Attorney noted that as many as 21 State tribunals remained outside its structure. He referred to the values served by consolidation: greater coherence for the public, greater transparency and professionalism, greater ability to introduce good procedures and

---

practices, better use of public resources, avoidance of duplication of similar structures, and the avoidance of perception of conflict of interest where the portfolio department has a substantial involvement in proceedings in a portfolio tribunal.

As I have noted in previous annual reports, major reforms reflecting these values have occurred since 1997 in the United Kingdom, Victoria and Western Australia. The Queensland government has announced the creation of a new merged tribunal for that State, commencing March 2009. The one somewhat similar development in NSW since 1997 has been the creation in 2002 of a Consumer, Trader and Tenancy Tribunal, merging three fair trading tribunals.

In the context of Australian tribunals, a feature unique to the ADT is the Appeal Panel. It has served parties well, and led to many matters being finalised within the Tribunal in a way that might not have been so easily achieved had the only appeal right been to the Supreme Court.

In the speech in 1997 the Attorney raised the possibility that the Appeal Panel might be a useful facility for handling appeals from continuing, separate specialist tribunals. In one area the Attorney's suggestion has been picked up. Since 2003 decisions of the Guardianship Tribunal and like bodies are appealable to the ADT Appeal Panel.

The original ADT Act provided for two statutory reviews after a period of experience of its operation. The first was to concern the operation of the Tribunal itself. The second was to concern the operation of the Act as a whole. The first review (under s 146) was undertaken by a Parliamentary Committee from 2000 and 2002, with a final report late in 2002. The second review (under s 147) was imposed on the Minister. The Act fixed the commencement date as 2002 and the report date as 2003. On behalf of the Minister, the Department commenced the

review in 2003. The public submissions process ended in 2004. That report is now expected to be delivered in the Spring Session, 2008 in conjunction with a bill making a number of amendments to the ADT Act.

I turn now to the work of the Tribunal over the last decade.

In its first business year the Tribunal had three foundation Divisions – General, Equal Opportunity and Legal Services, with two commencing later in the same year, Community Services and Retail Leases. The Revenue Division was added in 2001.

In year one (98-99) the Tribunal received (by way of transfer or new filings) 625 primary applications; and there were 8 internal appeals (total 633). In year five (02-03) there were 766 primary applications and 73 appeals (one external) (total 839). In the current year, year ten, there were 989 primary applications and 103 appeals (19 external) (total 1092).

The total number of filings in the Tribunal over the ten years is 8114 primary applications, giving rise to 626 internal appeals. Since the external appeals jurisdiction started in 2003 there have been 100 external appeals.

The total number of Supreme Court filings relating to decisions of the ADT has been 113. There have been 34 orders upholding in whole or in part appeals or judicial review applications, plus 5 answers to referred questions of law.

The Tribunal has adopted from the beginning the policy of publishing to the web all reserved decisions, and as well publishing oral decisions seen as having some wider importance. In this way the key values of transparency, consistency and coherence are served. So are other values enshrined in the Act – fostering an atmosphere in which administrative review is viewed positively as a means of enhancing the delivery of services and programs, and promoting and effecting compliance with the law by

---

administrators. Our estimate is that over 3,000 decisions have been published to the web.

Person-power lies at the heart of the achievements of any organisation. The Tribunal has had a strong team in the Registry and a committed team of Members. The Tribunal was fortunate at foundation and for many years thereafter to have a team of Registry officers who brought to their work vast experience in the court system and a strong commitment to the values of the legislation. Many of the key Members have now been with the Tribunal for many years. Some have service, counting their time in the predecessor tribunals, stretching back 20 years. The Tribunal is unusual, given the degree of complexity of many of its jurisdictions, in the extent to which it depends on part-time and sessional members. These Members are given very little practical support and assistance, but have always undertaken their work with great professionalism and enthusiasm.

I am one of only two full-time Members. The other is my Deputy, Nancy Hennessy. She, like me, has been with the Tribunal since its inception. May I take this opportunity to acknowledge publicly her substantial contribution to the success of the Tribunal over the last ten years. Finally in this regard, I must refer to the invaluable service over the decade of my Associate, Lynne Watson. She, too, has made a notable contribution to the success of the Tribunal, and to its harmony.

In closing, I refer to some particular events of the last year.

The part-time Divisional Head of the Legal Services Division, Acting Judge Angela Karpin, retired from that post on 8 June 2008 after a term of three years. May I thank her for her service. The new part-time Head is the Hon Justice Wayne Haylen, of the Industrial Relations Commission.

The Tribunal has, I think, been considerably strengthened in its ranks by the appointment during the last year of a number of Senior Counsel, 'senior junior' counsel, experienced solicitors, and lay members of considerable distinction in their usual fields of endeavour.

I referred in last year's annual report to the increasingly unsatisfactory level of accommodation and administrative support for Members. No progress has been achieved.

Similarly, there has been no adjustment to their remuneration for several years despite adjustments having occurred regularly in the usual way to the remuneration of full-time judicial officers and full-time State tribunal members doing comparable work.

Between 19 December 2007 and 10 January 2008 the Tribunal saw the collapse of the internet and email services supplied by the Department. They returned intermittently during the period, and were fully restored on 11 January 2008. As the Tribunal, unlike the Courts, stays open on a usual basis at this time of the year, this was a major disruption to services.

There has been a striking decline in equal opportunity filings in the Tribunal over the last ten years (271 in year one, to a low point of 107 in year eight, and 144 in the latest year). This decline may of course be due positive factors such as an improvement in compliance in the community. A more likely influence, in my view, is the disincentive supplied of a low damages cap (\$40,000 since 1983!), combined with an inability easily to recover costs if successful.

While State law defines unlawful conduct broadly, the value of that approach is significantly negated by the paucity of the damages remedy. The limit on damages has, in my view, deterred many persons from taking any action at all, despite possibly having suffered a grave wrong.

---

There is to be an amendment lifting the cap to \$100,000.

While an improvement, it will continue to mean that strong economic loss claims can not be pursued in this Tribunal. It is particularly detrimental to State employees with sex discrimination or sexual harassment claims that have a strong economic loss component, because they can not take their complaint to the alternative system, the Commonwealth's.

I also referred last year to the phenomenon affecting all judicial institutions, in numbers once not seen, of the difficult and disruptive litigant. The Attorneys of the country have been developing a Vexatious Proceedings Bill. The Government has announced its intention to introduce the Bill in the near future. I welcome the initiative.

A major area of jurisdiction of the Tribunal is review of agency Freedom of Information determinations. The Ombudsman has announced an Inquiry into the operation of the State Act for the purpose of making recommendations for reform. The Federal Government is developing reform proposals, as is the Queensland Government. These are welcome developments. The Tribunal will be making submissions to the Ombudsman's Inquiry.



Judge Kevin O'Connor AM

President



# Our Objectives

---

The Tribunal's objectives are set out in the objects clause of the ADT Act, s 3:

### 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.



# Access, Assistance and Support

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

## Location and Facilities

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

The Tribunal has very limited facilities to accommodate members outside the hearing rooms on the days they sit, or to enable part-time members to undertake research and work on their decisions on-site.



## Remote Users and Regional Access

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

- sitting in regional locations
- telephone and visual links.

Remote links are normally only used in preliminary stages of matters. It is rare for them to be used at final hearings. Suburban and country residents and legal practitioners welcome the opportunity to appear by telephone. The Tribunal rarely uses visual links. In matters involving prisoners the Tribunal sits at secure court facilities or uses video-link.

The Divisions of the Tribunal will sit, as needed and if practical, at remote locations. The Appeal Panel has not sat at remote locations, but has permitted parties to appear by telephone on occasions.

*In the last year the Divisions of the Tribunal sat at 20 locations in regional New South Wales, most frequently Newcastle. Other locations where the Tribunal sat on two or more occasions were: Albury, Armidale, Ballina, Bathurst, Coffs Harbour, Dubbo, Goulburn, Queanbeyan and Wollongong. The usual venue for remote sittings is the local courthouse.*

## Access by persons with disabilities

The Tribunal's own area and building in which it is located has the following facilities for the assistance of persons with disabilities: appropriately spaced waiting area and tribunal hearing rooms; telephone typewriter (TTY); and Infra-Red Listening System (Hearing Loop); ramp access via St James Arcade for persons with mobility disabilities; disabled toilets on the 9th floor; building lifts with Braille lift buttons and voice floor announcements. The Registry will arrange for Auslan interpreters as required.

## Sources of Information about the Tribunal

The Tribunal's website provides general information about the Tribunal, and links to its Legislation and Rules, Daily Law Lists and a further link to published Decisions. There is information about each Division (Practice Notes, Forms and brochures) and electronic versions of the Annual Report. The address is [www.lawlink.nsw.gov.au/adt](http://www.lawlink.nsw.gov.au/adt).

The Tribunal sits in public. Hearings are open to the public unless special orders are made to close them. The names of parties in certain classes of proceedings are anonymised in decisions published to the web. The Annual Report for the year ending 30 June 2006, under the heading 'Open Justice' gave a brief outline of the Tribunal's practice in relation to anonymisation and the hearing of applications for suppression orders.

*Decisions are usually loaded to the CaseLaw NSW web-site on the same day they are delivered to the parties. They appear later on the AUSTLII web-site usually at intervals of about a month. A number of specialist services report and comment on the decisions of the Tribunal relevant to the service.*

*In the last year there were 420 reported decisions (383 last year, 411 the year before). The distribution was Appeal Panel – 81 (last year 65); General Division – 170 (164); Revenue – 49 (36); Community Services – 10 (14); Equal Opportunity – 39 (53); Retail Leases – 41 (33); and Legal Services – 30 (18).*

## Registry

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.



*Pauline Green  
Registrar*

The staff of the Registry comprise officers of the Attorney General's Department. There are 11 positions, including the Registrar and Deputy Registrar. Registry staff work in small teams specialising in case management, client services and support services. In order to develop and maintain individual skills, officers are rotated between the teams.

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

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 for budgetary purposes a business centre of the Attorney General's Department.

The Tribunal principal source of funds is from Consolidated Revenue. The Public Purpose Fund established by the LPA is a second source of funds, primarily allocated to the cost of operation of the Legal Services Division. Appendix A contains a summary of the expenditure incurred by the Tribunal in the reporting period. Additional details may be found in the Annual Report of the Attorney General's Department.

# Membership

As at 30 June 2008, the Tribunal had 121 members. Two are full-time judicial members, the President and the full-time Deputy President. The remainder of the membership is part-time and sessional. There are 11 presidential judicial members (including the two full-time members mentioned) 51 judicial members and 59 non-judicial members. The list with appointment details appears in Appendix B.

The gender division, overall, is 61 male, 60 female. The division within judicial members (including presidential judicial members) is 28:34; and within non-judicial members 33:26.

There were 17 new members appointed during the year, 12 judicial and 5 non-judicial. There were 12 members whose appointments expired – 5 judicial and 7 non-judicial.

As noted in the President's Overview, Acting Judge Karpin retired as Divisional Head in June 2008, and the Honourable Justice Wayne Haylen was appointed as part-time Deputy President and Divisional Head, Legal Services Division. His Honour is a full-time judge of the Industrial Relations Commission.

During the year the Attorney General invited expressions of interest in appointment to the Tribunal. There were 117 expressions of interest from lawyers seeking appointment as judicial members, and 33 expressions of interest from members of the community seeking appointment as non-judicial members. The Attorney appointed a selection panel headed by the President. The other members were a senior officer with legal qualifications belonging to the Cabinet Office, Ms Leigh Sanderson and the principal of a leading Sydney high school, Ms Margaret Varady.

Interviews were held with short-listed candidates in November 2007 and April 2008. Most of the new appointments to the Tribunal during this year resulted from this process.

We pay tribute to two former members who died during the year. Mr David Officer, QC, a barrister member of the Legal Services Division since its inception and previously with the Legal Services Tribunal who resigned in March 2007, died in August 2007. Mr Keven Mapperson, a non-judicial member in the General Division since October 1999 who regularly sat on Appeal Panels, died in September 2007.

Professor Neil Rees resigned in July 2007 to take up an appointment in Victoria as the Chairperson of that State's Law Reform Commission. Professor Rees gave distinguished service of many years to the Equal Opportunity jurisdiction of the Tribunal and at various times served as an Acting Deputy President. He is responsible for a number of the leading decisions of the Tribunal in that field, and also in the field of guardianship appeals.

Mr Roger Clisdell, an eminent solicitor, was a leading member in the legal professional disciplinary jurisdiction for many years. He resigned in March 2008 to take up appointment as a Magistrate.

## Professional Development

The major collegiate event for the Tribunal is the annual members' conference, held this year on Friday 2 November at the Australian Museum.

The theme was 'Tribunal Craft'. The day was introduced by the new Attorney General, the Hon John Hatzistergos MLC.

The keynote address was delivered by the Hon Justice Robert French of the Federal Court of Australia on the topic 'Australian Administrative Law: Themes and Values'.

Various practical issues were the subject of the plenary sessions and workshop streams. Judge Roger Dive, Senior Judge, Drug Court and Mr Jim



*Hon Justice Robert French, delivering keynote address at 2007 Members Conference*

---

Simpson, of the Guardianship Tribunal led discussion on 'Managing Difficult Interactions in the Hearing Room'. Mr Allan Parker, a professional mediator and communications expert, led discussion on 'Communication Skills especially in Formal Settings'.

Workshop streams dealt with: Relevance of the Civil Procedure Reforms to the Work of the Tribunal, led by Justice John Hamilton of the Supreme Court; Recent Developments in Retail Leases Law, led by solicitors, Bill Cannon and Peter Edmundson of Blake Dawson Waldron; Modern Issues in Professional Ethics, led by Neville Carter, Principal, College of Law and Virginia Shirvington, consultant; Implications for Equal Opportunity Law of the High Court decision in Purvis, led by Dr Belinda Smith, Univ of Sydney Law School.

The final session was in panel format, and addressed the topic, 'Transparency, Suppression and Anonymisation', with panelists – David Vaile, Director, Cyberspace and Policy Law Centre, UNSW; David Norris, Senior Solicitor, Crown Solicitor's Office; and Monica Attard, Presenter 'Media Watch', ABC Television.

#### **Divisional and Other Activities**

During the year a number of smaller, specialist training and similar activities were held. They included: new members' induction sessions (September 2007, March 2008); FOI and Privacy seminar for List members (December 2007, led by Sarah-jane Morris, Senior Solicitor, Crown Solicitor's Office); a Community Services Division training day (March 2008); and special presentations given to Divisional members' meetings.

#### **Conferences and Papers**

Fifteen Tribunal members attended the annual conference of the NSW Chapter of the Council of Australasian Tribunals (COAT) held in May 2007. Three members, the President and Deputy Presidents Hennessy and Britton, attended the

national Tribunals Conference organised by the Australian Institute of Judicial Administration and COAT in June 2007 at Southport, Queensland. The President and Deputy President Hennessy presented papers to the conference. The President participated in the Phoenix Judges Program conducted by the National Judicial College of Australia from 19–22 May June 2008 in Canberra. The President presented a paper to the Government Lawyers Conference in Sydney in October 2007, and addressed the State Licensing Police conference at Mudgee in June 2008.

#### **Council of Australasian Tribunals**

The President was elected convenor of the NSW Chapter of COAT in September 2007, and in that capacity is a member of the National Executive of COAT. Deputy President Hennessy is a member of the Chapter committee.

#### **International**

In October 2007 the President, at the invitation of Interpol, attended the 68th meeting of the Commission for the Control of Interpol's Files in his capacity as Chairman (Alternate). The meeting was held at Interpol headquarters in Lyon, France.

The Commission is responsible for overseeing the practices of Interpol's central administration in relation to the collection, handling and dissemination of personal data and dealing with individual complaints. The Commission's object is to ensure that the data protection principles of the law of France and of the European Union's relevant conventions are observed. The principal members of the Commission are the European Union Data Protection Supervisor (the Chairman), a delegate from Chile whose background includes membership of the UN Committee on Torture and the Presidency of the South American Human Rights Commission, a delegate from France who is a member of the Conseil d'Etat, and two Interpol representatives.

# The Divisions and the Appeal Panel

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

Three Divisions have as their only or principal business the making of 'original decisions' (the Equal Opportunity Division, the Retail Leases Division and the Legal Services Division).

It is conceptually more helpful to group the Divisions of the Tribunal into those performing primarily administrative or public law functions and those performing primarily civil or private law functions. The LSD's functions belong to the public law field, in contrast to the EOD and RLD, which are engaged, essentially, in the resolution of private disputes.

## 'Administrative Review' or 'Public Law' Divisions

- **General Division:** operative 6 October 1998. Hears most applications by citizens for the review of administrative decisions or administrative conduct. The Tribunal's disciplinary jurisdictions - whether original or review - are located in this Division, with the important exception of lawyers for which there is the separate LSD.
- **Community Services Division:** operative 1 January 1999. Hears applications for review of various administrative decisions made in the Community Services and Disability Services portfolios and applications by sex offenders for permission to engage in child-related employment.
- **Revenue Division:** operative 1 July 2001. Hears applications for review of various State taxation decisions.
- **Legal Services Division:** operative 6 October 1998. Hears disciplinary matters relating to the conduct of legal practitioners.



*Deputy President Wayne Haylen, President Kevin O'Connor, Deputy Presidents Nancy Hennessy, Jane Needham, Anne Britton and Michael Chesterman*

## The 'Civil' or 'Private Law' Divisions

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

## Appeal Panel

The Appeal Panel has two streams: **internal appeals** and **external appeals**. The main business is the hearing of internal appeals, i.e. interlocutory and final appeals against Divisional decisions. The other stream deals with appeals from bodies external to the Tribunal - at present certain decisions of the Guardianship Tribunal, the Mental Health Review Tribunal and Magistrates.

## Legislation Conferring Jurisdiction

The Tribunal's review jurisdiction is allocated by specific enactments, usually by provisions in Acts of Parliament but sometimes by provisions in Regulations.

The Tribunal's current list of legislation conferring jurisdiction is found in Appendix C. The Tribunal is not always kept informed of allocations of review jurisdiction. The list is a guide only in that regard.







While the list records a large number of enactments conferring jurisdiction, the experience of the Tribunal is that a small number of enactments account for much of the Tribunal's work.

**Overall Case Load**

There were 989 primary applications lodged in the Tribunal in the last year, a decline of 20 as compared to the year before. There were 104 appeals lodged, an increase of nine on the previous year. So, overall, for the first time in the Tribunal's history there was a decline in filings as compared to the previous year (by 11, or 1%).

In its ten year history the Tribunal has had filed 8144 primary applications and 726 appeals.

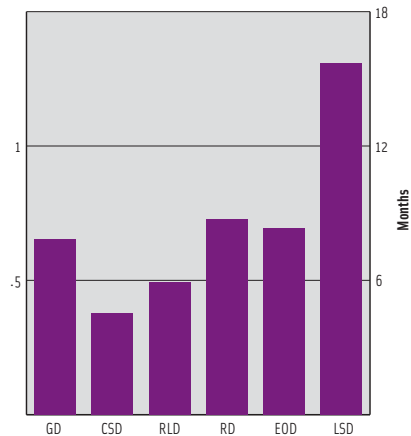
As at the end of the current year, the average time from filing to disposal of primary applications in the Tribunal was 0.65 of a year (i.e. 7.8 months). The average time from filing to disposal in the case of an appeal was 0.55 of a year (i.e. 6.7 months). The collective average was 0.64 (i.e. 7.7 months).

There has been a decline in the speed of disposal, as compared to five years ago, when the figures were 0.54 for primary applications, 0.31 for appeals, and collectively 0.52 (i.e. 6.3 months).

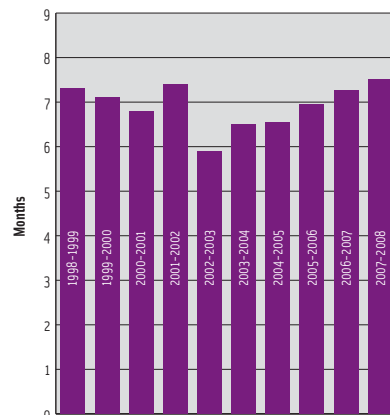
The collective average has now been slowing incrementally each year. The Divisional Heads have been asked to suggest ways in which the turnaround time can be improved.

Appendix D contains overall Case Load information, for all years since 1998. It also includes information relating to adherence to Time Standards. Appendix E contains detailed case management statistics for each Division, the Appeal Panel and the Guardianship and Protected Estates List.

Each Division - Average Disposal Time 07-08



Annual Average Divisional Disposal Time: Ten Year Comparison



# The General Division

The President is, in addition, the Divisional Head of the General Division.

## Case Load

There were 391 new applications filed in the reporting year. This number represents 39.5% of the Tribunal's first instance filings for the year, and is identical to last year.

The major category of business within the Division may broadly be described as 'Occupational Regulation' (passenger transport, firearms, security guards, motor dealers, tow truck industry, fisheries, property stock and business agents, home building) – 192 matters, i.e. 49%. A further 39%, 153, fell into the 'Information Law' category (FOI 117, PPIPA 32, HRIPA 4), i.e. 39%. These proportions correspond to the pattern of recent years. The Information Law category increased markedly four years ago, and had since stayed at that level.

The remainder of the General Division filings is made up primarily of professional discipline filings (accredited certifiers, licensed conveyancers, veterinary practitioners) – 13 matters (3%), and guardianship and protected estates matters – 29 matters (7.5%). These categories are dealt with more fully below by separate reports.

## Case Management

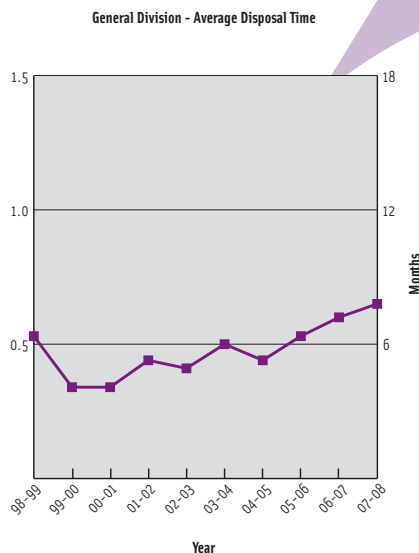
The General Division directions list is the first hearing point for all the Occupational Regulation filings and miscellaneous other filings. The Information Law business is streamed to a different case management process – planning meetings. The professional discipline matters usually start out in the General Division directions list, but then are usually streamed separately. The guardianship and protected estates matters are listed initially for separate, confidential directions hearings usually on the same day as the main directions list.

## Legislative Developments

During the year the main new review jurisdiction given to the Tribunal relates to casino, liquor and gaming control.

The *Liquor Act 2007* allows for complaints of non-compliance with licensing standards to be made against licensees by the Director of Liquor and Gaming, the Police or the local consent authority (e.g. the local Council) to made to the Casino, Liquor and Gaming Control Authority. The Authority may make disciplinary orders, going as far as cancellation of the licence. An affected party may apply to the Tribunal for review of the Authority's decisions.

The President addressed the annual conference of licensing police in June 2008 on the way the Tribunal will deal with matters arising under this legislation.



# Guardianship and Protected Estates List

---

This List has been created to manage all of the Tribunal's protective jurisdiction business. It falls into two categories: review applications lodged in the General Division concerning decisions taken in respect of the affairs of protected persons by the Protective Commissioner or the Public Guardian; external appeals in relation to guardianship and other protective orders. The List is managed by Deputy President, Magistrate Nancy Hennessy.

Members with appropriate expertise are assigned to hear review applications and appeals in the protective jurisdiction of the Tribunal. The details appear in Appendix B.

## **Case Load**

### **Review Decisions**

Of the 29 applications for review, 25 related to decisions of the Protective Commissioner and 4 related to decisions of the Public Guardian. Of the 21 applications that were finalised, the decision was affirmed in 7 cases and varied or remitted in 3 cases. Ten applications were withdrawn, settled or dismissed. This level of activity is similar to earlier years.

*The Tribunal affirmed a decision by the Public Guardian to allow a 25 year old woman with a severe brain injury to move with her father to a location several hours drive away from where her mother and other family members lived. The Tribunal applied the principles that the woman's welfare and interests should be given paramount consideration and that it is important to preserve family relationships. The unanimous opinion of the service providers whose views had been obtained was that it was in the woman's best interests for her to relocate with her father. After weighing the potential positive effect of the woman being cared for by a father who is living where he wants to live with the potential negative effect of not having as regular access to her mother and other extended family members, the Tribunal agreed to the move: EL v Office of the Public Guardian and anor [2008] NSWADT 84*

## **External Appeals**

During the year 20 appeals were lodged, 18 from decisions of the Guardianship Tribunal and one each from decisions of the Mental Health Review Tribunal and the Local Court. Twenty appeals were finalised: in one case the appeal was upheld, in 12 cases the appeal was dismissed, in 6 cases the appeal was withdrawn and in one case the Appeal Panel decided that it had no jurisdiction. Six appeals remained pending at the end of the year. This pattern also remains similar to previous years.

# Revenue Division

The Divisional Head is part-time Deputy President, Ms Jane Needham SC.

State tax law gives taxpayers the right to apply for review of decisions made by the Chief Commissioner, State Revenue on objections to assessment. However, unlike the situation in most merits review matters where there is no onus of proof, the applicant in Revenue Division matters bears the onus of proving his or her case.

The Tribunal's jurisdiction is concurrent with the Supreme Court. It is usual for taxpayers with lower-amount disputes to bring their case to the Tribunal rather than the Supreme Court. Jurisdiction in relation to the majority of revenue type statutes is conferred by s 96 of the Taxation Administration Act 1996. Jurisdiction under the *First Home Owner Grant Act 2000* is conferred directly by that Statute.

## Practice and Procedure

The process of dividing the lists into relatively simple matters being called over at 10.00 am on directions days, and more complex matters at 11.00am, is working well. The Practice Note is still in development and some consultation has taken place, and it is hoped that the Practice Note will be issued during the next year.

*The experience of the Division has been that a significant proportion of review applications are resolved between the parties without hearing. Pre-hearing resolution usually occurs as a result of the Office of State Revenue agreeing at the first directions hearing to reconsider the Chief Commissioner's determination. This practice introduces an element of delay, but the delay may be productive if the Chief Commissioner alters the determination under review in the applicant's favour, or the parties resolve the matter in some other way.*

## Case Load

The Division's intake lessened markedly this year. It received 121 applications, 44 less than last year, a decline of 27%. The slowing of intake assisted the Division in being able to clear more applications than were filed, i.e. 148.

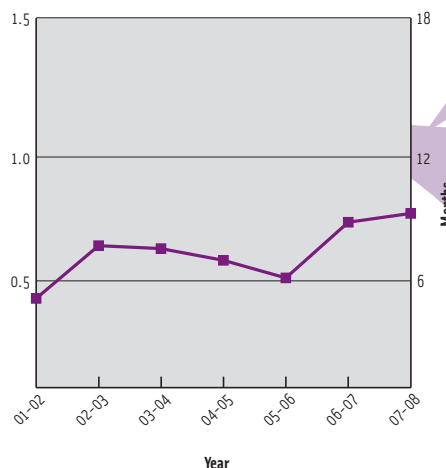
Of the 121, 60 related to land tax assessment, and 30 arose under the First Home Owners Grant scheme. The balance related to pay-roll tax (15), stamp duties (10), penalties (4) and the parking space levy (2). There were two variations of some significance in this group (payroll-tax down from 35 to 15, and FHOG down from 46 to 30).



Deputy President  
Jane Needham SC

*Analysis of the various outcomes of matters disposed of in 2007/8 shows that of the 148 disposals, 98 (66%) did not go to hearing either because the parties reached agreement, the application was withdrawn or not pursued. Of the remaining 50 resolved cases, the decision under review was affirmed in 35 cases. The decision was set aside, varied or remitted in 14, and a mixed result recorded in 3 cases.*

Revenue Division - Average Disposal Time



# Community Services Division



Deputy President  
Anne Britton

The Divisional Head is part-time Deputy President, Ms Anne Britton.

## Structure and Functions

The Division has both a merits review and original decision-making function.

The Division sits with three members. A judicial member presides. The two non-judicial members are persons with experience in community and disability services issues. Typically the panel will include a member with a professional perspective (as a child psychologist, for example) and a person with a user perspective (as a leader in a disability services community organisation, for example). The reviewable decisions committed to the Division include such sensitive matters as decisions to remove a child from an authorised carer (foster carer); and decisions to deregister a family day care centre. Unlike the position in other Divisions, this Division's review jurisdiction extends to private sector organisations empowered to make statutory decisions in areas such as foster care.

The Division also hears original applications for exemptions from persons who are prohibited from engaging in child-related employment because of a past sex offence. The Act requires the Tribunal to be satisfied that the prohibited person does not pose a risk to the safety of children before the application sought is granted. The respondent to the applications is the Commissioner for Children and Young Persons.

Most of the applications for review heard by the Division are brought by foster carers objecting to decisions to remove children from their care. These applications are

dealt with as urgent matters, and are quickly listed for directions and full hearing. It is usual to appoint a guardian to represent the interests of the affected children. The Tribunal's web site contains relatively few reported decisions relating to these cases, as given the pressing need to conclude these matter in a timely fashion, oral reasons are generally delivered at the conclusion of the case.

The following case, that did give rise to a published decision, illustrates the complexity that can be involved in these cases, especially where allegations of abuse are involved.

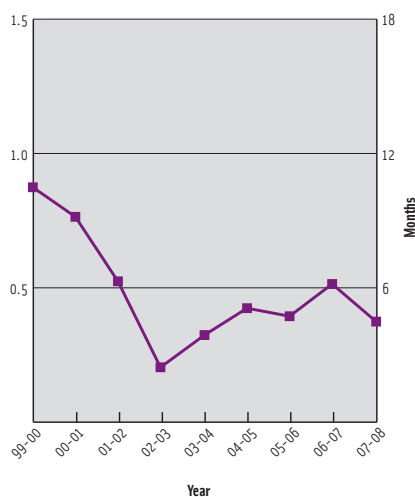
*In BP and anor v Minister for Community Services [2007] NSWADT 184 a child who had lived with the Applicants since she was two and a half years of age was removed from their care following allegations of physical abuse. The Tribunal found that the child had not been abused as alleged. The Tribunal concluded that the child's primary attachment was to the Applicants and their daughter, who in turn, had a strong attachment to the child. Being satisfied that the Applicants would provide a warm, caring, stable and nurturing environment for the child the Tribunal decided to set aside the decision under review.*

## Case Load

There has been a slight increase in the number of applications received this year from last year. Twenty applications were filed in respect of reviewable decisions; 17 applications were made under the *Commission for Children and Young People Act 1998*. These levels are in line with previous years.

Increasing use has been made of mediation to resolve disputes involving authorised carers. Of the four matters referred to mediation, all settled. Over two-thirds of applications filed in the course of the year were finalised in less than six months.

Community Services - Division Average Disposal Time



# Legal Services Division

The Hon Justice Wayne Haylen, of the Industrial Relations Commission, was appointed Head of the Legal Services Division and part-time Deputy President on 9 June 2008 following the retirement of Deputy President and Acting Judge Angela Karpin from the post.

Justice Haylen has had a distinguished career in the law. He joined the Bar in 1976, became a Queen's Counsel in 1990 and was appointed a judge in 2001. He served as a council member and chair of the Australian Consumers Association for many years. He was a member of the State Privacy Committee, again for many years. Presently, he is also a member of the appeal tribunals for the horse and greyhound racing codes.

## Structure and Functions

The Division hears applications for disciplinary orders from the Law Society, the Bar Council or the Legal Services Commissioner in relation to alleged misconduct by legal practitioners. The Division may also deal with client claims for compensation of misconduct. It also considers practitioner applications allowing employment of persons convicted of a serious offence. The Division, in the past, dealt with disciplinary applications relating to licensed conveyancers. That function has now been transferred by legislation to the General Division. In addition practitioners may apply to the Tribunal for review of disciplinary orders made by the Law Society or the Bar Council under the (lower tier) disciplinary powers vested in them by the legislation.

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

## Case Load

There were 39 applications filed during the year, and 35 applications finalised. The Division has 51 pending applications. The number of pending

applications has increased from 27 three years ago, to 47 two years ago to 51 as at 30 June 2008. The aim in the next year is to reduce the pending business to less than 40.

*During the year three applications for disciplinary orders were dismissed. Five practitioners were struck off the roll of practitioners. In two instances practising certificates were cancelled. In one instance it was suspended. The types of conduct for which practitioners were deregistered ('struck off') or had their practising certificate cancelled were:*

- Misappropriation of moneys
- Practising as a solicitor after practising certificate was cancelled
- Unethical conduct (eg omitting from returns lodged with the Office of State Revenue notifications of stamp duty payable, falsely stamping documents with a stamp provided by the Office of State Revenue, falsely inserting transaction numbers on documents, placing false letters, facsimiles, file notes and other documents in a file, issuing a Bill of Costs for work not performed)
- Failing to carry out instructions
- Misleading a client
- Misleading court by leading alibi evidence known by the practitioner to be untrue

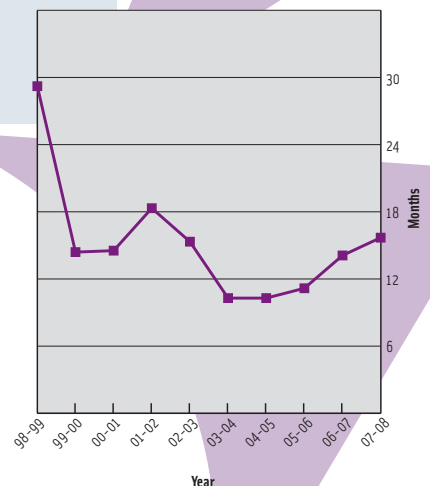


Deputy President  
Wayne Haylen

## Legislation

One legislative amendment during the year affected the Tribunal. It is no longer required that the appointment of a Deputy President as Divisional Head of the Legal Services Division of the Tribunal be from a practitioner member of the Division.

Legal Services Division - Average Disposal Time



# Other Professional Discipline Jurisdictions

---

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

The Tribunal's other professional discipline jurisdictions cover veterinary surgeons, architects, accredited certifiers and registered surveyors. Applications affecting these professions and occupations are heard in the General Division. Details as to these jurisdictions are available in previous annual reports.

In the last year, there was one filing under the *Veterinary Practice Act 2003*; no filings under the *Architects Act 2003*; and 9 filings under the *Building Professionals Act 2007*, all in respect of the conduct of accredited certifiers and none involving registered surveyors.

Almost all of the disciplinary matters heard by the General Division have concerned accredited certifier conduct. In the previous reporting year, there were 14 filings, so there have been 23 filings in two years. This number is partly explained, by the slowness with which these matters have moved through the pre-Tribunal disciplinary process. A number of the cases have involved allegations relating to conduct in the years 2000-2002 in the early period of the private certifier system. Nonetheless, 23 disciplinary filings is a very high number when compared to the number of accredited certifiers in NSW, approximately 450.

The *Building Professionals Amendment Act 2008* widens the Board's jurisdiction to allow it to make orders of suspension or cancellation for professional misconduct. While applications can still be brought direct to the Tribunal where a case is seen as involving conduct of this degree of seriousness, the likelihood is that serious cases will ordinarily be dealt with by the Board. A person who is the subject of a disciplinary finding may, as has always been the case, apply to the Tribunal for review of the finding and of any disciplinary action taken by the Board. [This change to jurisdictional arrangements commenced on 23 July 2008.]



# Equal Opportunity Division

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

## Structure and Function

The Division exercises jurisdiction conferred by the *Anti-Discrimination Act 1977*.

The Division hears and determines matters falling into the following four categories:

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

There were 88 matters pending at the beginning of the year. Of the 144 new applications filed during the year, 99 (69%) belonged to the first category, 38 (26%) to the second category, 4 (3%) to the third category and 2 (2%) to the fourth. The Division finalised 132 matters, 12 less than it received, leaving 100 applications pending at the end of the year.

## Membership

A panel of three sits on most hearings – one judicial member and two non-judicial members who have expertise in various areas of anti-discrimination law and practice. For some kinds of preliminary and interim applications, the Tribunal comprises only one judicial member.

## Case Load

### Referred complaints

If the complaint cannot be conciliated by the President of the ADB, or it cannot be resolved for some other reason, the President may refer it to the Tribunal. Ninety-nine original complaints were referred this year and 107 were finalised. Of those 107, 74 (70%) were settled or withdrawn, 1 (1%) was summarily dismissed, 19 (17%) were

dismissed after a hearing and 13 (12%) resulted in orders being made in favour of the applicant. These figures are similar to last year. The low proportion of matters in which an order is ultimately made in favour of an applicant, comes about because many meritorious matters are settled either through mediation or direct negotiation between the parties.



*Deputy President,  
Nancy Hennessy*

## Mediation

The Tribunal conducts a preliminary case conference at which parties are offered the opportunity of mediation if their case is suitable. Of the 107 original complaints finalised during the year, mediation was conducted in 55 matters. Of those 55 matters, 41 (75%) settled at or after mediation and 14 (25%) proceeded to a hearing. There is a significant incentive for parties to resolve complaints 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 for each complaint. If parties are legally represented, legal costs can consume a considerable proportion of any compensation that is ultimately awarded.

## Grounds of complaint

A complaint may allege more than one ground of discrimination. The most frequently cited grounds of discrimination were race (46), disability (35), sexual harassment (23) and sex discrimination (21). There were 19 complaints alleging victimisation of a person as a result of them making a complaint. There were fewer complaints about discrimination on the ground of having responsibilities as a carer (14), homosexuality (6) and marital status (3). The Tribunal received seven complaints of racial, transgender or HIV/AIDS vilification.

### Applications for leave to proceed

Where a complaint is declined by the President of the ADB because, for example, it lacks substance or is frivolous or vexatious, the complainant must obtain the Tribunal's "leave" or permission before being allowed to proceed. Thirteen applications for leave were pending at the beginning of the year and the Tribunal received 38 new applications during the year. Of the 39 matters disposed of during the year, leave was granted in 5 cases (13%) and refused in 24 cases (62%). The applicant withdrew the application or settled the complaint in the remaining 10 cases (25%). Twelve applications remain pending at 30 June 2008.

### Applications for the registration of conciliation agreements made at the ADB

The Tribunal also has jurisdiction to register conciliation agreements made when the complaints are still with the President of the ADB. The point of registration is that, as long as it contains terms that the Tribunal has power to order, the agreement, once registered, can be enforced as an order of the Tribunal. Five applications for registration were made this year and four were finalised. The Tribunal registered one agreement and the other three applications were withdrawn or dismissed.

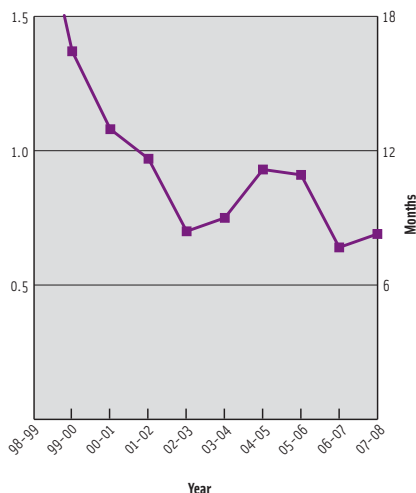
### Applications for interim orders

The President of the ADB, or a party to a complaint, may apply to the Tribunal for an interim order to preserve the status quo between the parties, or the rights of the parties, pending determination of the complaint. This year two new applications for interim orders were made. Both were withdrawn.

### Disposal rates

The Equal Opportunity Division's time standards for disposal of matters is 80% of matters to be finalised within 12 months and 100% within 2 years. This year 75% (100) were disposed of in less than one year and a total of 88% (a further 16 matters) in less than 2 years. The remaining 16 matters were more than two years old when they were finalised. Although we aim to meet the time standards, this is not always possible. Three reasons for complaints taking longer than expected to finalise are that the matters have been adjourned pending the finalisation of related proceedings in other jurisdictions, multiple interlocutory applications and/or appeals have been made or cases are complex and involve several parties.

Equal Opportunity Division - Average Disposal Time



## Significant Cases

### Race discrimination by hotels

*A Hotel admitted that it had instructed staff to refuse entry to persons of Middle Eastern or Islander background unless they were known to them. Although the hotel denied that the policy was in operation when the complainant was refused entry twice, the Tribunal found that his complaints of race discrimination were substantiated. The hotel and the associated security firms were ordered to pay him a total of \$9,000 in damages. \$3,000 of that amount was for "aggravated" damages because the security firms falsely claimed that the complainant was intoxicated at the time. (Tupou v Scruffy Murphy's Pty Ltd & Ors [2007] NSWADT 192)*

*A second case involved hotel security guards refusing several Aboriginal people entry. Each applicant was awarded \$15,000 in damages (Grogan and ors v First Rate Leisure Pty Limited and ors [2007] NSWADT 294).*

### Ballot papers in Braille

*The complainant, who is blind, applied to the NSW Electoral Commission asking that he be provided with a ballot paper in Braille so that he could cast a secret vote in the local government elections. There was no response to that request and the complainant's wife had to read the ballot paper to him and cast his vote. The Tribunal decided that the Electoral Commission's failure to provide the complainant with a ballot paper in Braille amounted to disability discrimination. As it would not have caused the Electoral Commission unjustifiable hardship to provide this service, the Tribunal awarded the complainant \$5,000 in damages: Fittler v New South Wales Electoral Commission and anor (No 2) [2008] NSWADT 116.*

### Same sex couples as foster carers

*The Tribunal held that a church based foster care agency had discriminated against a same sex couple by refusing to accept their application to become foster carers: OV and anor v QZ and or (No 2) [2008] NSWADT 115. The agency sought to rely on a religious exemption contained in the Act. But the Tribunal found that the exemption did not apply because the agency could not identify a teaching or doctrine of the church permitting discrimination on the basis of homosexuality. That decision is currently on appeal to the Appeal Panel.*

# Retail Leases Division



Deputy President,  
Michael Chesterman

The Divisional Head is part-time Deputy President, Emeritus Professor Michael Chesterman.

## Structure and Functions

The Retail Leases Division exercises jurisdiction conferred by the *Retail Leases Act 1994* on the Tribunal to determine applications relating to 'retail shop leases' as defined in this Act. The Supreme Court, the District Court and the Local Court may also exercise jurisdiction in civil proceedings brought under this Act. But section 75(2) of the Act establishes a 'general principle' that retail tenancy disputes 'should be dealt with by the Tribunal rather than by a court'.

The *Retail Leases Act* requires in section 68 that, except where a party to a lease applies for an order in the nature of an interim injunction, mediation by the Retail Tenancy Unit must be attempted, or must be found to be unlikely to resolve the dispute, before any proceedings may be taken in the Tribunal or in any other court or tribunal.

The Act makes provision for two categories of claim: retail tenancy claims and unconscionable conduct claims. An application may be a 'combined claim', involving claims in both these categories.

## Case Load

At the beginning of the year, 108 applications under the Retail Leases Act were pending. During the year, 261 new applications were filed and 240 applications were disposed of, so that at the end of the year the number of applications pending had increased by 21 to 129. This represents something of a return to the pattern of the years preceding 2006-07, in that the Division was not able to dispose of as many applications as were filed.

The number of new applications (261) was significantly greater than last year's figure of 227. The biggest single factor contributing to this increase was a substantial rise in the number of applications for the appointment of specialist retail valuers to determine, or review a determination of, the current market rent payable under a lease. This year, the Tribunal received 64 of these 'valuer applications', compared with only 26 in the preceding year.

Under the *Retail Leases Act*, valuer applications fall within the category of retail tenancy claims. But because the task undertaken by the Tribunal is primarily administrative, they differ significantly from other types of retail tenancy claim. It is preferable, when setting out statistics relating to the Division's work, to treat them as a separate category.

Among the 261 new applications, 64 (24.5%), as just mentioned, were valuer applications; 127 (48.7%) were retail tenancy claims in other categories; 5 (1.9%) were unconscionable conduct claims; and 65 (24.9%) were 'combined' claims, involving both retail tenancy claims and unconscionable conduct claims.

Of the 240 applications that were disposed of, 177 (73.75%) were within one of these last three categories of claim (retail tenancy, unconscionable conduct or 'combined'). The outcomes of them were as follows: 114 (64.4%) were withdrawn, discontinued or dismissed before hearing, or were settled with consent orders being made; 1 (0.6%) was transferred to the Supreme Court; 3 (1.7%) were dismissed on the ground of lack of jurisdiction; 21 (11.9%) were dismissed on the merits; and in 38 (21.5%), orders were made.

The remaining 63 (26.25%) of the 240 applications that were disposed of were valuer applications. The outcomes were as follows: 21 (33.3%) were withdrawn, discontinued or dismissed before hearing or were settled with

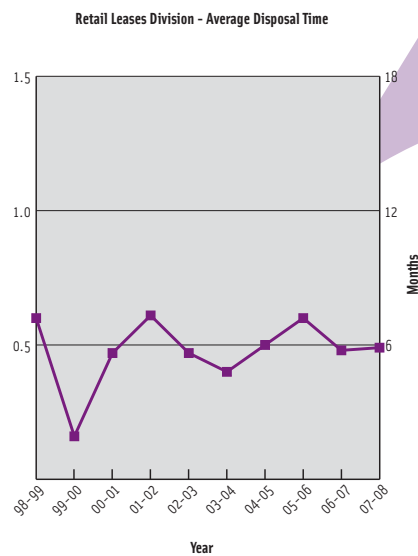
consent orders being made; 41 (65.1%) were resolved by orders appointing valuers; and in 1 (1.6%) the Tribunal held that it had no jurisdiction.

The rate of disposal (64.4%) of retail tenancy, unconscionable conduct and 'combined' claims without a determination by the Tribunal or a transfer to the Supreme Court was not as high as in previous years. Considering, however, that numerous retail tenancy disputes do not reach the Tribunal at all because of the requirement that mediation by the Retail Tenancy Unit must first be attempted, the proportion of disputes that are resolved without a hearing is commendably high.

During the year, 9 appeals (compared with only 2 in the preceding year) were determined by an Appeal Panel on appeal from the Division. In only 3 of these were issues from within the substantive law of retail leasing resolved. The remaining appeal decisions were concerned with questions of standing to sue, the limits of the Tribunal's jurisdiction, time limitations and costs.

**Timeliness**

According to time standards adopted by the Division, 85% of the applications made to it should be disposed of within six months and 100% within one year. Regrettably, it has not proved possible to adhere to these standards. Of the 240 applications disposed of in 2007-08, 168 (70%) were disposed of within six months and 213 (88.75%) within a year. Out of the remaining 27, 7 (2.92%) took more than two years to resolve. These percentages represent an improvement on the preceding year. But this may be attributable to the increased proportion of valuer applications within the Division's case load.



---

*The many matters dealt with this year in the cases decided by the Division included:*

- *The statutory definition of a 'retail shop lease'*
- *Whether the Tribunal has jurisdiction to deal with disputes where one party is a 'stranger' to the lease*
- *Pre-lease misrepresentations*
- *What constitutes 'key money' under the Retail Leases Act*
- *The consequences of refusal or failure by a lessor to make available to the lessee facilities, within property owned by the lessor, such as a parking space, a loading area and a toilet*
- *The extent and nature of a lessor's obligation to effect repairs when damage to the premises disrupts the business carried on by the lessee*
- *The exercise of an option to renew conferred by a lease*
- *Assignment of a lessee's interest under a lease*
- *Whether a breach by a lessee of any term described in the lease as an 'essential term' may entitle the lessor to terminate the lease without serving the statutory notice required by section 129 of the Conveyancing Act 1919*
- *Misleading or deceptive conduct*
- *Unconscionable conduct*
- *Relief against forfeiture*
- *The appointment of specialist retail valuers*
- *The circumstances in which costs orders may be made with respect to proceedings under the Retail Leases Act*

## **Legislative Developments**

In April 2008, the Department of State and Regional Development issued a Discussion Paper entitled 'Issues affecting the retail lease industry in NSW'. It contained numerous proposals for reform of the *Retail Leases Act*.

In June 2008, the Tribunal sent to the Retail Tenancy Unit a submission addressing a number of these proposals. The submission focused on issues directly concerning the Tribunal's role in determining retail tenancy disputes. The issues canvassed in the submission included the following:-

- Time limits for commencing claims.
- Remedies for non-disclosure or incomplete disclosure before a lease is executed.
- The concept of 'unconscionable conduct' and the special requirements applying to determinations by the Tribunal of unconscionable conduct claims and 'combined' claims.
- The appointment of specialist retail valuers, including the appropriate body to exercise the jurisdiction to make appointments currently conferred on the Tribunal.

# Appeal Panel

The President is responsible for Appeal Panel listings and the general administration of the Appeal Panel.

## Structure and Functions

As explained in the introduction to this part of the report, the Appeal Panel hears internal and external appeals.

Interlocutory internal appeals may be heard by one presidential member of the Appeal Panel. Final appeals must be heard by a three member panel, comprising 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 103 appeals - 83 internal appeals, 20 external appeals. Of the internal appeals, 42 were dismissed, 20 resulted in decisions that varied or set aside the decision under appeal, 5 were resolved by consent orders, one did not proceed for want of jurisdiction and 15 were withdrawn or discontinued. Of the external appeals, one was upheld, 12 were dismissed, one matter did not proceed for want of jurisdiction and the remaining 6 were withdrawn or discontinued.

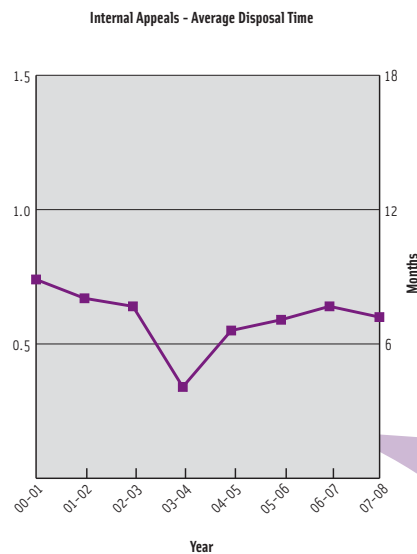
## Internal Appeals

In the last year the number of appeals filed was 84, distributed 46 General Division (54%), 1 CSD, 10 EOD, 16 Retail Leases, 11 Revenue. (LSD decisions are no longer appealable to the Appeal Panel but are appealable directly to the Supreme Court.)

Of the 84, there were 17 interlocutory appeals - 10 in General, 3 in EOD and 4 in RLD. Of these 17, 8 were pending as at 30 June 2008. As to the 9 disposals, one gave rise to a consent order, in 3 leave was granted, 2 leave was not granted, and 3 were withdrawn.

83 internal appeals were finalised in 07-08. 15 were withdrawn/discontinued. Of the balance (68), 20 were as successful in whole or in part, 42 were dismissed, 5 were the subject of consent orders and 1 was outside jurisdiction.

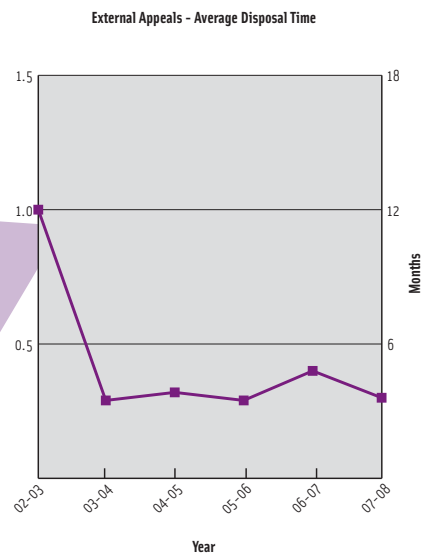
The average time an internal appeal spends before the Appeal Panel was 0.6 of a year (i.e. 7.2 months).



### External Appeals

There were 20 appeals filed, 18 from the Guardianship Tribunal, 1 from the Mental Health Review Tribunal and 1 from a Magistrate. 1 appeal was upheld, 12 dismissed, 6 withdrawn/discontinued, 1 no jurisdiction.

The average time an external appeal spends before the Appeal Panel was 0.3 of a year (i.e. 3.6 months).



### Further Appeals

#### Appeals to Supreme Court and other Applications to that Court

Appeal Panel decisions may be appealed on a 'question of law' to the Supreme Court. Where the presidential member is a judge, the appeal is assigned to the Court of Appeal: *Supreme Court Act 1970, s 48*.

There are some categories of Tribunal decisions that can not be appealed to the Appeal Panel. The most important concerns decisions of the Legal Services Division (see *Legal Profession Act 2004, s 729A*). Other exceptions include: the veterinary practitioners and architects discipline jurisdictions of the Tribunal; council disputed returns cases; and child employment exemption cases.

Legal Services Division appeals are not restricted to questions of law. They take the form of a rehearing, but not a new hearing: LP Act, s 729A. The Supreme Court Act 1970, s 48 assigns all LSD appeals to the Court of Appeal (the status of the presiding member is irrelevant).

There were 16 filings relating to Appeal Panel or Divisional decisions in the Supreme Court. During the year the Court disposed of 14 filings affected the Tribunal. Four were withdrawn. After hearing, three appeals were allowed in whole or in part (two relating to Appeal Panel decisions, one an EOD decision) and seven were dismissed.



# Appeal Cases: Overview

---

This section highlights some of the more important appeal decisions during the last year.

## (I) Appeal Panel

The following survey includes abbreviated references to the case, so for example 08/27 means the appeal reported at [2008] NSWADTAP 27.

## Internal Appeals

### From General Division

*Freedom of Information – Residual Discretion to Release Exempt Documents.* Disagreeing with Tribunal case law, the Supreme Court ruled in 2006 that the Tribunal has jurisdiction to exercise the agency's power to release documents containing exempt matter. In response to several cases, the Appeal Panel extended the appeal to the merits, and exercised the discretion. The cases include 07/38, 07/51, 07/63, 07/65, 08/08 and 08/17. The first and sixth of these cases concerned documents said to be third party protected disclosures, the second, fourth and fifth concerned documents said to relate to the legal professional privilege of the agency, and the third concerned documents said to relate to a third party's personal affairs. In two of the cases the decision was to permit the release of matter protected by legal professional privilege. In another there was a limited release of third party personal affairs information.

There is now an appeal pending in the Court of Appeal relating to one of the decisions to release matter protected by legal professional privilege, which will require consideration of the Supreme Court ruling of 2006.

In another appeal relating to the FOI Act, the Appeal Panel dealt with the extent of the Tribunal's jurisdiction in relation to advance deposit decisions of agencies: 07/64.

*Commercial Agents and Private Inquiry Agents –* The Appeal Panel dealt with the interaction between the spent convictions laws and the

disqualification provisions of this Act: see 07/40.

*Accredited Certifiers:* The Appeal Panel upheld an appeal by the prosecuting agency against a decision of the Tribunal relating to whether it had failed properly to assess the gravity of the certifier's conduct, and allowed the admission of new evidence: 08/13

*Firearms – Shooters Range – Conditions on Approval:* The administrator, the Commissioner of Police had imposed conditions on the shooters' range approval under the Firearms Act. The licensees applied for review by the Tribunal. The Tribunal varied the conditions in a manner which it thought would assist the applicants. The applicants' view was that the conditions were less satisfactory and less workable, and appealed. The Appeal Panel upheld the appeal, restored the Commissioner's decision, and encouraged the parties to develop a protocol to enable practical implementation of the Commissioner's conditions: 07/45.

*Privacy – What constitutes "personal information":* The Appeal Panel held that the definition of "personal information" is to be construed broadly and "is not confined to information that concerns the 'personal affairs' of a person" – this is to import an FOI concept into the interpretation of the definition. A photograph did fall within the definition of "personal information." 07/58.

*Privacy – The 'publicly available publication' exception to the meaning of "personal information":* The Appeal Panel held that the circulation by an agency of a published law report containing information about the complainant did not fall under the privacy legislation, PIPPA, by reason of the exception in s 4(3) of the Act. While the report had been drawn down from an internet site, it was clear that it was a complete record of the officially published report: 08/26.

---

*Protective Commissioner:* Two daughters of a woman whose financial affairs were under management of the Protective Commissioner applied for review of a decisions made by the Commissioner to sell their mother's home, and retain two vacant blocks of land. The Tribunal had no evidence that the home was not in rentable condition, and ordered that it be retained, and one of the blocks be sold. The Appeal Panel granted leave to appeal the Tribunal's decision on the basis of material evidence that had not been before the Tribunal which showed that the home was not rentable. The Appeal Panel decided that it was in Ms X's financial best interests to sell the property at Toongabbie and discontinue the sale of the block of land. 08/32

#### **From Equal Opportunity Division**

The following is a short account of a number of decisions dealing with different aspects of the operation of the *Anti-Discrimination Act 1977* (NSW).

*Homosexual vilification – radio broadcast:* The Appeal Panel ruled on the construction to be given to the 'reasonableness and good faith' defence where statements are found to constitute homosexual vilification. The Appeal Panel, overruling the Tribunal, preferred Federal Court authority to Victorian Court of Appeal authority on the point. The case related to statements made by a prominent radio presenter. The Appeal Panel remitted the case. The matter was settled, without any further hearing: 08/32

*Race discrimination in a school setting:* This case dealt with racist remarks by students at a school directed to the complainant. The Appeal Panel overruled the Tribunal's interpretation of ss 7 and 17 of the Act. The respondent was the Education Department. The Tribunal noted that it was not enough to show that the students' remarks were racist, and that the school staff had failed to take sufficient action to deal with

the behaviour. It was necessary to show further that the insufficient action was 'on the ground' of the complainant's race, and this had not been done. 07/50

*Sexual harassment and Employer Liability:* The Appeal Panel deals with the issues of the nature of the vicarious liability of employers for acts by employees of sexual harassment, the nature of the test for sexual harassment, the extent to which the test should have regard to the situation and characteristics of the complainant, and the extent to which circumstances though fall outside the relevant period (i.e. the period within which any complaint must be lodged can be taken into account): 07/54

*Disability discrimination – victimisation:* This decision, like the previous case, also dealt with the extent to which conduct outside the relevant period can be taken into account. It considered the way the differential treatment test is to be applied in disability discrimination matters. There were also a number of procedural errors identified in the Tribunal's reasoning process. 08/24

*Sex discrimination – discrimination on basis of carer responsibilities:* The Appeal Panel set aside the Tribunal's determination that a person was discriminated against on the basis of her responsibilities as carer. It held that the differential treatment test had been misapplied, and considered the way the Tribunal had applied various evidentiary principles, such as the drawing of inferences where a defendant fails to give evidence on additional facts that are peculiarly within her or his knowledge and the use in making a finding of the fact that a person has not given evidence. 08/04

*Disability discrimination – the remedy of apology:* Dealt with the scope of the Tribunal's power to order an apology, and a costs issue: 07/33

## **From Retail Leases Division**

*Retail Leases - Pre-Lease Misrepresentation - Estoppel:* The Appeal Panel agreed with the Tribunal that the lessor was bound by any representations by the letting agent, even if the agent was not directly employed by the lessor if authority had been given. But the Appeal Panel considered, contrary to the Tribunal, that the failure of the lessee to agitate the misrepresentation (as to an anchor tenant) within a reasonable period after entering into possession debarred, or estopped, the lessee from relief. As to relevant principles it took account of a Supreme Court judgment delivered after the Tribunal decision. Accordingly the lessor was entitled to an order for damages in respect of early termination, subject to a discount for failure to mitigate. 07/47

## **From Revenue Division**

*Land tax exemption - Principal place of residence - Parcel of land:* Two Appeal Panel decisions dealt with the land tax exemption for principal place of residence.

In the first, the question was whether the block owned by the taxpayer adjacent to the block on which the domestic residence was built was also exempt as forming part of a parcel of land used as a principal place of residence. The Tribunal held that the second block did not form part of a parcel used for that purpose. The Appeal Panel reversed the finding, and held that the Tribunal had erred in finding that the fact that the adjacent block had an independent dwelling house constructed on it was determinative: 07/67. This decision was reversed by the Supreme Court, see below McGrath's case.

In the second case, the taxpayer had owned two domestic residences during the tax year. The Appeal Panel examined the election provisions in the law addressed to persons who own multiple residential properties, and found them inapplicable in this instance as the higher value

property was not put to any residential use by the taxpayer in the relevant year, and upheld the Commissioner's decision. 08/27.

*First Home Owner Grant - Inheritance:* In settlement of a dispute between the heirs as to the adequacy of the provisions made for them by the father's will, the Supreme Court made consent orders the effect of which was that the home passed to the wife subject to her making payments to his daughters from a previous relationship. As she had not owned land before, she applied for a First Home Owner Grant. The Commissioner refused on the basis that it was not a purchase transaction or otherwise 'eligible' under the law. The Tribunal reversed the Commissioner's decision. The Appeal Panel found that whilst the cash payments enabled the transfer it could not be said that they were payments of the purchase price in the usual sense. Nor was there the necessary factual matrix for the transaction to become a "contract for the purchase of a home," as required under the Act. 08/7

*Pay-roll Tax Act - Distinction between employees and independent contractors:* A building company had arrangements with people and companies that did work for it which it asserted took its payments for their services outside the pay-roll tax net. The Appeal Panel upheld the taxpayer's case, on the basis that the service providers were independent contractor and the payments therefore immune, for all but 5 of the 36 'entities' that were identified as 'contentious'. 07/32. In a further decision (the fourth in the sequence of Appeal Panel decision in this case), concerning those 5 instances, it upheld the taxpayer's objection to being assessed to pay penalty tax. The Appeal Panel also made an order for costs against the Commissioner in relation to aspects of the case. 08/14

## External Appeals

*Guardianship Tribunal – financial management order:* The Appeal Panel upheld the appeal of two daughters of a protected person, who had applied to the Guardianship Tribunal for revocation of orders vesting management of her financial affairs in the Protective Commissioner. They objected to the way the Protective Commissioner was handling their mother's affairs. The Appeal Panel held that the Tribunal had misdirected itself when, dismissing their application, it had seen it as necessary at the threshold that the daughters demonstrate that the Protective Commissioner had acted incompetently, improperly or unlawfully and to supply proof of a plan of management and a plan to deal with negative action by their brother. Rather, the Guardianship Tribunal should have started with the proposition that it had a broad discretion to revoke the appointment, and that the matter was governed by a consideration of the protected person's best interests once the complainants had shown 'some reason' for concern.08/05

### (2) Court of Appeal

Two of the Court of Appeal decisions related to the Tribunal's FOI jurisdiction.

*Howell v Macquarie University [2008] NSWCA 26:* The Appeal Panel substantially upheld a Tribunal decision which supported an agency determination refusing access to documents. The access applicant appealed. The Court found no error in the Appeal Panel's interpretation of the legal professional privilege exemption. The Court also dealt with the issue of whether a leaning position should be adopted in interpreting exemptions in favour of access (no), and the way in which an objection to privilege based on improper purpose is to be addressed.

*Administrative Decisions Tribunal Appeal Panel v Director General, Department of Commerce &*

*Ors [2008] NSWCA 140:* The Appeal Panel referred to the Court under s 118 of the ADT Act the question whether the Tribunal had jurisdiction under the FOI Act to deal with objections that the agency had failed to disclose all relevant documents in its FOI determination because it had not engaged in a sufficient search. The Tribunal had asserted such a jurisdiction since 2000. The Court held that the NSW Act does not confer such a jurisdiction. The Tribunal could only examine the determination in respect of the documents identified by the agency as held by it and falling within the terms of the request. Issues of inadequate search can only be agitated before the Ombudsman.

Three of the Court of Appeal decisions related to legal profession discipline jurisdiction. Two arose as direct appeals from the LSD, and one from the Appeal Panel (involving a case that preceded the removal of the Appeal Panel appeals jurisdiction in respect of the LSD).

*LI v Council of the New South Wales Bar Association [2007] NSWCA 223:* The LSD gave the Bar Association leave to bring out of time a disciplinary application against a barrister. The barrister submitted that this was oppressive and unfair in the circumstances. The Court was satisfied that the Division had exercised its discretion according to relevant considerations, and did not consider it appropriate to intervene. The appeal was dismissed.

*Stanoevski v The Council of the Law Society of New South Wales [2008] NSWCA 93:* In 2003 the Division granted the Law Society's application to strike off the solicitor for professional misconduct. The solicitor appealed to the Appeal Panel. The Appeal Panel found that the Division had erred in certain respects, and granted leave to extend the appeal to the merits. Ultimately, the Appeal Panel reached the same conclusion as the Tribunal, but by majority (2 to 1). On appeal, the Court accepted that the Appeal Panel had overlooked that the solicitor's name had not

actually been removed from the roll at that point. Nonetheless it had addressed the correct question – the applicant’s present fitness to remain in practice. It agreed that the onus in that regard lay with the Law Society. But once acts of professional misconduct were proven of a kind which reasonably justified the conclusion that the solicitor was unfit, it was up to the solicitor to adduce evidence to displace that conclusion. The Court was satisfied that the Appeal Panel had regard to relevant considerations.

*Davison v Council of the New South Wales Bar Association [2007] NSWCA 227*: The LSD ordered that the barrister’s name be removed from the roll, because of non-performance of civic obligations (payment of tax over many years). The Court dismissed the appeal. The Court agreed with the Tribunal that the barrister’s failure to meet his civic obligation to pay tax was deliberate and that he had failed in his obligation to make reasonable contributions to the trustee in bankruptcy after his commercial ventures had failed. It gave a check-list of the considerations that are relevant to an assessment of a practitioner’s present fitness, especially in relation to conduct not connected with the ordinary work of professional conduct.

The next case relates to the Tribunal’s anti-discrimination jurisdiction.

*Deva v University of Western Sydney [2008] NSWCA 137*: This case reached the Court of Appeal along the judicial review track. The complainant challenged a Tribunal decision by originating summons. The single judge upheld the Tribunal’s dismissal of the complainant’s complaint. The complainant had alleged race discrimination in employment resulting unfairly in termination. The complainant had already taken proceedings in the Australian Industrial Relations Commission for harsh and unreasonable conduct. That case had been dismissed. Purporting to apply the provisions in

the ADA (ss 119, 122) seeking to avoid dual proceedings on the same ‘subject matter’. The Tribunal had refused to entertain the complaint. The single judge upheld the Tribunal’s decision. The Court of Appeal upheld the appeal, and quashed the Tribunal’s decision. The Court of Appeal found that the Tribunal erred in treating the present complaint as involving the same subject matter.

*High Court*: An application for special leave to appeal from a Court of Appeal decision arising from the Retail Leases Division was refused: *Skiwing Pty Limited v Trust Company of Australia Limited* [2008] HCASL 229 (meaning of ‘outgoings’ under s 12 of the *Retail Leases Act* 1994).

### (3) Supreme Court (single judge)

*McGuirk v University of New South Wales [2007] NSWSC 806*: The case related to the FOI Act’s legal professional privilege exemption. The document recorded advice given by senior counsel to the Council of the University. The Court found no error. However, the Court upheld the second ground of appeal, that the Appeal Panel had failed to exercise the residual discretion to allow disclosure of exempt documents (found to be available by a 2006 Supreme Court in a case determined after the Appeal Panel case). Accordingly the decision was set aside, and the matter remitted.

The question of whether the 2006 Supreme Court decision was correct has now been referred to the Court of Appeal, in another case involving the same parties: see *University of New South Wales v McGuirk* [2008] NSWSC 369. In this case the Appeal Panel decided to release advice found to be exempt on the ground of legal professional privilege exercised the residual discretion said to derive from section 63 of the ADT Act. The University appealed, and the proceedings have been removed to the Court of Appeal.

*Wecker v University of Technology, Sydney* [2007] NSWSC 927. The complainant was a student at UTS who challenged his exclusion, claiming it involved (imputed) disability discrimination. The University replied that it had acted because of threats of violence made to staff. The Anti-Discrimination Board found the complaint lacked substance. The Tribunal granted leave to proceed in the Tribunal. The Tribunal dismissed the complaint. The Appeal Panel dismissed the appeal. The Court noted that the Tribunal had made a finding that Mr Wecker did not have a disability within the meaning of s 49A. The Tribunal also found that none of the employees involved in making decisions about the disciplinary conduct thought Mr Wecker had a mental illness. Therefore the Appeal Panel was correct in finding that the issue of whether or not he was treated less favourably did not come into play. The Court rejected his claim that he had been denied procedural fairness by the Appeal Panel. The Court rejected that claim that UTS had failed to accord natural justice in its internal procedures.

*Chief Commissioner v McGrath* [2008] NSWSC 387, a Commissioner's appeal from the Appeal Panel decision noted above as 07/67. The Court was not satisfied that the Tribunal had erred in its analysis of the relevant law, or in its application of the law to the facts. The Tribunal had properly divided its two dwellings finding, and the residential land finding. It had not

conflated the two, as suggested by the Appeal Panel. Accordingly the basis given for extending to the merits was not sustainable. The Court set aside the Appeal Panel's decision, and restored the Tribunal's decision affirming the Commissioner.

*Commissioner of Police NSW v Gray* [2008] NSWSC 414 This case dealt with the important question of extent of the duty of an administrator to disclose protected intelligence information relied upon to refuse a licence application. Under s 15 (7) of the Security Industry Act 1997 the Commissioner is not required to give reasons for the refusal if doing so would disclose the existence or content of any criminal intelligence. The applicant claimed that failure to provide such information was a denial of procedural fairness. The Court (Malpass AsJ) found that the Tribunal was entitled to order the Commissioner to provide the applicant of particulars of time, place and manner of the conduct relied on to support the determination that the applicant was not a fit and proper person. His Honour found that the object of the prohibition against disclosure of criminal intelligence was to protect the identity of informants and details of police methodology and that the provision of particulars would not disclose the existence or content of criminal intelligence. It was not the intention of the legislature that an applicant be deprived of particulars of the case it had to meet.

### Supreme Court Activity

Year	Carried Forward	Lodged	Withdrawn	Dismissed	Upheld (whole or part)	s118	Pending
1998-99	6	3	0	2	1	0	6
1999-00	5	5	1	3	1	0	5
2000-01	5	5	0	0	2	0	8
2001-02	9	11	1	7	2	2	8
2002-03	8	9	2	8	1	1	5
2003-04	5	14	1	2	5	2	9
2004-05	8	16	4	6	5	0	11
2005-06	11	14	0	5	2	0	18
2006-07	22	20	3	7	11	0	21
2007-08	21	16	4	3	3	1	26*
<b>Total</b>	<b>6</b>	<b>113</b>	<b>16</b>	<b>43</b>	<b>33</b>	<b>6</b>	<b>26*</b>

Note: This table is based on ADT records. It covers (1) Orthodox Appeals from Appeal Panel; (2) Referrals of questions of law by the Appeal Panel under s118 ADT Act; (3) Appeals from the Legal Services Division; and (4) Originating Summonses. \* Reconciliation produces a net figure of 21. This discrepancy will be reviewed for next year's report.

# Practice and Procedure

---

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 Tribunal has nineteen operative Practice Notes: no. 1; nos. 3-20.

Practice Note 17 (General Division: Professional Discipline Proceedings) was re-issued on 16 November 2007, with amendments. Practice Note 17 applies to applications for disciplinary finding/s by the Tribunal under the *Veterinary Practice Act 2003*, *Environmental Planning and Assessment Act 1979* and the *Architects Act 2003*.

The Tribunal has three user groups: Freedom of Information; Privacy; and Guardianship and Protected Estates. The groups met as needed. None of the groups have met in the last year.

Appendix F sets out the formal composition of User Groups and Rule Committees.

The Tribunal also has a statutory Rule Committee and each Division has a Rule Sub-Committee. This structure is to be revived in the near future.

The experience of the Tribunal has been that it is more practical to deal with practice and procedure issues via Practice Notes. The Parliament has recognised the value of using Practice Notes, and given their use statutory force.

Section 91A provides:

## **91A Practice notes**

- (1) Subject to the rules of the Tribunal, the President may issue practice notes for the Tribunal in relation to any matter with respect to which rules may be made.
- (2) Part 6 of the Interpretation Act 1987 applies to a practice note issued under this section in the same way as it applies to a rule of court.

A major development in the mainstream court system is the *Civil Procedure Act* 2005 and the *Uniform Civil Procedure Rules* 2005. The Tribunal is presently undertaking a review of its Practice Notes and its Rules to harmonise them where appropriate with the new civil procedure rules. The Tribunal's major objective is to ensure that simple practices and procedures apply to proceedings in the Tribunal, and that they are not such that people feel they must engage legal representation simply to navigate the rules.

At present a new Practice Note is being developed in relation to Revenue Division matters. Consultations have taken place with the Chief Commissioner of State Revenue and senior officers of the Office of State Revenue. There have been consultations with the Protective Commissioner (who is also the Public Guardian) in relation to the possibility of more actively using mediation in dealing with applications for review of those offices' decisions.

The Tribunal has alternative dispute resolution facilities. These are used most actively in the Equal Opportunity Division of the Tribunal.

The Tribunal has very few situations where a party can bring proceedings in the Tribunal without going through a prior process that has elements of an alternative dispute resolution character. Retail leases dispute must go to the government's Retail Tenancy Unit unless the Tribunal dispenses with the requirement. All anti-discrimination complaints must first be the subject of attempts at conciliation by the Anti-Discrimination Board. All reviewable decisions are usually first the subject of two decisions at agency level, where substantial discussions and negotiation will often have occurred. Professional discipline proceedings are subject to elaborate internal procedures that will often involve discussion and negotiation.

Mediation is one of two forms of alternative dispute resolution specified for use in the

---

Tribunal by the ADT Act. The other form, neutral evaluation, is not currently in use.

The Tribunal provides trained mediators at no cost to the parties. The majority of mediators are also members of the Tribunal. Mediators who are members take no part in the hearing of the matter if mediation is unsuccessful.

At the less formal level, planning meetings in the FOI and Privacy Lists are used to encourage parties to negotiate a settlement or limit the issues and documents in dispute.

*The Tribunal conducted 61 formal mediations: 55 Equal Opportunity Division, 4 - Community Services Division and 2 - General Division. 46 (75%) settled at or after mediation and 15 (25%) proceeded to hearing.*

Mediators are appointed under s 106 of the ADT Act. Appointments have been limited to serving members of the Tribunal. A list of Mediators follows the List of Members in Appendix B.



# Appendices

## Appendix A: Financial Information

### Administrative Decisions Tribunal & Legal Services Division Financial Information as at 30 June 2008<sup>1</sup>

	ADT			LSD <sup>2</sup>	TOTAL
	Actual	Budget	Variance	Actual	Actual
	\$	\$	\$	\$	\$
Employee Related Payments (Including Crown Liabilities)	188,4106	1,829,359	(54,747)	216,478	2,100,584
Property Items	344,839	375,240	(30,401)		344,839
Other Operating	1,265,652	1,045,558	(220,094)	216,561	1,482,213
Depreciation	689,60	58,845	(10,115)		68,960
<b>Total Expenditure</b>	<b>3,563,557</b>	<b>3,309,002</b>	<b>(254,555)</b>	<b>433,202</b>	<b>3,996,759</b>
<b>Total Revenue<sup>3</sup></b>	<b>(821,109)</b>	<b>(834,709)</b>	<b>(13,599)</b>	<b>(433,202)</b>	<b>(1,254,311)</b>
<b>Net Cost Of Services</b>	<b>2,742,448</b>	<b>2,474,293</b>	<b>(268,155)</b>	<b>0</b>	<b>2,742,448</b>
Less Depreciation	(68,960)	(58,845)	10,115	0	(68,960)
Less Crown Liabilities	(235,683)	(232,610)	3,073	0	(235,683)
<b>Controlled Net Cost Of Services</b>	<b>2,437,805</b>	<b>2,182,838</b>	<b>(254,967)</b>	<b>0</b>	<b>2,437,805</b>

#### Notes

- 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.
- 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.
- Revenue**  
The Tribunal received \$1,254,311 in revenue. Of this, \$1,174,222 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 B: List of Members

### 1 July 2007 to 30 June 2008

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.

#### PRESIDENT

Judge KEVIN PATRICK O'CONNOR, AM, to 9 August 2010

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 2010

Assigned as set out below.

GENERAL DIVISION	Current Expiry date		
<b>Divisional Head</b>		<b>Presidential Members assigned to Guardianship and Protected Estates list</b>	
Judge KEVIN PATRICK O'CONNOR, AM, President	9.8.10	ANNE KATHLEEN BRITTON, Deputy President	11.10.09
<b>Deputy Presidents</b>		ROBIN PATRICK HANDLEY	
PETER RAYMOND CALLAGHAN, SC (13.2.08)	31.10.10	(Deputy President from 1.5.08)	31.10.10
Acting Judge MICHAEL RAINSFORD		Magistrate NANCY LOUISE HENNESSY,	
CHESTERMAN	2.10.08	Deputy President	7.3.10
ROBIN PATRICK HANDLEY		NEIL ROBERT REES*	26.7.07
(Deputy President from 1.5.08)	31.10.10	<b>Judicial Members assigned to Guardianship and Protected Estates list</b>	
Magistrate NANCY LOUISE HENNESSY	7.3.10	SUZANNE MAREE LEAL	31.10.09
JANE ANNABEL DARLING NEEDHAM, SC	2.11.08	JULIAN JOSEPH MILLAR	31.10.09
JOHN JOSEPH STEELE, QC (13.2.08)	31.10.10	<b>Non-judicial Members assigned to Guardianship and Protected Estates list</b>	
<b>Judicial Members</b>		MARY ELIZABETH BOLT	31.10.10
CATHERINE LOUISE FITZGERALD	31.10.10	BARBARA RUTH FIELD	31.10.09
GAIL BARTON FURNESS (19.12.07)	31.10.10	JENNIFER GREEN	31.10.08
PENELOPE HELEN GOODE	30.4.09	LYNN MARY HOULAHAN	31.10.08
YVONNE GRANT	31.10.10	RALPH WILLIAM MERRELL	31.10.08
ERAINÉ ELIZABETH GROTTÉ	31.10.10	BRUCE GEOFFREY THOMSON	31.10.08
SIGRID HIGGINS	31.10.10	ELIZABETH ANNE WHAITE	30.7.08
SUZANNE MAREE LEAL	31.10.09	ANN DOMINICA WUNSCH	31.10.09
PETER HENRY MOLONY	31.10.10	<b>Non-judicial Members, Public Health</b>	
STEPHEN HENRY MONTGOMERY	31.10.10	ANNEMARIE HENNESSY	31.10.10
LINDA MARY PEARSON	31.10.10	RICHARD MATTHEWS	31.10.10
JANELLE ANNE SAFFIN*	18.10.07	<b>Non-judicial Members, Accredited Certifier</b>	
ROBERT BRUCE WILSON	31.10.10	PETER GABRIEL FRIEDMANN	31.10.09
<b>Non-judicial Members</b>		PHILIP ARTHUR HAYWARD	31.10.09
ZITA ROSE ANTONIOS	31.10.08	GRAHAM JOHN MALLISON	31.10.09
CLIFFORD DOUGLAS BLAKE, AO	31.10.10	GORDON PATRICK WREN	31.10.09
MARY ELIZABETH BOLT	31.10.10		
KEVEN WILLIAM MAPPERSON	19.9.07†		
ANNETTE FRANCES O'NEILL	31.10.08		

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

MAGDOLINE AWAD	31.10.09
TANYA LORRAINE CARTER	31.10.09
FIONA JENNIFER CLARK	31.10.08
ANDREW JONATHAN DART	31.10.09
PETER KENNETH KNIGHT	31.10.09
ROSALIE JANE MAYO-RAMSAY	31.10.08
RUTH ROSEMARY THOMPSON	31.10.09

**Non-judicial Members, Education**

TERENCE RICHARD BURKE, AM	31.10.10
JOLYN MARGARET KARAOLIS, AM	31.10.10
JOSEPH RIORDAN, AO	31.10.10

**Non-judicial Members, Architects**

MARTYN DAVID CHAPMAN, AM	31.10.07
JANE MARGARET JOSE	31.10.10
PATRICK JOHN O'CARRIGAN	31.10.10
PETER ROY WATTS	31.10.10

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

Magistrate NANCY LOUISE HENNESSY, Deputy President	7.3.10
--	--------

**Deputy President**

ANNE KATHLEEN BRITTON	11.10.09
PETER RAYMOND CALLAGHAN, SC (13.2.08)	31.10.10
Acting Judge MICHAEL RAINSFORD CHESTERMAN	2.10.08
JANE ANNABEL DARLING NEEDHAM, SC	2.11.08

**Judicial Members**

LARISSA YASMIN BEHRENDT	31.10.08
DAVID LEE BITEL	31.10.09
JENNIFER LOUISE CONLEY	31.10.10
GAIL BARTON FURNESS (19.12.07)	31.10.10
PENELOPE HELEN GOODE	30.4.09
ERAINE ELIZABETH GROTTÉ	31.10.10
GRAHAM REGINALD IRELAND	31.10.08
RUTH LAYTON	30.4.09
RICHARD JOHN PERRIGNON (19.12.07)	31.10.10
SARAH PRITCHARD (27.8.07)	31.10.09
NEIL ROBERT REES*	26.7.07
SIMON JAMES RICE, OAM	30.4.09
JANELLE ANNE SAFFIN*	18.10.07
ANNE SCAHILL (19.12.07)	31.10.10
MARGARET MARY SMYTH	31.10.10
STEPHANIE VASS (19.12.07)	31.10.10

**Non-judicial Members**

ZITA ROSE ANTONIOS	31.10.08
MARY ELIZABETH BOLT	31.10.10
MAREE JANE GILL	30.4.09
DENNY GROTH	31.10.10
ELAYNE HAYES	31.10.10
NOEL ARTHUR HIFFERMAN	30.4.09
LYNN MARY HOULAHAN	31.10.08
DINOO KELLEGHAN (19.12.07)	31.10.10
ALAN KIRKLAND (19.12.07)	31.10.10
ANTHEA ELISABETH LOWE	30.4.09
LINDA MARILYN MONAGHAN-NAGLE	31.10.10
LAURA CLARE MOONEY	30.4.09
LOUISE NEMETH DE BIKAL	30.4.09

MAURICE MICHAEL O'SULLIVAN	30.4.09
HENRY NAN HUNG PAN, OAM	30.4.09
ANTHONY MICHAEL JOSEPH SCHEMBRI	30.4.09
JOACHIM SCHNEEWEISS, AM	31.10.10
BETTY LORRAINE WEULE	31.10.10

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

ANNE KATHLEEN BRITTON, Deputy President	11.10.09
---	----------

**Deputy President**

THOMAS JOSEPH KELLY, Deputy President	31.10.07
---------------------------------------	----------

**Judicial Members**

MARGARET MARY SMYTH	31.10.10
---------------------	----------

**Non-judicial Members**

MARY ELIZABETH BOLT	31.10.10
PHILIP FOREMAN (19.12.07)	31.10.10
JANE GOODMAN-DELAHUNTY (19.12.07)	31.10.10
JENNIFER GREEN	31.10.08
DENNY GROTH	31.10.10
LYNN MARY HOULAHAN	31.10.08
MEREDITH MARTIN	31.10.08
JAN MASON	31.10.10
LINDA MARILYN MONAGHAN-NAGLE	31.10.10
JEANETTE McDONALD MOSS, AM	31.10.08

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

The Hon. Justice WAYNE ROGER HAYLEN, Deputy President (9.6.08)	8.6.11
--	--------

**Deputy Presidents**

PETER RAYMOND CALLAGHAN, SC (13.2.08)	31.10.10
Acting Judge MICHAEL RAINSFORD CHESTERMAN	2.10.08
Acting Judge ANGELA JEANNE STIRLING KARPIN, Deputy President	30.11.08
Acting Judge JOHN McGUIRE	20.9.09

**Barrister Members**

PAUL EDWIN BLACKET, SC (27.8.07)	31.10.09
ROBERT BRUCE SCOTT MACFARLAN, QC	31.10.08
SHARRON NORTON, SC	31.10.08
LIONEL PHILIP ROBBERDS, QC	31.10.08
WENDY LOUISE ROBINSON, QC	31.10.08
ALISON PATRICIA STENMARK, SC	31.10.09
ROBERTSON WRIGHT, SC (27.8.07)	31.10.09

**Solicitor Members**

MICHAEL JAMES BARNES	31.10.10
CHRISTINE ANNE BISHOP	31.10.08
JOHN WILLIAM FRANCIS BRENNAN, RFD	31.10.08
ROGER JAMES CLISDELL*	17.3.08
JOHN SYDNEY CURRIE	31.10.08
ROSEMARY COX*	30.6.08
JULIE LOUISE GREENWOOD	31.10.08
SANDRA NERYL HALE	31.10.08
GRAHAM BRIAN MOLLOY	31.10.08
JOHANNA PHEILS	31.10.10
MICHELLE ANNE RIORDAN	31.10.10
CEDRIC BOHRSMANN VASS	31.10.08

**Licensee Members**

JANICE LOUISE HEDISON	31.10.10
-----------------------	----------

**Non-judicial Members**

CARL DONALD BENNETT	31.10.10
LESHIA OLGA BUBNIUK	31.10.10
MICHAEL EUGENE COSTIGAN	31.10.08
BARRIE DRUMMOND DYSTER	31.10.08
ROSS ANDREW EDWARD FITZGERALD	31.10.08
ELAYNE HAYES	31.10.10
ELISABETH WILMA KIRKBY	31.10.07
ANNETTE FRANCES O'NEILL	31.10.08
JOHN TINGLE (19.12.07)	31.10.10

**RETAIL LEASES DIVISION****Divisional Head**

Acting Judge MICHAEL RAINSFORD CHESTERMAN, Deputy President	2.10.08
--	---------

**Deputy President**

PETER RAYMOND CALLAGHAN, SC (13.2.08)	31.10.10
Magistrate NANCY LOUISE HENNESSY	7.3.10
ELIZABETH MARGARET OLSSON, SC (30.8.07)	29.8.08

**Judicial Members**

ROBERT JOHN FOX	31.10.08
SIGRID HIGGINS	31.10.10
MARGARET COLLEEN HOLE, AM	31.10.10
GRAHAM BRIAN MOLLOY	31.10.08
STEPHEN HENRY MONTGOMERY	31.10.10
KIM BERESFORD RICKARDS	31.10.09
JANELLE ANNE SAFFIN*	18.10.07

**Non Judicial Members**

TANYA LORRAINE CARTER	31.10.09
NEIL FAGG	31.10.10
ROGER KENNETH FAIRWEATHER	31.10.10
GARTH WARREN GRIFFITHS	31.10.10
BRIAN TERRY HARRISON	31.10.09
ANNETTE FRANCES O'NEILL	31.10.08
TERENCE JAMES TYLER	31.10.09
ROBERT VAUGHAN WARD	31.10.10
BETTY LORRAINE WEULE	31.10.10

**REVENUE DIVISION****Divisional Head**

JANE ANNABEL DARLING NEEDHAM, SC, Deputy President	2.11.08
--	---------

**Deputy President**

ROBIN PATRICK HANDLEY (Deputy President from 1.5.08)	31.10.10
--	----------

**Judicial Members**

JULIAN BLOCK	31.10.10
JULIE LOUISE GREENWOOD	31.10.08
MICHELLE JOSEPHINE HIRSCHHORN (19.12.07)	31.10.10
MARGARET COLLEEN HOLE, AM	31.10.10
RICHARD JOHN PERRIGNON (19.12.07)	31.10.10
JOANNE CHRISTINE SEVE	31.10.07
AMARJIT SINGH VERICK	31.10.10

**Non Judicial Members**

CARL DONALD BENNETT	31.10.10
CLIFFORD DOUGLAS BLAKE, AO	31.10.10
DANNY KOUTOULAS	31.10.10

**MEDIATORS**

List of Mediators under s 106 of the ADT Act  
Appointments have been limited to serving members of the Tribunal.

**COMMUNITY SERVICES DIVISION**

PENELOPE HELEN GOODE
DENNY GROTH

**EQUAL OPPORTUNITY DIVISION, GENERAL DIVISION – GUARDIANSHIP AND PROTECTED ESTATES MATTERS**

ZITA ROSE ANTONIOS
LEIGH BAKER
PENELOPE HELEN GOODE
DENNY GROTH
ASHLEY LIMBURY
JILLIAN MOIR
MARGARET MARY SMYTH

**GENERAL DIVISION – FREEDOM OF INFORMATION AND PRIVACY MATTERS**

ZITA ROSE ANTONIOS
PENELOPE HELEN GOODE
ASHLEY LIMBURY
JILLIAN MOIR

*Legend*

\* Date of resignation

‡ Deceased

## Appendix C: Legislation

### Principal Legislation

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

### Primary Legislation

Aboriginal Lands Rights Act 1983  
Adoption Act 2000  
Agricultural Livestock (Disease Control Funding) Act 1998  
Agricultural Tenancies Act 1990  
Air Transport Act 1964  
Animal Research Act 1985  
Anti-Discrimination Act 1977  
Apiaries Act 1985  
Architects Act 2003  
Births Deaths and Marriages Registration Act 1995  
Boxing and Wrestling Control Act 1986  
Building and Construction Industry Security of Payment Act 1999  
Building Professionals Act 2005  
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  
Chiropractors Act 2001  
Coal Mine Health and Safety Act 2002  
Coal Mine Health and Safety Regulation 2006  
Commercial Agents and Private Inquiry Agents Act 2004  
Commission for Children and Young People Act 1998  
Community Justices Centres Act 1983  
Community Services (Complaints, Reviews and Monitoring) Act 1993  
Community Services (Complaints, Reviews and Monitoring) Regulation 2004  
Conveyancers Licensing Act 2003  
Co-operative Housing and Starr-Bowkett Societies Act 1998  
Deer Act 2006  
Dental Practice Act 2001  
Disability Services Act 1993  
Drug and Alcohol Treatment Act 2007  
Education Act 1990  
Electricity Supply Act 1995  
Electricity (Consumer Safety) Act 2004  
Entertainment Industry Act 1989

Environmental Planning and Assessment Act 1979  
Explosives Act 2003  
Fair Trading Act 1987  
Firearms Act 1996  
Firearms Regulation 2006  
First Home Owner Grant Act 2000  
Fisheries Management Act 1994  
Food Act 2003  
Food Regulation 2004  
Forestry Act 1916  
Freedom of Information Act 1989  
Freedom of Information Regulation 2005  
Game and Feral Animal Control Act 2002  
Gas Supply Act 1996  
Guardianship Act 1987  
Guardianship Regulation 2005  
Health Care Complaints Act 1993  
Health Records and Information Privacy Act 2002  
Hemp Industry Act 2008  
Higher Education Act 2001  
Home Building Act 1989  
Home Building Regulation 2004  
Housing Amendment (Community Housing Providers) Act 2007  
Hunter Water Act 1991  
Impounding Act 1993  
Legal Profession Act 2004  
Licensing and Registration (Uniform Procedures) Act 2002  
Liquor Act 2007  
Local Government Act 1993  
Marine Safety Act 1998  
Mental Health Regulation 2007  
Mine Health and Safety Act 2004  
Mine Health and Safety Regulation 2007  
Motor Dealers Act 1974  
Motor Vehicle Repairs Act 1980  
Motor Vehicle Sports (Public Safety) Act 1985  
Mount Panorama Motor Racing Act 1989  
Native Title (New South Wales) Act 1994  
Non-Indigenous Animals Act 1987  
Nurses and Midwives Act 1991  
Occupational Health and Safety Act 2000  
Occupational Health and Safety Regulation 2001  
Ombudsman Act 1974  
Optometrists Act 2002  
Osteopaths Act 2001  
Passenger Transport Act 1990  
Pawnbrokers and Second-hand Dealers Act 1996  
Pesticides Act 1999  
Petroleum Product Subsidy Act 1997  
Photo Card Act 2005  
Physiotherapists Act 2001  
Plant Diseases Act 1924  
Podiatrists Act 2003  
Police Act 1990  
Powers of Attorney Act 2003  
Private Health Facilities Act 2007

Privacy and Personal Information Protection Act 1998  
Private Hospitals and Day Procedure Centres Act 1988  
Property, Stock and Business Agents Act 2002  
Protected Estates Act 1983  
Protected Estates Regulation 2003  
Public Health Act 1991  
Public Lotteries Act 1996  
Rail Safety Act 2002  
Racing Administration Act 1998  
Registration of Interests in Goods Act 1986  
Retail Leases Act 1994  
Rice Marketing Act 1983  
Road and Rail Transport (Dangerous Goods) Act 1997  
Road Transport (General) Act 2005  
Road Transport (Safety and Traffic Management) Act 1999  
Security Industry Act 1997  
Shop Trading Act 2008  
State Water Corporation Act 2004  
Surveying Act 2002  
Sydney Water Act 1994  
Sydney Water Catchment Management Act 1998  
Taxation Administration Act 1996 ie  
    Betting Tax Act 2001  
    Duties Act 1997  
    Gaming Machine Tax Act 2001  
    Health Insurance Levies Act 1982  
    Insurance Protection Tax Act 2001  
    Land Tax Act 1956  
    Land Tax Management Act 1956  
    Parking Space Levy Act 1992  
    Payroll Tax Act 2007  
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 Practice Act 2003  
Vocational Education and Training Act 2005  
Weapons Prohibition Act 1998  
Wine Grapes Marketing Board (Reconstitution) Act 2003  
Wool Hide and Skin Dealers Act 2004  
Workers Compensation Regulation 2003  
Workplace Injury Management and Workers Compensation Act 1998  
Youth and Community Services Act 1973

## Appendix D: Case Load and Time Standards

### CASE LOAD

	All Divisions			Appeal Panel - Internal		
	Applications Lodged	Applications Completed	Applications Pending#	Appeals Lodged	Appeals Completed	Appeals Pending#
1998-1999*	625**	234	391*	8	2	6
1999-2000	568	619	340*	44	20	30
2000-2001	666	629	377	53	45	38
2001-2002	695	642	430	61	59	40
2002-2003	766	817	379	73	67	46
2003-2004	908	791	496	65	89	21
2004-2005	919	910	505	77	59	39
2005-2006	969	913	561	82	74	47
2006-2007	1009	954	616	80	76	51
2007-2008	989	955	650	83	84	50
<b>Total</b>	<b>8114</b>	<b>7464</b>	<b>(650)</b>	<b>626</b>	<b>575</b>	<b>51</b>

\* Date of commencement: 6 October 1998

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

# Pending and filed figures have been adjusted following an audit and manual reconciliation of files in 2008.

### APPEAL - EXTERNAL

	Appeals Lodged	Appeals Completed	Appeals Pending#
2002-2003*	1	0	0
2003-2004	28	21	8
2004-2005	19	21	6
2005-2006	17	18	5
2006-2007	15	14	6
2007-2008	21	19	8
<b>Total</b>	<b>100</b>	<b>93</b>	<b>7</b>

\* External appeals jurisdiction commenced – 28 February 2003

---

## TIME STANDARDS

As at 30 June 2008 the Tribunal's performance against its time standards was:  
(target appears in brackets)

### Review decisions

- 62% of matters disposed of in less than 6 months (85%)
  - 82% of matters disposed of in less than 1 year (100%)
  - Clearance ratio\* – 93%
- 

### Original Decisions (other than Equal Opportunity Division matters)

- 59% of matters disposed of in less than 6 months (85%)
  - 83% of matters disposed of in less than 1 year (100%)
  - Clearance ratio\* – 102%
- 

### Original Decisions (Equal Opportunity Division matters)

- 80% of matters disposed of in less than 1 year (80%)
  - 90% of matters disposed of in less than 2 years (100%)
  - Clearance ratio\* – 104%
- 

### Professional Disciplinary Decisions (includes Legal Services Division and General Division cases)

- 64% of matters disposed of in less than 9 months (90%)
  - 82% of matters disposed of in less than 1 year (100%)
  - Clearance ratio\* – 50%
- 

### Appeals (Internal Appeals from appealable decisions of the Tribunal and External Appeals)

- 70% of matters disposed of in less than 6 months (80%)
  - 82% of matters disposed of in less than 1 year (100%)
  - Clearance ratio\* – 94%
- 

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



# Appendix E: Statistics

## GENERAL DIVISION 1/7/2007 - 30/6/2008

### 1. Case flow 2007-2008

Matters pending at 30 June 2007	New Applications filed	Disposals	Pending as at 30 June 2008
242	390	372	255*

\* Adjustment made to 255 to rectify a previous error (from 261)

### 2. Applications by type 2007-2008

Applications for Original Decision	Applications for review	Professional Discipline
2	383	5

### 3. Applications by Act 2007-2008

Subject by Act	
Apiaries Act 1985	1
Births Deaths and Marriages Registration Act 1995	3
Boxing & Wrestling Control Act 1986	1
Building Professionals Act 2005	9
Business Names Act 2002	4
Conveyancers Licensing Act 2003	1
Education Act 1990	2
Environmental Planning and Assessment Act 1979	2
Explosives Act 2003	1
Firearms Act 1996	40
Fisheries Management Act 1994	8
Freedom of Information Act 1989	117
Guardianship Act	4
Health Records and Information Privacy Act 2002	4
Home Building Act 1989	27
Licensing and Registration (Uniform Procedures) Act 2001	2
Motor Dealers Act 1974	2
Motor Vehicle Repairs Act 1974	2
Occupational Health and Safety Act 2001	3
Passenger Transport Act 1990	42
Police Act 1990	2
Privacy and Personal Information Protection Act 1998	32
Property Stock and Business Agents Act	17
Protected Estates Act 1983	25
Registration of Interests in Goods Act 1986	1
Road Transport (General) Act 1999	1
Security Industry Act 1997	21
Shops and Industries Act 1962	1
Tow Truck Industry Act 1989	9
Veterinary Practice Act	1
Vocational Education and Training Accreditation Act 2005	5

### 4. Outcomes in Review matters 2007-2008

Dismissed because application withdrawn/no appearance/agreement reached	Decision under review affirmed	Decision under review set aside/ varied/remitted/ recommendation made	Mixed result - Partly Affirmed/ Partly set aside varied or remitted	Privacy - contravention - no action	Privacy - contravention order made	Privacy - application dismissed	No Jurisdiction
152	95	59	21	4	3	1	19

---

#### 5. Outcomes in Original matters 2007-2008

Dismissed because application withdrawn/no appearance/ agreement reached	Application granted	Application refused	No Jurisdiction
0	0	0	1

#### 6. Outcomes in Professional Discipline 2007-2008

Dismissed	Orders made	Application withdrawn dismissed	No jurisdiction
0	0	0	0

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

No. disposed of in under 6 months	207	No.
disposed of in under 12 months	102	
No. disposed of in over 12 months	53	
No. disposed of in over 2 years	10	
	372	

#### 8. Mediation

No. of disposals where mediation was conducted		
Settled at Mediation	Settled after Mediation	Proceeded to Hearing
1	0	1

## Guardianship and Protected Estates List 1/7/2007-30/6/2008

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 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 2007-2008

Pending as at 30 June 2007	New Applications Filed	Disposals	Pending as at 30 June 2008
2*	29	21	10

\*(Incorrect figure of 3 in 2006-2007)

#### 2. Applications for Review by Act 2007-2008

Subject by Act	Number
Guardianship Act	4
Protected Estates Act	25

#### 3. Outcomes in Review Matters under the Guardianship Act and the Protected Estates Act 2007-2008

Dismissed because application withdrawn/ no appearance/ agreement reached	Decision under review affirmed	Decision under review set aside/varied/ remitted/ recommendation made	Mixed result - Partly Affirmed/ Partly set aside varied or remitted	No Jurisdiction	Total
10	7	2	1	1	21

#### 4. 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

## COMMUNITY SERVICES DIVISION 1/7/2007 - 30/6/2008

### 1. Case flow 2007-2008

Matter pending as at 30 June 2007	New Applications filed	Disposals	Pending as at 30 June 08
17	37	40	14

### 2. Applications by type 2007-2008

Applications for original decision	Applications for review
20	17

### 3. Applications by Act 2007-2008

Subject by Act	Number
Children and Young Persons (Care and Protection) Act 1988	20
Commission for Children and Young People Act 1998	17

### 4. Outcomes - Reviewable Decisions 2007-2008

Dismissed because application withdrawn/no appearance/agreement reached	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
12	2	1	0	3

### 5. Outcomes- Original Decisions 2007-2008

Dismissed because application withdrawn/no appearance/agreement reached	Declaration Made	Declaration Refused	No Jurisdiction
12	9	1	0

### 6. Mediation 2007-2008

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

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

No. disposed of in under 6 months	27
No. disposed of in under 12 months	9
No. disposed of in over 12 months	2
No. disposed of in over 2 years	2

## EQUAL OPPORTUNITY DIVISION 1/7/2007 - 30/6/2008

### 1. Case flow 2007- 2008

Matters pending at 30 June 2007	New Applications filed	Disposals	Pending as at 30 June 08
88	144	132	100

### 2. Applications by type 2007-2008

Referrals of complaints by President of Anti-Discrimination Board	Application for registration of conciliation agreement	Applications for leave to proceed	Applications for interim orders
99	5	38	2

### 3. Referrals of Complaints by President of Anti-Discrimination Board by Ground 2007-2008

Head of discrimination**	Number
Race	46
Disability Discrimination	35
Sexual Harassment	23
Sex Discrimination	21
Victimisation	19
Carers responsibilities	14
Age Discrimination	10
Homosexual vilification	7
Homosexual Discrimination	6
Marital status	3
Transgender vilification	3
Vilification	3
Pregnancy Discrimination	2
Vilification - HIV/AIDS	1

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

### 4A. Outcomes of Referrals 2007-2008

Dismissed because application withdrawn/no appearance/agreement reached	Summary dismissal under section 111,s 102	Dismissed after hearing	Orders made
59	1	19	13

### 4B. Mediation

No. of disposals where mediation was conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing
55	10	31	14

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

for referrals	
No. disposed of in under 6 months	65
No. disposed of in under 12 months	35
No. disposed of in over 12 months	16
No. disposed of in over 2 years	17

### 5A. Application for registration of conciliation agreement 2007 - 2008

(this information also forms part of the Equal Opportunity Division case flow statistics above)

Matters pending at 30 June 2007	New Applications filed	Disposals	Pending as at 30 June 08
1	5	4	2

**5B. Outcome of application for registration of agreement 2007-2008**

Agreement registered	Agreement not registered	Dismissed because application withdrawn / no appearance/ agreement reached
1		3

**5C. Timeliness - time from date of application to date of disposal**

for registration of agreement

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

**6A. Applications for leave to proceed 2007-2008**

(this information also forms part of the Equal Opportunity Division case flow statistics above)

Matters pending at 30 June 2007	New applications filed	Disposals	Pending at 30 June 2008
13	38	39	12

**6B. Outcome of applications for leave 2007-2008**

Leave granted	Leave not granted	Dismissed because application withdrawn / no appearance/ agreement reached
5	24	10

**6C. Timeliness - time from date of application to date of disposal**

for leave applications

No. disposed of in under 6 months	29
No. disposed of in under 12 months	7
No. disposed of in over 12 months	3
No. disposed of in over 2 years	0

**7A. Applications for interim orders**

New Applications Filed	Disposals
2	2

**7B. Outcome of applications for interim orders**

Order granted	Order not granted	Consent orders	Application withdrawn dismissed
0	0	0	2

**7C. Timeliness - time from date of application to date of disposal**

for interim orders

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

## RETAIL LEASES DIVISION 1/7/2007 - 30/6/2008

### 1. Case flow 2007-2008

Matters pending at 30 June 2007	Applications filed	Disposed	Pending as at 30 June 08
108	261	240	129

### 2. Applications by Type 2007-2008

Retail tenancy claim	127
Unconscionable conduct claim	5
Combined retail tenancy & unconscionable conduct claim	65
Specialist Retail Valuer	64

### 3. Outcomes 2007- 2008

Dismissed because application withdrawn / no appearance/ agreement reached	Dismissed after hearing	Settled - Orders made	Orders made	No Jurisdiction	Transfer to Supreme Court
114	21	21	79	4	1

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

No. disposed of in under 6 months	168
No. disposed of in under 12 months	41
No. disposed of in over 12 months	25
No. disposed of in over 2 years	6

## REVENUE DIVISION 1/7/2007- 30/6/2008

### 1. Case flow 2007-2008

Matters pending at 30 June 2007	Applications filed	Disposals	Matters pending as at 30 June 08
115	121	148	88

### 2. Applications by Type 2007-2008\*

Subject by Act	
Duties Act 1997	10
First Home Owners Grant Act	30
Land Tax Act	16
Land Tax Management Act 1956	44
Parking Space Levy Act 1992	2
Payroll Tax Act 1971	15
Taxation Administration Act 1996	4

### 3. Outcomes 2007- 2008

Dismissed because application withdrawn/ no appearance/ agreement reached	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
96	35	14	3	0

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

No. disposed of in under 6 months	69
No. disposed of in under 12 months	59
No. disposed of in over 12 months	18
No. disposed of in over 2 years	2

## LEGAL SERVICES DIVISION 1/7/2007- 30/6/2008

### 1. Case flow 2007-2008

Matters pending at 30 June 2007	Applications filed	Disposed	Pending as at 30 June 08
47	39	35	51

### 2. Applications by type 2007-2008

Applications for original decision	1
Applications for review	2
Application for professional discipline	36

### 3. Applications by subject 2007-2008

Type of Practitioner	Type of conduct	Number
Barrister	Disciplinary action	6
Solicitor	Show Cause s.75	1
Solicitor	Disciplinary action	29
Solicitor	Reprimand/Compensation Order s.540	2
Lay associate	Approval of lay associate s. 17(3)	1

### 4. Outcomes in Original matters 2007-2008\*\*

#### *Disciplinary - Penalty imposed by type*

Dismissed after hearing	3
Fined	12
Reprimanded	18
Practising Certificate suspended	2
Practising Certificate cancelled	1
Removed from Roll	5
Consent order	5
Conditions imposed on practising certificate	4
Compensation	1
Undertake and complete course of further Legal Education	1
Withdrawn	1
Application granted	1
Application refused	1
<i>Approval of lay associate</i>	
Application granted	0
Withdrawn	0

\*\*NB: a number of matters have more than one outcome

### 5. Outcomes in Review matters 2007-2008

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

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

No. disposed of in under 6 months	9
No. disposed of in under 12 months	14
No. disposed of in over 12 months	9
No. disposed of in over 2 years	3

## APPEALS 1/7/2007 - 30/6/2008

### Internal Appeals to Appeal Panel

#### 1. Case Flow 2007 -2008

	Appeals Pending as 30 June 2007	New Appeals filed	Disposals	Pending as at 30 June 08
General Division	27*	46	43	30
Community Services Division	0	1	1	0
Equal Opportunity Division	13*	10	20	3
Retail Leases Division	6	16	10	12
Revenue Division	3	11	9	5
Legal Services Division	0	0	0	0
Total		84	83	50

\*incorrect pending figure in 2006-2007 annual report (15)

#### 2. Outcome of Internal Appeals 2007 - 2008

	Upheld (in full or part)	Dismissed	No Jurisdiction	Consent Orders	Withdrawn/ Discontinued	Total
General Division	11	25	0	1	6	43
Community Services Division	0	0	0	0	1	1
Equal Opportunity Division	3	9	1	1	6	20
Retail Leases Division	1	6	0	3	0	10
Revenue Division	5	2	0	0	2	9
Legal Services Division	0	0	0	0	0	0
Total						83

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

No. disposed of in under 6 months	46
No. disposed of in under 12 months	19
No. disposed of in over 12 months	14
No. disposed of in over 2 years	4
	83

### External Appeals to the Appeal Panel

#### 1. Case Flow 2007 -2008

	Appeals Pending as 30 June 2007	New Appeals filed	Disposals	Pending as at 30 June 08
Guardianship Tribunal	6	18	18	6
Mental Health Review Tribunal	0	1	1	0
Magistrate	0	1	1	0
Total	6	20	20	6

#### 2. Outcome of External Appeals 2007-2008

Upheld (in full or in part)	Dismissed	Withdrawn/Discontinued	No Jurisdiction
1	12	6	1

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

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



## Appeals to the Supreme Court

### 1. Case flow 2007 - 2008

	Appeals Pending as 30 June 2007	New Appeals filed	Disposals	Pending as at 30 June 2008
General Division	1	3	2	2
Community Services Division	3	0	0	3
Equal Opportunity Division	1	1	1	1
Retail Leases Division	1	1	0	2
Revenue Divison	0	0	0	0
Legal Services Division	1	2	2	1
Appeal Panel	14	7	4	17
Appeal External	0	2	2	0
Total	21	16	11	26

### 2. Outcome of Appeals 2007 - 2008

	Upheld (in full or part)	Dismissed	Withdrawn/ Discontinued	Orders made following s118 referral
General Division	0	1	1	1
Community Services Division	0	0	0	0
Equal Opportunity Division	1	1	0	0
Retail Leases Division	0	0	0	0
Revenue Divison	0	0	0	0
Legal Services Division	0	3	0	0
Appeal Panel	2	2	1	0
Appeal External	0	0	2	0
Total	3	7	4	0

### Published Appeal Decisions- Presiding Member

Member	Number- Internal Decisions	Number- External Decisions	Total
O'Connor, P	22	0	22
Hennessy, DP	32	8	40
Chesterman, DP	7	1	8
Needham, DP	6	0	6
Britton, DP	1	2	3

---

## Appendix F: User Groups and Rule Subcommittee Membership

### User Groups

User Groups provide input to assist in ensuring that the Tribunal's practices and procedures are working efficiently. The Tribunal established a Freedom of Information User Group in 1999. The President chairs the Group and membership includes a Deputy President, a Judicial Member of the General Division and representatives from the Crown Solicitor's Office, the NSW Ombudsman, the NSW FOI and Privacy Network and the Public Interest Advocacy Centre. The Group did not meet this year.

Last year's report noted the establishment of a Privacy User Group, which did not meet during the year. It comprises representatives from the Privacy Commissioner, the Crown Solicitor's Office, NSW Health, the NSW FOI and Privacy Network, the Public Interest Advocacy Centre and the Australian Privacy Foundation.

In early 2004 the Tribunal established the Guardianship and Protected Estates User Group to discuss and develop policies and practices in relation to matters dealt with in the Guardianship and Protected Estates List in the General Division and external appeals before the Appeal Panel. The President, Judge O'Connor, the Deputy President Hennessy and a non-judicial member of the Tribunal are members of this group. External members are representatives from the Offices of the Protective Commissioner and Public Guardian, the Guardianship Tribunal, the Mental Health Review Tribunal, the Chief Magistrates Office, the Crown Solicitor, the Legal Aid Commission, LawAccess NSW, Intellectual Disability Rights Service and The Aged Care Rights Service. The User Group did not meet during the year and resolved to meet on an as-needs basis. Issues discussed at the meeting included the representation role within the Tribunal, identification of parties and the revised Practice Note.

### The Rule Committee

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

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

#### General Division

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

#### Community Services Division

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

---

### **Equal Opportunity Division**

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

### **Retail Leases Division**

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

### **Legal Services Division**

1. Divisional Head: Justice Wayne Haylen
2. Judicial member: vacant
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.



